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Bill C-32: An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022

*An Act to implement certain provisions
of the fall economic statement tabled
in Parliament on November 3, 2022 and
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in Parliament on April 7, 2022*

Charter Statement
C-32

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Tabled in the House of Commons, November 21, 2022

Explanatory Note

Section 4.2 of the *Department of Justice Act* requires the Minister of Justice to prepare a Charter Statement for every government bill to help inform public and Parliamentary debate on government bills. One of the Minister of Justice's most important responsibilities is to examine legislation for inconsistency with the *Canadian Charter of Rights and Freedoms* ["the Charter"]. By tabling a Charter Statement, the Minister is sharing some of the key considerations that informed the review of a bill for inconsistency with the Charter. A Statement identifies Charter rights and freedoms that may potentially be engaged by a bill and provides a brief explanation of the nature of any engagement, in light of the measures being proposed.

A Charter Statement also identifies potential justifications for any limits a bill may impose on Charter rights and freedoms. Section 1 of the Charter provides that rights and freedoms may be subject to reasonable limits if those limits are prescribed by law and demonstrably justified in a free and democratic society. This means that Parliament may enact laws that limit Charter rights and freedoms. The Charter will be violated only where a limit is not demonstrably justifiable in a free and democratic society.

A Charter Statement is intended to provide legal information to the public and Parliament on a bill's potential effects on rights and freedoms that are neither trivial nor too speculative. It is not intended to be a comprehensive overview of all conceivable Charter considerations. Additional considerations relevant to the constitutionality of a bill may also arise in the course of Parliamentary study and amendment of a bill. A Statement is not a legal opinion on the constitutionality of a bill.

Charter Considerations

The Minister of Justice has examined Bill C-32, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022*, for any inconsistency with the Charter pursuant to his obligation under section 4.1 of the *Department of Justice Act*. This review involved consideration of the objectives and features of the Bill.

What follows is a non-exhaustive discussion of the ways in which Bill C-32 potentially engages the rights and freedoms guaranteed by the Charter. It is presented to assist in informing the public and Parliamentary debate on the Bill. It does not include an exhaustive description of the entire bill, but rather focuses on those elements relevant for the purposes of a Charter statement.

The main Charter-protected rights and freedoms potentially engaged by the proposed measures include:

- **Right to liberty (section 7 of the Charter)**

Section 7 of the Charter protects against the deprivation of an individual's life, liberty and security of the person unless done in accordance with the principles of fundamental justice. These include the principles against arbitrariness, overbreadth and gross disproportionality. An arbitrary law is one that impacts section 7 rights in a way that is not rationally connected to the law's purpose. An overbroad law is one that impacts section 7 rights in a way that, while generally rational, goes too far by capturing some conduct that bears no relation to the law's purpose. A grossly disproportionate law is one whose effects on section 7 rights are so severe as to be "completely out

of sync” with the law’s purpose. Offences that carry the possibility of imprisonment have the potential to deprive liberty and so must accord with the principles of fundamental justice.

The principles of fundamental justice also include residual protections for the right to silence and for the protection against self-incrimination, which provide certain additional safeguards beyond those accorded by the more specific rights against self-incrimination in sections 11(c) and 13 of the Charter.

- **Right against unreasonable search and seizure (section 8 of the Charter)**

Section 8 of the Charter protects against “unreasonable” searches and seizures. The purpose of section 8 is to protect individuals against unreasonable intrusion into a reasonable expectation of privacy. A search or seizure that intrudes upon a reasonable expectation of privacy will be reasonable if it is authorized by a law, the law itself is reasonable (in the sense of striking an appropriate balance between privacy interests and the state interest being pursued), and it is carried out in a reasonable manner. The assessment of the reasonableness of the law is a flexible one that takes into account the nature and purpose of the legislative scheme, and the nature of the affected privacy interests.

- **Equality rights (section 15 of the Charter)**

Section 15(1) Charter protects equality rights. It provides that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination, including on the basis of age and mental or physical disability. Equality

entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect, and consideration.

Additional Reporting Requirements for Trusts

Part 1 would amend the *Income Tax Act* and the *Income Tax Regulations* to require every person in a fiduciary capacity, that is, a person acting on behalf of and in the best interests of another person, or similar role, to provide certain information in relation to express trusts. Generally, an express trust is a trust made in writing, other than a trust created as a result of an individual's death. The information must include the name, address, date of birth (in the case of an individual), jurisdiction of residence and taxpayer identification number, such as a social insurance number, business number or trust account number, of each trustee, beneficiary, settlor as well as each person who has the ability to exert control over trustees. Trusts that meet specific exceptions will not be subject to this reporting requirement, such as trusts whose units are listed on a designated stock exchange. The new reporting requirement will apply to taxation years that end after December 30, 2023.

The requirement to provide information about trusts potentially engages section 8 of the Charter. The following considerations support the consistency of this requirement with section 8. The purpose of the measure is to improve the collection of relevant information to help the Canada Revenue Agency assess the tax liability for trusts and its beneficiaries. In the regulatory and administrative contexts, privacy expectations are reduced. Powers to compel the production of information for the administration of the *Income Tax Act*, which is based upon a self-assessment system, have been upheld as reasonable under section 8. In reviewing the

relevant provisions, the Minister has not identified any potential effects that could constitute an unreasonable interference with privacy as protected by section 8 of the Charter.

Tax-Free First Home Savings Account

Part 1 would amend the *Income Tax Act* to create a new registered account to help individuals save for their first home. Contributions to a First Home Savings Account would be tax-deductible and income earned in a First Home Savings Account would not be subject to taxation. Qualifying withdrawals from a First Home Savings Account made to purchase a first home would also be non-taxable. Failure to use the funds for a qualifying first home purchase within 15 years would result in the First Home Savings Account being closed. Any unused savings could be transferred into a registered retirement savings plan (RRSP) or registered retirement income fund.

These provisions potentially engage section 15 of the Charter because an individual must be at least 18 years of age in order to qualify for a First Home Savings Account. In addition, the First Home Savings Account's maximum participation period ends after the individual turns 71 years of age, assuming the other events triggering termination have not occurred, specifically, withdrawal from the First Home Savings Account, or the passage of 14 years since it was opened. The following considerations support the consistency of the provisions with section 15 of the Charter. Courts have recognized that age-based distinctions are a common and necessary way of ordering our society. Reaching 18 years of age is a broadly accepted proxy for financial independence used throughout the *Income Tax Act*. Ending eligibility for the First Home Savings Account at age 71 aligns with the existing upper age limit for RRSP (Registered retirement savings plan) contributions. This ensures that in providing for the

transferability of First Home Savings Account funds into an RRSP (Registered retirement savings plan), the measure does not create an opportunity to circumvent the upper age limit for RRSP (Registered retirement savings plan) contributions, or a means of postponing the date on which funds must be withdrawn from an RRSP (Registered retirement savings plan).

Medical Expense Tax Credit

Part 1 would amend the *Income Tax Act* to broaden tax recognition under the Medical Expense Tax Credit to cover expenses incurred by individuals who, in order to become a parent, rely on surrogacy, embryo donation, or sperm or ova (“gamete”) donation. While it is illegal in Canada to pay for the services of surrogate mothers or to purchase gametes or embryos from donors, intended parents may reimburse such individuals for out-of-pocket medical expenses incurred in the context of a non-commercial arrangement. Under the new measure, such reimbursements would be eligible under the Medical Expense Tax Credit provided that the expenses are permissible under the *Assisted Human Reproduction Act* and are incurred in Canada.

These amendments could have a potential effect on section 15 rights in differing ways. Surrogacy, and embryo or gamete donation, are often relied on by 2SLGBTQI+ individuals and individuals with fertility-related health issues, both of whom are protected under section 15 of the Charter based on the grounds of sexual orientation and disability. Therefore, the expansion of the Medical Expense Tax Credit to cover these expenses could be considered to promote substantive equality for these individuals. On the other hand, limiting the expansion of this coverage to only those expenses incurred in Canada could be considered to create a distinction based on sexual orientation and disability because generally, amounts paid for

expenses incurred out-of-country are eligible for the Medical Expense Tax Credit. The following considerations support the consistency of the provisions with section 15 of the Charter. Canadian law expressly prohibits commercial surrogacy and the purchase of gametes or embryos due to concerns over potential exploitation in the trade of reproductive capabilities for commercial ends. Allowing Medical Expense Tax Credit eligibility for expenses incurred in jurisdictions where commercial surrogacy and the sale of embryos and gametes are permitted would run counter to Canada's approach to assisted human reproduction, including the objective of minimizing the risks of exploitation in the trade of human reproductive capabilities.

Multigenerational Home Renovation Tax Credit

Part 1 would amend the *Income Tax Act* to create a refundable tax credit, the Multigenerational Home Renovation Tax Credit. The Multigenerational Home Renovation Tax Credit would provide up to \$7,500 in support for families adding a secondary unit to their home for the purposes of allowing an immediate or extended family member who is either a senior or an adult with a disability, to live with them. Qualifying seniors are individuals who are 65 years of age or older at the end of the taxation year in which the renovation is completed. Qualifying adults with disabilities are 18 years of age or older at the end of the taxation year in which the renovation is completed and are eligible for the Disability Tax Credit at any time in that year. Qualifying relatives of a senior, or adult with a disability are individuals 18 years of age or older at the end of the taxation year in which the renovation is completed, and are a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece or nephew of the person in question or of that person's spouse or common-law partner.

These provisions potentially engage section 15 of the Charter because an individual must be at least 18 years of age in the relevant timeframe to be a qualifying adult with a disability or a qualifying relative. In addition, to qualify as an eligible senior, a person must be 65 or older in the relevant timeframe. The following considerations support the consistency of the provisions with section 15 of the Charter. Courts have recognized that age-based distinctions are a common and necessary way of ordering our society. Reaching 18 years of age is a broadly accepted proxy for financial independence used throughout the *Income Tax Act*. The age of 65 is similarly accepted as a common age of retirement and eligibility for associated benefits.

Rules with respect to audits by Canada Revenue Agency officials

The Minister of National Revenue has broad powers to audit taxpayers' returns, to inspect relevant records and to compel information that may be relevant to the determination of tax liability. These broad powers are necessary to ensure that Canada's system of tax collection, which relies primarily on taxpayer self-assessment and self-reporting, works properly. Amendments in Part 1 would re-enact and modernize the information-gathering power included in section 231.1 of the *Income Tax Act*, including to address a gap that has been identified following the Federal Court of Appeal decision in *Minister of National Revenue v. Cameco* (2019). In that case, the Court held that section 231.1 authorized inspectors to require persons on the premises where an inspection is being conducted to answer questions about the origin and location of records and documents, but that it did not constitute a power to compel oral interviews of a taxpayer or its employees.

The re-enacted section 231.1 would preserve existing information-gathering powers available to an authorized person for purposes related to the administration or enforcement of the *Income Tax Act*. These include the power to inspect, audit or examine documents and property that may be relevant in determining a taxpayer's obligations or entitlements under the Act. They also include the power to enter any place, other than a dwelling house, where relevant information or property is or should be kept. The revised provision would also clarify that an authorized person conducting an audit or examination may require a person to attend at a place designated by the authorized person or by video-conference and to answer the questions orally.

Analogous amendments, providing the authority to require a person to attend a designated place and answer questions orally, would be made to the inspection and requirement powers in sections 98 and 288 of the *Excise Tax Act*, section 70 of the *Air Travellers Security Charge Act*, section 260 of the *Excise Act, 2001* and section 141 of the *Greenhouse Gas Pollution Pricing Act*.

The power to compel an individual to attend and to answer questions to further an audit potentially engages the liberty interest under section 7 of the Charter. The following considerations support the consistency of this power with section 7. The protection against self-incrimination and the right to silence under section 7 are not absolute. The power to compel individuals to attend and to answer questions serves an important administrative purpose, namely, determining tax liability. The context in which the power may be used is non-adversarial because the power is not available for the predominant purpose of furthering a prosecution against the witness.

Because the amended inspection powers have the potential to interfere with privacy interests they may also engage section 8 of the Charter. The following considerations support the consistency of these powers with section 8. The amended inspection powers would not be available to further a penal investigation. Rather, they would be available for the administrative purpose of verifying and assessing tax liability, in circumstances where privacy expectations are diminished. As such, the proposed powers are similar to inspection powers that have been upheld in the administrative and taxation contexts.

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