# REVISED STATUTES

# OF

# NOVA SCOTIA

# 2023

BEING A
CONSOLIDATION AND REVISION OF
THE PUBLIC GENERAL STATUTES OF THE PROVINCE
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THE STATUTE REVISION ACT, AND
REPRESENTING THE LAW AS OF DECEMBER 31, 2023, AND
IN FORCE ON A DAY TO BE FIXED BY
THE GOVERNOR IN COUNCIL BY PROCLAMATION

## VOLUME Ca-Com


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# VOLUME Ca-Com

# Revised Statutes of Nova Scotia

# 2023

CHAPTER C-1

# An Act Respecting the Development of Municipal Campsites and Scenic Areas

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(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Campsites and Scenic Areas Development Act*. R.S., c. 332, s. 1.

**Interpretation**

**2** In this Act,

"approved campsite" means a campsite approved for financial assistance under this Act;

"local community organization" means an organization, incorporated under any Act of the Legislature, that is active in the municipality;

"local scenic area" means an area approved for financial assistance under this Act;

"Minister" means the Minister of Natural Resources and Renewables;

"municipality" means a regional municipality, a town or a municipality of a county or district. R.S., c. 332, s. 2.

**Financial assistance**

**3** **(1)** Subject to the approval of the Governor in Council, the Minister may grant financial assistance to a municipality to assist in the development of an approved campsite.

**(2)** The financial assistance in respect of an approved campsite must not exceed one half of the total cost of development and in no case may exceed $15,000.

**(3)** No financial assistance may be granted under this Act unless, in the opinion of the Minister, there is a need for the approved campsite having regard to its location in relation to other parks in the Province and the camping, picnicking and other facilities provided for the accommodation and enjoyment of the public. R.S., c. 332, s. 3.

**Powers of municipality**

**4 (1)** The council of any municipality may provide for the establishment of an approved campsite under this Act and may acquire real and personal property by purchase or otherwise for that purpose.

**(2)** The council of any municipality may enter into an agreement with the council or councils of other municipalities for establishing an approved campsite, acquiring real or personal property for that purpose and developing and operating the campsite upon such terms as may be agreed upon by the municipalities.

**(3)** Establishment of an approved campsite is a municipal purpose for the purpose of the *Municipal Government Act*. R.S., c. 332, s. 4.

**Approval of campsite**

**5 (1)** Any municipality or, where there is an agreement under Section 4, municipalities may apply to the Minister for approval of a campsite under this Act.

**(2)** Where a municipality or municipalities apply to the Minister, the municipality or municipalities shall file with the Minister a plan of the campsite and specifications indicating the development work that will be carried out by the municipality or municipalities.

**(3)** The municipality or municipalities shall furnish any other information required by the Minister.

**(4)** The Minister shall not approve a campsite unless the land constituting the campsite is owned by the municipality or municipalities making application.

**(5)** The Minister shall not approve a campsite unless the area of the campsite exceeds 25 acres. R.S., c. 332, s. 5.

**Agreement with Minister**

**6** When a campsite is approved under this Act, the Minister on behalf of the Crown may enter into an agreement with the council of any municipality or, where there is an agreement under Section 4, the councils of those municipalities for the development of the approved campsite, on such terms as may be agreed upon by the Minister and the municipality or municipalities. R.S., c. 332, s. 6.

**Approval of disposal of campsite**

**7** Where financial assistance has been granted under this Act, the approved campsite or any part thereof may not be sold or disposed of without the approval of the Minister. R.S., c. 332, s. 7.

**Bylaws**

**8** **(1)** Subject to this Act and the regulations and subject to the approval of the Minister, the council of any municipality that alone or in agreement with another municipality has established an approved campsite may make bylaws

(a) for the care, preservation, improvement, control and management of the campsite and the appointment of a board for that purpose;

(b) regulating and controlling the use of lands in the campsite;

(c) prohibiting or regulating and controlling the use or keeping of birds and animals in the campsite;

(d) prohibiting or regulating and controlling the erection, posting or other display of notices, signs, sign-boards and other advertising devices in the campsite;

(e) prohibiting or regulating and controlling the use, setting out and extinguishment of fires in the campsite;

(f) prohibiting or regulating and controlling pedestrian, vehicular, boat or air traffic in the campsite;

(g) prohibiting or regulating, controlling and licensing trades, businesses, amusements, sports, occupations and other activities or undertakings in the campsite;

(h) prescribing fees payable for the use of any facilities provided in the campsite;

(i) prescribing the maximum periods of stay of persons, vehicles, boats, vessels or aircraft in the campsite;

(j) prescribing fees payable for entrance into the campsite of persons, vehicles, boats and aircraft;

(k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The *Municipal Government Act* applies with necessary changes to any bylaw passed under this Section. R.S., c. 332, s. 8.

**Financial assistance to develop scenic area**

**9** **(1)** Where

(a) a local community organization wishes to initiate and carry out a project of local improvement by constructing and developing trails, scenic waterfalls, streams or other local scenic or picnic areas; and

(b) that organization and the municipality in which the local scenic area is located agree to each provide 25% of the cost of such construction and development,

the Minister may, subject to the approval of the Governor in Council, grant financial assistance to any such municipality or local community organization.

**(2)** Financial assistance granted under subsection (1) must not exceed 50% of the total cost of construction and development and in no case may exceed $2,500. R.S., c. 332, s. 9.

**Condition for financial assistance**

**10** **(1)** The Minister shall not grant financial assistance under Section 9 unless the municipality or the local community organization

(a) owns; or

(b) holds a lease, for the 20 years following the date on which assistance is requested, on,

the land constituting the local scenic area.

**(2)** Where financial assistance has been granted under Section 9, the local scenic area or any part thereof may not be sold or disposed of, other than by the expiration of a lease, without the approval of the Minister. R.S., c. 332, s. 10.

**Regulations**

**11** The Governor in Council may make regulations respecting any matter necessary or advisable to carry out the intent and purpose of this Act and the more effective administration thereof. R.S., c. 332, s. 11.

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CHAPTER C-2

# An Act to Implement the Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters

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(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Canada and United Kingdom Reciprocal Recognition and Enforcement of Judgments Act*. R.S., c. 52, s. 1.

**Interpretation**

**2** In this Act, "convention" means the Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters set out in the Schedule hereto. R.S., c. 52, s. 2.

**Duty of Attorney General**

**3** The Attorney General shall

(a) request the Government of Canada to designate the Province as a province to which the convention extends; and

(b) determine the courts of the Province to which application for registration of a judgment given by a court of the United Kingdom may be made and request the Government of Canada to designate those courts for the purpose of the convention. R.S., c. 52, s. 3.

**Convention in force**

**4** On, from and after the date the convention enters into force in respect of the Province as determined by the convention, the convention is in force in the Province and the provisions thereof are law in the Province. R.S., c. 52, s. 4.

**Notice of effective date**

**5** The Attorney General shall publish in the Royal Gazette the date the convention comes into force in the Province and the courts to which application for registration of a judgment given by a court of the United Kingdom may be made. R.S., c. 52, s. 5.

**Regulations**

**6** The Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Act. R.S., c. 52, s. 6.

**Conflict with other enactments**

**7** Where there is a conflict between this Act and any enactment, this Act prevails. R.S., c. 52, s. 7.

SCHEDULE

CONVENTION BETWEEN CANADA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND PROVIDING FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

Canada,

and

The United Kingdom of Great Britain and Northern Ireland,

DESIRING to provide on the basis of reciprocity for the recognition and enforcement of judgments in civil and commercial matters;

HAVE AGREED AS FOLLOWS:

PART I

DEFINITIONS

ARTICLE I

In this Convention

(a) "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

(b) "the 1968 Convention" means the Convention of 27th September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended;

(c) "court of a Contracting State" means

(i) in relation to the United Kingdom, any court of the United Kingdom or of any territory to which this Convention extends pursuant to Article XIII;

(ii) in relation to Canada, the Federal Court of Canada or any court of a province or territory to which this Convention extends pursuant to Article XII,

and the expressions "court of the United Kingdom" and "court of Canada" shall be construed accordingly;

(d) "judgment" means any decision, however described (judgment, order and the like), given by a court in a civil or commercial matter, and includes an award in proceedings on an arbitration if the award has become enforceable in the territory of origin in the same manner as a judgment given by a court in that territory;

(e) "judgment creditor" means the person in whose favour the judgment was given, and includes his executors, administrators, successors and assigns;

(f) "judgment debtor" means the person against whom the judgment was given and includes any person against whom the judgment is enforceable under the law of the territory of origin;

(g) "original court" in relation to any judgment means the court by which the judgment was given;

(h) "registering court" means a court to which an application for the registration of a judgment is made;

(i) "territory of origin" means the territory for which the original court was exercising jurisdiction.

PART II

SCOPE OF THE CONVENTION

ARTICLE II

1. Subject to the provisions of this Article, this Convention shall apply to any judgment given by a court of a Contracting State after the Convention enters into force and, for the purposes of Article IX, to any judgment given by a court of a third State which is party to the 1968 Convention.

2. This Convention shall not apply to

(a) orders for the periodic payment of maintenance;

(b) the recovery of taxes, duties or charges of a like nature or the recovery of a fine or penalty;

(c) judgments given on appeal from decisions of tribunals other than courts;

(d) judgments which determine

(i) the status or legal capacity of natural persons;

(ii) custody or guardianship of infants;

(iii) matrimonial matters;

(iv) succession to or the administration of the estates of deceased persons;

(v) bankruptcy, insolvency or the winding up of companies or other legal persons;

(vi) the management of the affairs of a person not capable of managing his own affairs.

3. Part III of this Convention shall apply only to a judgment whereby a sum of money is made payable.

4. This Convention is without prejudice to any other remedy available to a judgment creditor for the recognition and enforcement in one Contracting State of a judgment given by a court of the other Contracting State.

PART III

ENFORCEMENT OF JUDGMENTS

ARTICLE III

1. Where a judgment has been given by a court of one Contracting State, the judgment creditor may apply in accordance with Article VI to a court of the other Contracting State at any time within a period of six years after the date of the judgment (or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings) to have the judgment registered, and on any such application the registering court shall, subject to such simple and rapid procedures as each Contracting State may prescribe and to the other provisions of this Convention, order the judgment to be registered.

2. In addition to the sum of money payable under the judgment of the original court including interest accrued to the date of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, if any, including the costs of obtaining a certified copy of the judgment from the original court.

3. If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

4. Subject to the other provisions of this Convention

(a) a registered judgment shall, for the purposes of enforcement, be of the same force and effect;

(b) proceedings may be taken on it; and

(c) the registering court shall have the same control over its enforcement,

as if it had been a judgment originally given in the registering court with effect from the date of registration.

ARTICLE IV

1. Registration of a judgment shall be refused or set aside if

(a) the judgment has been satisfied;

(b) the judgment is not enforceable in the territory of origin;

(c) the original court is not regarded by the registering court as having jurisdiction;

(d) the judgment was obtained by fraud;

(e) enforcement of the judgment would be contrary to public policy in the territory of the registering court;

(f) the judgment is a judgment of a country or territory other than the territory of origin which has been registered in the original court or has become enforceable in the territory of origin in the same manner as a judgment of that court; or

(g) in the view of the registering court the judgment debtor either is entitled to immunity from the jurisdiction of that court or was entitled to immunity in the original court and did not submit to its jurisdiction.

2. The law of the registering court may provide that registration of a judgment may or shall be set aside if

(a) the judgment debtor, being the defendant in the original proceedings, either was not served with the process of the original court or did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and, in either case, did not appear;

(b) another judgment has been given by a court having jurisdiction in the matter in dispute prior to the date of judgment in the original court; or

(c) the judgment is not final or an appeal is pending or the judgment debtor is entitled to appeal or to apply for leave to appeal against the judgment in the territory of origin.

3. If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall be registered only in respect of the balance remaining payable at that date.

4. A judgment shall not be enforced so long as, in accordance with the provisions of this Convention and the law of the registering court, it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until the application has been finally determined.

ARTICLE V

1. For the purposes of Article IV(1)(c) the original court shall be regarded as having jurisdiction if

(a) the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings;

(b) the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court;

(c) the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the territory of origin;

(d) the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted habitually resident in, or being a body corporate had its principal place of business in, the territory of origin;

(e) the judgment debtor, being a defendant in the original court, had an office or place of business in the territory of origin and the proceedings were in respect of a transaction effected through or at that office or place; or

(f) the jurisdiction of the original court is otherwise recognised by the registering court.

2. Notwithstanding anything in sub-paragraphs (d), (e) and (f) of paragraph (1), the original court shall not be regarded as having jurisdiction if

(a) the subject matter of the proceedings was immovable property outside the territory of origin; or

(b) the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the territory of origin.

PART IV

PROCEDURES

ARTICLE VI

1. Any application for the registration in the United Kingdom of a judgment of a court of Canada shall be made

(a) in England and Wales, to the High Court of Justice;

(b) in Scotland, to the Court of Session;

(c) in Northern Ireland, to the High Court of Justice.

2. Any application for the registration in Canada of a judgment of a court of the United Kingdom shall be made

(a) in the case of a judgment relating to a matter within the competence of the Federal Court of Canada, to the Federal Court of Canada;

(b) in the case of any other judgment, to a court of a province or territory designated by Canada pursuant to Article XII.

3. The practice and procedure governing registration (including notice to the judgment debtor and applications to set registration aside) shall, except as otherwise provided in this Convention, be governed by the law of the registering court.

4. The registering court may require that an application for registration be accompanied by

(a) the judgment of the original court or a certified copy thereof;

(b) a certified translation of the judgment, if given in a language other than the language of the territory of the registering court;

(c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and

(d) particulars of such other matters as may be required by the rules of the registering court.

ARTICLE VII

All matters concerning

(a) the conversion of the sum payable under a registered judgment into the currency of the territory of the registering court; and

(b) the interest payable on the judgment with respect to the period following its registration,

shall be determined by the law of the registering court.

PART V

RECOGNITION OF JUDGMENTS

ARTICLE VIII

Any judgment given by a court of one Contracting State for the payment of a sum of money which could be registered under this Convention, whether or not the judgment has been registered, and any other judgment given by such a court, which if it were a judgment for the payment of a sum of money could be registered under this Convention, shall, unless registration has been or would be refused or set aside on any ground other than that the judgment has been satisfied or could not be enforced in the territory of origin, be recognised in a court of the other Contracting State as conclusive between the parties thereto in all proceedings founded on the same cause of action.

PART VI

RECOGNITION AND ENFORCEMENT
OF THIRD STATE JUDGMENTS

ARTICLE IX

1. The United Kingdom undertakes, in the circumstances permitted by Article 59 of the 1968 Convention, not to recognise or enforce under that Convention any judgment given in a third State which is a Party to that Convention against a person domiciled or habitually resident in Canada.

2. For the purposes of paragraph (1)

(a) an individual shall be treated as domiciled in Canada if and only if he is resident in Canada and the nature and circumstances of his residence indicate that he has a substantial connection with Canada; and

(b) a corporation or association shall be treated as domiciled in Canada if and only if it is incorporated or formed under a law in force in Canada and has a registered office there, or its central management and control is exercised in Canada.

PART VII

FINAL PROVISIONS

ARTICLE X

This Convention shall not affect any conventions, international instruments or reciprocal particular matters, govern the recognition or enforcement of judgments.

ARTICLE XI

Either Contracting State may, on the exchange of instruments of ratification or at any time thereafter, declare that it will not apply the Convention to a judgment that imposes a liability which that State is under a treaty obligation toward any other State not to recognise or enforce. Any such declaration shall specify the treaty containing the obligation.

ARTICLE XII

1. On the exchange of instruments of ratification, Canada shall designate the provinces or territories to which this Convention shall extend and the courts of the provinces and territories concerned to

which application for the registration of a judgment given by a court of the United Kingdom may be made.

2. The designation by Canada may be modified by a further designation given at any time thereafter.

3. Any designation shall take effect three months after the date on which it is given.

ARTICLE XIII

1. The United Kingdom may at any time while this Convention is in force declare that this Convention shall extend to the Isle of Man, any of the Channel Islands, Gibraltar or the Sovereign Base Areas of Akrotiri and Dhekelia (being territories to which the 1968 Convention may be applied pursuant to Article 60 of that Convention).

2. Any declaration pursuant to paragraph (1) shall specify the courts of the territories to which application for the registration of a judgment given by a court of Canada shall be made.

3. Any declaration made by the United Kingdom pursuant to this Article may be modified by a further declaration given at any time thereafter.

4. Any declaration pursuant to this Article shall take effect three months after the date on which it is given.

ARTICLE XIV

1. This Convention shall be ratified; instruments of ratification shall be exchanged at London.

2. This Convention shall enter into force three months after the date on which instruments of ratification are exchanged.

3. This Convention may be terminated by notice in writing by either Contracting State and it shall terminate three months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Ottawa, this 24th day of April 1984 in the English and French languages, each version being equally authentic.

For the Government of Canada

For the Government of the United Kingdom of Great Britain and Northern Ireland

R.S., c. 52, Sch.

CHAPTER C-3

# An Act to Implement an Agreement Between the Government of Nova Scotia and the Government of Canada on Offshore Petroleum Resource Management and Revenue

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**Short title**

**1** This Act may be cited as the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. 1987, c. 3, s. 1.

**Interpretation**

**2** In this Act,

"Bay of Fundy" means the submarine areas within the limits described in Schedule II;

"Board" means the Canada-Nova Scotia Offshore Petroleum Board established by the joint operation of Section 9 of this Act and Section 10 of the federal Implementation Act;

"Canada-Nova Scotia benefits plan" means a plan submitted pursuant to subsection 52(2);

"Chief Executive Officer" means the Chief Executive Officer of the Board appointed pursuant to Section 25;

"coalbed methane", otherwise known as "natural gas from coal", means methane naturally occurring in coal seams and adjacent strata;

"development plan" means a plan submitted pursuant to subsection 147(2) for the purpose of obtaining approval of the general approach of developing a pool or field as proposed in the plan;

"federal Government" or "Government of Canada" means the Governor General in Council;

"federal Implementation Act" means the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (Canada);

"federal Minister" means the Minister of Natural Resources for Canada;

"field"

(a) means a general surface area underlain or appearing to be underlain by one or more pools; and

(b) includes the subsurface regions vertically beneath the general surface area referred to in clause (a);

"frontier lands" has the same meaning as in the *Canada Petroleum Resources Act*;

"fundamental decision" means a decision made by the Board respecting the exercise of a power or the performance of a duty or function pursuant to a provision of this Act that expressly provides for the exercise of the power or the performance of the duty or function subject to Sections 34 to 40;

"gas" means natural gas and includes substances other than oil that are produced in association with natural gas, but does not include coalbed methane associated with the development or operation of a coal mine;

"Government" means the federal Government, the Provincial Government, or both, as the context requires;

"Minister" means, other than for the purpose of Part V, the minister of the Government of the Province who is responsible for the management of offshore petroleum resources;

"Nova Scotia lands" means

(a) Sable Island; and

(b) those submarine areas that belong to the Crown in right of the Province or in respect of which the Crown in right of the Province has the right to dispose of or exploit the natural resources, and that are within the offshore area;

"Offshore Accord" means the Canada-Nova Scotia Offshore Petroleum Resources Accord, dated August 26, 1986, and entered into by the Government of Canada, as represented by the Prime Minister of Canada and the Minister of Energy, Mines and Resources, and by the Province of Nova Scotia, as represented by the Premier and the Minister of Mines and Energy, and includes any amendments thereto;

"offshore area" means the lands and submarine areas within the limits described in Schedule I;

"oil" means

(a) crude oil regardless of gravity produced at a well head in liquid form; and

(b) any other hydrocarbons, except coal and gas, and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the surface or subsurface or the seabed or subsoil thereof of the offshore area;

"petroleum" means oil or gas;

"pool" means a natural underground reservoir containing or appearing to contain an accumulation of petroleum that is separated or appears to be separated from any other such accumulation;

"prescribed", except where otherwise provided, means prescribed by the regulations made by the Governor in Council;

"Sable Island" means the area, whether above or under water, in the offshore area, that is within the limits described in Schedule III;

"Sable Island National Park Reserve of Canada" means Sable Island National Park Reserve of Canada as described in Schedule 2 to the *Canada National Parks Act*;

"spill-treating agent", except in Section 175, means a spill-treating agent that is on the list established under section 14.2 of the *Canada Oil and Gas Operations Act*. 1987, c. 3, s. 2; 1993, c. 16, s. 1; 2007, c. 14, s. 5; 2012, c. 17, s. 1; 2013, c. 15, s. 1; 2013, c. 16, s. 1; 2014, c. 43, s. 1.

**Jurisdiction preserved**

**3** The provisions of this Act are not to be construed as providing a basis for any claim by or on behalf of the Government of Canada in respect of any entitlement to or legislative jurisdiction over the offshore area or any living or non-living resources in the offshore area. 1987, c. 3, s. 3.

**Act prevails**

**4** In case of any inconsistency or conflict between

(a) this Act or a regulation made pursuant thereto; and

(b) any other Provincial enactment,

this Act and the regulations made pursuant thereto prevail. 1987, c. 3, s. 4.

**Amendment of description of offshore area**

**5 (1)** Subject to Section 6, the Governor in Council may make regulations amending the description of the limits set out in Schedule I for the purpose of the definition of "offshore area".

**(2)** The Minister may approve charts or cause charts to be issued setting out the offshore area or any portion thereof as may be set out consistent with the nature and scale of the chart.

**(3)** In any legal or other proceedings, a chart purporting to be approved or issued by the Minister is conclusive proof of the limits of the offshore area or portion thereof set out in the chart without proof of the signature or official character of the person purporting to have approved or issued the chart. 1987, c. 3, s. 5.

**Approval by federal Minister**

**6 (1)** Before a regulation is made under subsection 5(1) or 17(4), Section 32, subsection 38(8), 42(7) or 52(7), Section 58, 61 or 78, subsection 81(2), Section 117, subsection 121(1), Section 124, subsection 161(1), 176(5), 178(3) or 229(1) or Section 250, the Minister shall consult the federal Minister with respect to

the proposed regulation and the regulation shall not be made without the federal Minister's approval.

**(2)** Before a regulation is made under subsection 252(4) or (5) or 377(1), the Minister as defined in subsection 252(1) shall consult the federal Minister with respect to the proposed regulation and no regulation may be so made without the approval of that minister. 2013, c. 16, s. 2; 2014, c. 43, ss. 2, 34.

**Amendment of Accord**

**7** The Government of the Province as represented by the Premier of the Province or by such other member of the Executive Council for the Province as may be designated by the Governor in Council, may, jointly with the Government of Canada, amend the Offshore Accord. 1987, c. 3, s. 7.

**Application of Act**

**8** This Act applies to Nova Scotia lands within the offshore area. 1987, c. 3, s. 8.

PART I

JOINT MANAGEMENT

**Canada-Nova Scotia Offshore Petroleum Board**

**9 (1)** There is established by the joint operation of this Act and the federal Implementation Act a board to be known as the Canada-Nova Scotia Offshore Petroleum Board.

**(2)** Notwithstanding subsection (1), the Board shall be treated as if established by or under the law of the Province.

**(3)** The Board has the powers and capacities of a corporation incorporated pursuant to the *Companies Act*, including those set out in Section 15 of the *Interpretation Act*.

**(4)** The Board may be dissolved only by the joint operation of an Act of the Legislature and an Act of Parliament. 1987, c. 3, s. 9.

**Membership of Board**

**10 (1)** The Board consists of five members.

**(2)** Subject to subsection (3), the members of the Board may be appointed by both the Provincial Government and the Government of Canada or, in the alternative, each Government may appoint two members.

**(3)** The Chair of the Board is appointed by the Provincial Government and the Government of Canada.

**(4)** The Provincial Government may appoint one alternate member only to serve in the absence or incapacity of any member first appointed by it.

**(5)** The federal Government may appoint one alternate member only to serve in the absence or incapacity of any member first appointed by it.

**(6)** The federal Government and the Provincial Government may jointly appoint one alternate member only to serve in the absence or incapacity of any member first jointly appointed by them. 1987, c. 3, s. 10.

**Restriction on public servants as Board members**

**11** **(1)** In this Section and Section 12, "civil servant" means

(a) a person employed in the Province pursuant to the *Civil Service Act* and a person in the public service appointed by order in council; and

(b) a person employed in the public service of Canada as defined in the federal Implementation Act.

**(2)** Not more than two members of the Board may, during the term of office of those members on the Board, be civil servants and of those two members, not more than one may be appointed by each Government.

**(3)** The Chair of the Board shall not, during the term of office as Chair, be a civil servant. 1987, c. 3, s. 11.

**Term of Board member**

**12** **(1)** Subject to subsection (2), each member of the Board, including the Chair, is appointed for a term of six years.

**(2)** The first two members of the Board, other than the Chair, to be appointed by each Government are appointed for terms of four and five years, respectively.

**(3)** Each member of the Board is eligible for reappointment.

**(4)** Each member of the Board who is not a civil servant holds office during good behaviour but may be removed for cause by the Government or Governments that appointed the member.

**(5)** Each member of the Board who is a civil servant holds office during pleasure. 1987, c. 3, s. 12.

**Chair of Board**

**13** **(1)** Consultation between the two Governments with respect to the selection of the Chair of the Board is deemed to commence

(a) six months prior to the expiration of the term of office of the incumbent Chair; or

(b) where applicable, on the date of receipt by the Board of notice of the death, resignation or termination of appointment of the incumbent Chair,

whichever occurs earlier.

**(2)** Where the two Governments fail to agree on the appointment of the Chair of the Board within three months after the commencement of consultation between the Governments, after written notice given by one of the Governments to the other, the Chair shall be selected pursuant to subsection (3) by a panel, consisting of three members and constituted in accordance with Section 46 unless, at any time prior to the selection of the Chair by the panel, the Governments agree on the appointment.

**(3)** The Chair of the Board shall be selected from among persons nominated by each Government by the panel within 60 days after the appointment of the chair of the panel.

**(4)** The decision of the panel selecting a Chair of the Board is final and binding on both Governments. 1987, c. 3, s. 13.

**Acting Chair**

**14** The Board shall designate a member to act as Chair of the Board during any absence or incapacity of the Chair or vacancy in the office of Chair, and that person, while acting as Chair, has and may exercise all of the powers and perform all of the duties and functions of the Chair. 1987, c. 3, s. 14.

**Terms and conditions of appointment of Chair**

**15 (1)** Subject to Section 12, the salary and other terms and conditions of the appointment of the Chair of the Board or any other member or alternate member appointed by both Governments, including the effective date of the appointment, shall be fixed by an order of the Provincial Government and an order of the federal Government after agreement has been reached by both Governments on the salary and other terms and conditions.

**(2)** The salary and other terms and conditions of the appointment of any member appointed by either the Provincial Government or the federal Government must be agreed on by both Governments. 1987, c. 3, s. 15.

**Conflict of interest guidelines**

**16** Each member of the Board is subject to conflict of interest guidelines established jointly by the Minister and federal Minister and is not subject to any conflict of interest guidelines established by the Provincial Government. 1987, c. 3, s. 16.

**Indemnification of Board members, officers and employees**

**17 (1)** The Province shall, subject to such terms and conditions as may be prescribed, indemnify a person who is a present or former member, officer or employee of the Board, and the heirs and legal representatives of that person, against such costs, charges and expenses, including such amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which that person is a party by reason of being or having been such a member, officer or employee, as may be prescribed.

**(2)** Where the Government of Canada has indemnified a person referred to in subsection (1) or the heirs or legal representatives of that person, the

Province shall, subject to such terms and conditions as are prescribed, pay to the Government of Canada one half of the amount so indemnified.

**(3)** Any amount payable in respect of indemnification pursuant to this Section may be paid out of the General Revenue Fund.

**(4)** Subject to Section 6, the Governor in Council may make regulations prescribing anything that by this Section is to be prescribed. 1987, c. 3, s. 17.

**Additional duties of Board**

**18 (1)** The Board shall, in addition to performing the duties and functions conferred or imposed on the Board by or pursuant to this Act, perform such duties and functions as are conferred or imposed on it by the Offshore Accord, to the extent that such duties and functions are not inconsistent with this Act or any regulations made thereunder.

**(2)** The Board may make recommendations to both Governments, respecting petroleum-related activity in the offshore area and, respecting proposed amendments to this Act, the federal Implementation Act, any regulations made pursuant to those Acts and to any other legislation relating to petroleum resource activities in the offshore area. 1987, c. 3, s. 18.

**Information to Ministers**

**19 (1)** The Minister and the federal Minister are entitled to access to any information or documentation relating to petroleum resource activities in the offshore area that is provided for the purpose of this Act or any regulation made thereunder and such information or documentation must, notwithstanding subsection 118(2), on the request of either the Minister or the federal Minister be disclosed to that Minister without requiring the consent of the party who provided the information or documentation.

**(2)** Section 118 applies, with such modifications as the circumstances require, to any information or documentation to which the Minister and the federal Minister have access pursuant to subsection (1) and any disclosure of such information or documentation by the Minister or federal Minister or the production or giving of evidence relating thereto by such Minister, as if the references in that Section to the administration or enforcement of Part III or IV of this Act included references to the administration or enforcement of the federal Implementation Act.

**(3)** The Board shall require every person who makes an application in respect of which a fundamental decision is to be made by the Board, to give, forthwith after making the application, a written summary of the application to the Minister and the federal Minister. 1987, c. 3, s. 19.

**Location of Board**

**20** The principal office and staff of the Board must be located in the Province. 1987, c. 3, s. 20.

**Responsibility for storage and curatorship**

**21 (1)** The Board has responsibility for the storage and curatorship, in a facility in the Province, of all geophysical and geological records and reports,

reports respecting wells and materials recovered from wells in the offshore area and, without limiting the generality of the foregoing, drill cuttings, fluid samples, hydrocarbon samples and cores recovered from wells in the offshore area.

**(2)** The Board shall, at the request of the Minister or the federal Minister,

(a) furnish that Minister with a sample of any material referred to in subsection (1); or

(b) where it is not possible to produce a sample of such material, provide that Minister with all or a portion of such material, subject to being returned to the facility referred to in subsection (1),

if the material is to be permanently retained at the facility referred to in subsection (1). 1987, c. 3, s. 21.

**Meetings of Board**

**22** A meeting of the Board must be held

(a) once every two months unless the members of the Board unanimously agree to defer the meeting; and

(b) at any other time

(i) at the call of the Chair of the Board,

(ii) on the request of any two members of the Board, or

(iii) on the request of the Minister or the federal Minister to review any matter referred to the Board by that Minister. 1987, c. 3, s. 22.

**Quorum and votes**

**23 (1)** Three members of the Board constitute a quorum of the Board.

**(2)** Where, in the absence of unanimous agreement, a vote is required to be taken in respect of a decision of the Board, the decision shall be made on the basis of a majority vote of the members of the Board. 1987, c. 3, s. 23.

**Bylaws and conflict of interest guidelines**

**24** Subject to this Act and the Offshore Accord, the Board may

(a) make bylaws respecting

(i) the members, officers and employees of the Board,

(ii) the attendance and participation, including voting rights, at meetings of the Board of alternate members of the Board appointed pursuant to Section 10,

(iii) the manner of appointing the officers and employees of the Board on the basis of selection according to merit, including the holding of open competitions therefor,

(iv) the practices and procedures of the Board,

(v) the conduct of meetings of the Board,

(vi) the manner of dealing with matters and business before the Board, and

(vii) generally, the carrying on of the work of the Board and the management of the internal affairs of the Board; and

(b) establish conflict of interest guidelines respecting persons employed by the Board pursuant to subsection 26(2). 1987, c. 3, s. 24.

**Chief Executive Officer**

**25 (1)** There shall be a Chief Executive Officer of the Board who,

(a) where both the federal Government and the Provincial Government appoint the Chair as Chief Executive Officer, is the Chair of the Board; or

(b) in any other case, is to be appointed by the Board by means of an open competition.

**(2)** The appointment of a Chief Executive Officer pursuant to clause (1)(b) is subject to the approval of both Governments.

**(3)** Where either Government fails to make an appointment pursuant to clause (1)(a) or to approve the appointment of a Chief Executive Officer pursuant to clause (1)(b), the Chief Executive Officer shall be appointed by both the federal Government and the Provincial Government after having been selected pursuant to subsection (4) by a panel, consisting of three members and constituted in accordance with Section 46, unless at any time prior to the selection of the Chief Executive Officer by the panel, the two Governments agree on the appointment.

**(4)** The Chief Executive Officer shall be selected from among persons nominated by each Government within 60 days after the appointment of the Chair of the panel.

**(5)** The decision of the panel selecting a Chief Executive Officer is final and binding on both Governments.

**(6)** Subsection 13(1) applies, with such modifications as the circumstances require, to the appointment of the Chief Executive Officer pursuant to clause 1(a) or subsection (3).

**(7)** The Board shall designate a person to act as Chief Executive Officer during any absence or incapacity of that Officer or vacancy in the office of Chief Executive Officer and that person, while acting as Chief Executive Officer, has and may exercise all the powers and perform all the duties and functions of that office. 1987, c. 3, s. 25.

**Officers and employees**

**26 (1)** In this Section, "civil service" has the same meaning as in the *Civil Service Act*.

**(2)** The Board may, on the recommendation of the Chief Executive Officer, employ such other officers and such employees as are necessary for the

Board to properly perform the powers, duties and functions of the Board pursuant to this Act and the Offshore Accord.

**(3)** The appointment of every person employed pursuant to subsection (2) must be based on selection according to merit.

**(4)** A person employed pursuant to subsection (2) is not considered to be employed in the public service of Canada or the civil service of the Province by virtue of that employment.

**(5)** For the purpose of being eligible for appointment to a position in the civil service pursuant to the *Civil Service Act*,

(a) any person who, immediately prior to being employed by the Board, was employed in the civil service is deemed to be a person employed in the civil service in the Department of Natural Resources and Renewables in the location where that person is performing duties for the Board and in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the Board; and

(b) any person who, immediately prior to being employed by the Board, was not employed in the civil service is, two years after being employed by the Board, be deemed to be a person employed in the civil service in the Department of Natural Resources and Renewables in the location where that person is performing duties for the Board and in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the Board.

**(6)** Nova Scotia social legislation, as defined in subsection 252(1), the *Trade Union Act*, the *Occupational Health and Safety Act* and any regulations made under that legislation or those Acts, apply to persons employed under subsection (2).

**(7)** Notwithstanding section 4 and subsections 123(1) and 168(1) of the *Canada Labour Code*, that Act does not apply to persons employed under subsection (1). 1987, c. 3, s. 26; 2013, c. 16, s. 3.

**Auditor**

**27** The Board shall appoint an auditor, for such term as is set by the Board, for the purpose of auditing the financial statements of the Board. 1987, c. 3, s. 27.

**Audit and evaluation committee**

**28 (1)** The Board shall appoint an audit and evaluation committee consisting of not fewer than three members of the Board and fix the duties and functions of the committee and may, by bylaw, provide for the payment of expenses to the members of the committee.

**(2)** In addition to any other duties and functions that it is required to perform, the audit and evaluation committee shall cause internal audits to be conducted to ensure that the officers and employees of the Board act in accordance with management systems and controls established by the Board. 2013, c. 16, s. 4.

**Budget**

**29** **(1)** The Board must, in respect of each fiscal year, prepare a budget for the Board sufficient to permit the Board to properly exercise its powers and perform its duties and functions.

**(2)** The budget must be submitted to the Minister and the federal Minister, at such time as may be specified by each Minister, for their consideration and approval.

**(3)** Where it appears that the actual aggregate of the expenditures of the Board in respect of any fiscal year is likely to be substantially greater or less than that estimated in its budget in respect of that fiscal year, the Board shall submit to both Ministers for their consideration and approval a revised budget in respect of that fiscal year containing such particulars as may be requested by either Minister.

**(4)** The Government of the Province shall pay one half of the aggregate of the expenditures set out in the budget or revised budget, where applicable, submitted and approved pursuant to this Section in respect of each fiscal year.

**(5)** The sums required for the payment pursuant to subsection (4) must be paid out of the General Revenue Fund as required. 1987, c. 3, s. 28.

**Access by Ministers to books and accounts**

**30** Subject to subsection 19(2), both the Minister and the federal Minister are entitled to access to the books and accounts of the Board. 1987, c. 3, s. 29.

**Annual report**

**31** **(1)** The Board shall, in respect of each fiscal year, prepare an annual report in both official languages of Canada and submit it to the Minister and the federal Minister not later than 90 days after the expiration of that fiscal year.

**(2)** The annual report submitted under subsection (1) must contain an audited financial statement and a description of the activities of the Board, including those relating to occupational health and safety, during the fiscal year covered by the report.

**(3)** The Minister shall

(a) table the report before the Legislature within 15 days following submission of the report to the Minister; or

(b) where the Legislature is not then sitting, within 15 days after the Legislature next sits. 1987, c. 3, s. 30; 2013, c. 16, s. 5.

**Regulations**

**32** **(1)** Subject to Section 6, the Governor in Council may make regulations

(a) respecting the fees or charges, or the method of calculating the fees or charges, to be paid for the provision, by the Board, of a service or product under this Act;

(b) respecting the fees or charges, or the method of calculating the fees or charges, in respect of any of the Board's activities

under this Act or under the *Canadian Environmental Assessment Act, 2012*, that are to be paid by

(i) a person who makes an application for an authorization under clause 139(1)(b) or an application under subsection 147(2), or

(ii) the holder of an operating licence issued under clause 139(1)(a) or an authorization issued under clause 139(1)(b); and

(c) respecting the refund of all or part of any fee or charge referred to in clause (a) or (b), or the method of calculating that refund.

**(2)** The amounts of the fees or charges referred to in clause (1)(a) may not exceed the cost of providing the services or products.

**(3)** The amounts of the fees or charges referred to in clause (1)(b) may not exceed the cost of the Board's activities under this Act or under the *Canadian Environmental Assessment Act, 2012*. 2014, c. 43, s. 3.

**Division of fees and charges**

**33** One half of the amounts of the fees and charges obtained in accordance with regulations made under Section 32 must be paid to the credit of the Receiver General for Canada and the other half must be paid to the credit of the Crown in right of the Province, in the time and manner prescribed under those regulations. 2014, c. 43, s. 3.

**Finality of exercise of Board powers**

**34** Subject to this Act, the exercise of a power or the performance of a duty or function by the Board pursuant to this Act is final and not subject to the review or approval of either Government, the Minister or the federal Minister. 1987, c. 3, s. 31.

**Notice of fundamental decision**

**35 (1)** Where a fundamental decision is made by the Board, the Board shall, forthwith after making the decision, give written notice of that decision to the Minister and the federal Minister.

**(2)** The Board shall cause a fundamental decision to be published

(a) 30 days after receipt by both Ministers of written notice of the decision; or

(b) when the fundamental decision is implemented,

whichever first occurs. 1987, c. 3, s. 32.

**Time for implementation of fundamental decision**

**36 (1)** Subject to subsection (2), a fundamental decision may not be implemented

(a) before the expiration of 30 days after receipt by the Minister and the federal Minister of a notice of the fundamental deci-

sion and any further period during which the implementation of the decision is suspended or during which the decision may be set aside, the setting aside may be overruled or a determination may be made by the National Energy Board; or

(b) if the decision has been conclusively set aside.

**(2)** A fundamental decision may be implemented before the expiration of the periods referred to in clause (1)(a) where the Board is advised, in writing, that both the Minister and the federal Minister approve that decision.

**(3)** Where, on the expiration of the periods referred to in clause (1)(a), a fundamental decision of the Board has not been conclusively set aside, that decision must be implemented forthwith by the Board. 1987, c. 3, s. 33.

**Suspension of implementation of fundamental decision**

**37 (1)** The Minister or the federal Minister may, on giving written notice to the other Minister and the Board within 30 days after receipt of a notice of a fundamental decision, suspend the implementation of the decision during a period specified in the notice not exceeding 60 days after receipt of the notice of the decision.

**(2)** The Minister shall publish notice of a suspension by the Minister, pursuant to subsection (1), in the Royal Gazette. 1987, c. 3, s. 34.

**Setting aside fundamental decision**

**38 (1)** In this Section and in Sections 39 and 40,

"security of supply", in respect of any period, means the anticipation of self-sufficiency during each of the five calendar years in that period, taking into account the aggregate during each such year of anticipated additions to producing capacity and anticipated adjustments to refining capacity;

"self-sufficiency" means a volume of suitable crude oil and equivalent substances available from Canadian hydrocarbon producing capacity that is adequate to supply the total feedstock requirements of Canadian refineries necessary to satisfy the total domestic refined product requirements of Canada, excluding those feedstock requirements necessary to produce specialty refined products;

"suitable crude oil and equivalent substances" means those substances that are appropriate for processing in Canadian refineries and that are potentially deliverable to Canadian refineries.

**(2)** Within 30 days after receipt by the Minister and the federal Minister of a notice of a fundamental decision and any further period during which the implementation of the decision is suspended, the decision may be set aside by

(a) both the Minister and the federal Minister by written notice thereof to the Board; or

(b) the Minister, by written notice thereof to the federal Minister and the Board, in the case of

(i) a fundamental decision of the Board referred to in clause 147(4)(a), or

(ii) a fundamental decision with respect to a call for bids in relation to, or an interest in relation to, a portion of the offshore area that is situated wholly within the Bay of Fundy or Sable Island,

and the Minister shall publish notice of the setting aside in the Royal Gazette.

**(3)** The federal Minister may, by written notice to the Minister and the Board,

(a) set aside a fundamental decision of the Board within 30 days after receipt of a notice of the decision or any further period during which the implementation of the decision is suspended; or

(b) overrule the setting aside of a fundamental decision by the Minister, within 30 days after receipt of a notice to that effect,

if in the opinion of the federal Minister, the decision or setting aside of the decision would unreasonably delay the attainment of security of supply.

**(4)** Notwithstanding subsection (3), where the Minister disagrees with the setting aside or overruling by the federal Minister in respect of a fundamental decision pursuant to subsection (3), the National Energy Board shall, on summary application made to it by the Minister,

(a) determine whether the fundamental decision of the Board or the setting aside of that decision would unreasonably delay the attainment of security of supply; and

(b) thereby confirm or vacate the setting aside or overruling by the federal Minister in respect of the fundamental decision.

**(5)** A determination of the National Energy Board pursuant to subsection (4)

(a) must be made summarily within such time and in such manner as may be prescribed on application by the Minister within such time and in such manner as may be prescribed;

(b) is not subject to be reviewed or set aside by any government, court or other body; and

(c) must be published forthwith by the Board.

**(6)** Where an application is made by the Minister to the National Energy Board prior to the coming into force of the first regulation made for the purpose of clause (5)(a), the application and the determination of the National Energy Board must be made in accordance with the procedures established by the National Energy Board.

**(7)** A fundamental decision of the Board is deemed, for the purpose of clause 36(1)(b) and subsection 36(3), to be conclusively set aside where the periods within which the setting aside may be overruled pursuant to clause (3)(b) and the setting aside or overruling thereof may be vacated pursuant to subsection (4) have expired and

(a) the setting aside has not been overruled or, if it has been so overruled that overruling is vacated pursuant to subsection (3); or

(b) the setting aside has not been vacated pursuant to subsection (4).

**(8)** Subject to Section 6, the Governor in Council may make regulations prescribing anything that, by this Section, is to be prescribed. 1987, c. 3, s. 35.

**Determination of security of supply**

**39 (1)** For the purpose of this Act, where a determination as to whether security of supply exists is made pursuant to this Section by the Minister and the federal Minister or by a panel or is deemed to have been made pursuant to this Section, it is final and binding for the duration of the period in respect of which it is made.

**(2)** In respect of the period commencing on January 1, 1986, and terminating on December 31, 1990, a determination is and is deemed to have been made, for all purposes of this Act, that security of supply does not exist.

**(3)** Each period following the period referred to in subsection (2) shall commence on the expiration of the period immediately preceding that period and shall be for a duration of five successive calendar years. 1987, c. 3, s. 36.

**Failure to agree on security of supply**

**40 (1)** Where the Minister and the federal Minister fail to agree on a determination as to whether security of supply exists in respect of any period, the determination must be made by a panel consisting of three members, constituted in accordance with Section 46, within 60 days after the appointment of the chair of the panel unless, at any time prior thereto, the Minister and the federal Minister agree on the determination.

**(2)** Where a determination is made pursuant to subsection (1) by a panel as to whether security of supply exists, that determination is not subject to be reviewed or set aside by any Minister, government, court or other body. 1987, c. 3, s. 37.

**Powers and obligations of Government of Canada**

**41 (1)** Notwithstanding any other provision of this Act, nothing in this Act limits the powers of the Government of Canada in the event of a sudden domestic or import supply shortfall of suitable crude oil and equivalent substances or with respect to any other energy emergency.

**(2)** Notwithstanding any other provision of this Act, where the Government of Canada has obligations with respect to the allocation of petroleum pursuant to the Agreement On An International Energy Program dated November 18, 1974, the Board shall, where authorized to do so by the federal Minister and during the period that those obligations continue, take such measures as are necessary to comply with those obligations and as are fair and equitable in relation to other hydrocarbon-producing regions of Canada. 1987, c. 3, s. 38.

**Shortfall of petroleum deliveries**

**42** **(1)** For the purpose of this Section, "shortfall of petroleum deliveries in the Province" means deliveries of petroleum that are inadequate to supply, on commercial terms,

(a) the end use consumption demands of all consumers in the Province;

(b) the feedstock requirements of industrial facilities that are in place in the Province on January 31, 1986; and

(c) the feedstock requirements of any refining facility located in the Province that were not in place on January 31, 1986, if the feedstock requirements required to satisfy the demand of industrial capacity, as of January 31, 1986, in Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador have been met.

**(2)** Where there is a shortfall of petroleum deliveries in the Province, the Minister may, after consulting with the federal Minister, give notice to holders of production licences in the offshore area that the consumers and facilities referred to in subsection (1) that are specified in the notice have, during the term of the notice, the first option to acquire, on commercial terms, petroleum produced in the offshore area unless a sales contract, with respect to that petroleum, has been entered into prior to the giving of the notice.

**(3)** Notwithstanding any other provision of this Act, any contract entered into after the giving of the notice referred to in subsection (2) is deemed to be varied or suspended to the extent necessary to give effect to that notice.

**(4)** The term of a notice given pursuant to subsection (2) is the period during which a shortfall of petroleum deliveries in the Province continues to exist.

**(5)** Where the federal Minister or a holder of a production licence to whom a notice has been given pursuant to subsection (2) does not agree with the Minister that a shortfall of petroleum deliveries in the Province exists or continues to exist, the matter must be referred to arbitration in the manner prescribed.

**(6)** Where it is determined pursuant to arbitration that a shortfall of petroleum deliveries in the Province does not exist or continues to exist, the notice given pursuant to subsection (2) is and is deemed to be revoked and ceases to have effect on the date on which the determination is made.

**(7)** Subject to Section 6, the Governor in Council may make regulations for carrying out the purpose of this Section and, without limiting the generality of the foregoing, may make regulations

(a) defining the expression "commercial terms" or providing for arbitration to establish commercial terms in any particular case;

(b) governing, for the purpose of this Section, arbitration and the making of arbitration orders and appeals from and enforcement of arbitration orders; and

(c) prescribing the manner of exercising a first option to acquire that is granted pursuant to a notice given pursuant to subsection (2). 1987, c. 3, s. 39; 2014, c. 43, s. 4.

**Acquisition of portion of trunkline by Government**

**43** **(1)** In this Section,

"certificate" means a certificate of public convenience and necessity issued pursuant to Part III of the *National Energy Board Act*;

"Nova Scotia trunkline" means a trunkline for the transmission of petroleum in the offshore area or from the offshore area, and includes all tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio, and real and personal property connected therewith that are located within the offshore area or any other part of Nova Scotia, but does not include laterals, gathering lines, flow lines, structure, and facilities for the production and processing of petroleum.

**(2)** No certificate may be issued in respect of a Nova Scotia trunkline, unless the National Energy Board is satisfied that the Government of the Province has been given a reasonable opportunity to acquire on a commercial basis at least a 50%, or such lesser percentage as the Government proposes to acquire as a result of the opportunity, ownership interest in the trunkline.

**(3)** Where a certificate is not required in respect of a Nova Scotia trunkline, no authorization may be issued pursuant to clause 139(1)(b) in respect of that trunkline, unless the Board is satisfied that the Government of the Province has been given a reasonable opportunity to acquire on a commercial basis at least a 50%, or such lesser percentage as the Government proposes to acquire as a result of the opportunity, ownership interest in the trunkline.

**(4)** The Minister may, with the approval of the Governor in Council, enter into such agreements, make such arrangements and expend such money as is necessary for the Minister to participate in the construction, operation and acquisition of trunklines including the acquisition of the ownership interest referred to in this Section. 1987, c. 3, s. 40; 2015, c. 36, s. 1.

**Written directives**

**44** **(1)** The Minister and the federal Minister may jointly issue to the Board written directives in respect of

(a) fundamental decisions;

(b) Canada-Nova Scotia benefits plans and any of the provisions thereof;

(c) public reviews conducted pursuant to Section 47;

(d) studies to be conducted by the Board; and

(e) advice with respect to policy issues to be given by the Board to the Minister and the federal Minister.

**(2)** The Minister may issue to the Board written directives respecting any fundamental decision relating to the Bay of Fundy or Sable Island.

**(3)** The Minister as defined in subsection 252(1) and the federal Minister, on the recommendation of the Minister of Labour for Canada, may jointly issue written directives in relation to

(a) the development of guidelines and interpretation notes with respect to occupational health and safety matters; and

(b) the implementation of any recommendations made by an auditor under Section 372 or made following an inquiry under Section 373.

**(4)** Where a request is received during any calendar year by the Board or the Minister or the federal Minister to make a call for bids under Part III in relation to particular portions of the offshore area, the Minister or the federal Minister may, after having reviewed the plan of the anticipated decisions of the Board during the calendar year submitted under Section 45, issue to the Board a written directive to specify those portions of the offshore area in a call for bids made under Part III.

**(5)** The Board shall comply with a directive issued pursuant to this Section.

**(6)** Directives issued pursuant to this Section are not and are deemed not to be regulations for the purpose of the *Regulations Act*.

**(7)** Where a directive is issued pursuant to this Section a notice must be published in the Royal Gazette that the directive has been issued and that the text of the directive is available for inspection by any person on request made to the Board. 1987, c. 3, s. 41; 1993, c. 16, s. 3; 2013, c. 16, s. 6.

**Submission of plan**

**45** During the first month of each calendar year, the Board shall submit to the Minister and the federal Minister a plan outlining the anticipated decisions of the Board during that calendar year respecting

(a) the making of calls for bids pursuant to Part III with respect to interests to be issued in relation to portions of the offshore area and the issuance and terms and conditions of such interests; and

(b) exploration and development of the offshore area. 1987, c. 3, s. 42.

**Appointment of panel**

**46 (1)** For the purpose of subsections 13(2), 25(3) and 40(1), one member of a panel must be appointed by each Government within 30 days after the expiration of the three months referred to in subsection (2).

**(2)** The chair of the panel is appointed

(a) jointly by the two members of the panel appointed pursuant to subsection (1) within 30 days after the later of the two appointments made pursuant to that subsection; or

(b) where the two members of the panel fail to agree on the appointment of the chair of the panel within the 30-day period referred to in clause (a), by the Chief Justice of Nova Scotia within 30 days after the expiration of that period. 1987, c. 3, s. 43; 1988, c. 56, s. 1.

**Public review**

**47 (1)** Subject to any directives issued pursuant to subsection 44(1), the Board may conduct a public review in relation to the exercise of any of its powers or the performance of any of its duties or functions where the Board is of the opinion that it is in the public interest to do so.

**(2)** Where a public review is conducted pursuant to subsection (1) in relation to any matter, the Board may

(a) establish terms of reference and a timetable that will permit a comprehensive review of all aspects of the matter, including those within the authority of the Legislature or of Parliament;

(b) appoint one or more commissioners and, where there is to be more than one commissioner, appoint as commissioners persons nominated by each of the Governments in recognition of the authority of ministers of the Crown in right of the Province or of Canada under any enactment of the Province or of Parliament, other than this enactment or the federal Implementation Act, in relation to the matter;

(c) cause the commissioners to hold public hearings in appropriate locations in the Province or elsewhere in Canada and report thereon to the Board, the Minister and the federal Minister; and

(d) where the public review is conducted in relation to any potential development of a pool or field, require the person who proposed the potential development to submit and make available for public distribution a preliminary development plan, an environmental impact statement, a socio-economic impact statement, a preliminary Canada-Nova Scotia benefits plan and any other plan specified by the Board.

**(3)** On the request of the Board, the Government of the Province may, subject to such terms and conditions as it considers necessary, confer on the Board or the commissioners appointed pursuant to clause (2)(b) all or any of the powers, privileges and immunities conferred on persons appointed as commissioners pursuant to the *Public Inquiries Act*.

**(4)** The commissioners shall make their recommendations respecting any preliminary plan or statement submitted pursuant to clause (2)(d) within 270 days after their receipt of the plan or statement or such shorter period as may be set by the Board. 1987, c. 3, s. 44.

**Public hearing**

**48** The Board may conduct a public hearing in relation to the exercise of any of its powers or the performance of any of its duties and functions as a responsible authority as defined in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012*. 2014, c. 43, s. 5.

**Confidentiality**

**49** At any public hearing conducted under Section 48, the Board may take any measures and make any order that it considers necessary to ensure the confidentiality of any information likely to be disclosed at the hearing if the Board is satisfied that

(a) disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the hearing, or to prejudice the person's competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure; or

(b) the information is financial, commercial, scientific or technical information that is confidential information supplied to the Board and

(i) the information has been consistently treated as confidential information by a person directly affected by the hearing, and

(ii) the person's interest in confidentiality outweighs the public interest in its disclosure. 2014, c. 43, s. 5.

**Confidentiality where security concern**

**50** At any public hearing conducted under Section 48, the Board may take any measures and make any order that it considers necessary to ensure the confidentiality of information that is likely to be disclosed at the hearing if the Board is satisfied that

(a) there is a real and substantial risk that disclosure of the information will impair the security of pipelines, as defined in Section 130, installations, vessels, aircraft or systems, including computer or communication systems, or methods employed to protect them; and

(b) the need to prevent disclosure of the information outweighs the public interest in its disclosure. 2014, c. 43, s. 5.

**Limitation**

**51** The Board shall not take any measures or make any order under Section 49 or 50 in respect of information or documentation referred to in clauses 118(5)(a) to (e) and (j). 2014, c. 43, s. 5.

**Canada-Nova Scotia benefits plan**

**52 (1)** In this Section, "Canada-Nova Scotia benefits plan" means a plan for the employment of Canadians and, in particular, members of the labour force of the Province and, subject to clause (3)(d), for providing manufacturers, consultants, contractors and service companies in the Province and other parts of Canada with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

**(2)** Before the Board may approve any development plan pursuant to subsection 147(4) or authorize any work or activity pursuant to clause 139(1)(b), a Canada-Nova Scotia benefits plan shall be submitted to and approved by the Board, unless the Board waives that requirement in accordance with subsection (6).

**(3)** A Canada-Nova Scotia benefits plan must contain provisions intended to ensure that

(a) before carrying out any work or activity in the offshore area, the corporation or other body submitting the plan establish in the Province an office where appropriate levels of decision making are to take place;

(b) consistent with the *Canadian Charter of Rights and Freedoms*, individuals resident in the Province are given first consideration for training and employment in the work program for which the plan was submitted and any collective agreement entered into by the corporation or other body submitting the plan and an organization of employees respecting terms and conditions of employment in the offshore area contains provisions consistent with this clause;

(c) a program is carried out and expenditures are made for the promotion of education and training and of research and development in the Province in relation to petroleum resource activities in the offshore area;

(d) first consideration is given to services provided from within the Province and to goods manufactured in the Province, where those services and goods are competitive in terms of fair market price, quality and delivery.

**(4)** The Board may require that any Canada-Nova Scotia benefits plan include provisions to ensure that disadvantaged individuals or groups have access to training and employment opportunities and to enable such individuals or groups or corporations owned or co-operatives operated by them to participate in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

**(5)** In reviewing any Canada-Nova Scotia benefits plan, the Board shall consult with the Minister and the federal Minister on the extent to which the plan meets the requirements set out in subsections (1), (3) and (4).

**(6)** The Board may, pursuant to subsection (2),

(a) subject to any directives issued pursuant to subsection 44(1), approve any Canada-Nova Scotia benefits plans; or

(b) with the consent of both ministers, waive the requirement for any Canada-Nova Scotia benefits plan.

**(7)** Subject to Section 6, the Governor in Council may make regulations prescribing the time and manner of submission of any Canada-Nova Scotia benefits plan and the form and information to be contained therein. 1987, c. 3, s. 45.

**Payments to Board**

**53 (1)** A payment of royalty, rental, licence fee, cash bonus or deposit required to be made pursuant to the *Offshore Petroleum Royalty Act* or Parts III and IV of this Act in respect of the offshore area shall be made to the Board.

**(2)** A payment made to the Board pursuant to

(a) the federal Implementation Act in respect of those kinds of payments referred to in subsection (1); or

(b) this Section,

is a good and sufficient discharge of liability to make payment of such amounts pursuant to the *Offshore Petroleum Royalty Act* or Parts III and IV of this Act. 1987, c. 3, s. 46.

**Deposit in Nova Scotia Offshore Revenue Account**

**54** All revenues collected or assessed by the Board or the Province in respect of royalties, bonuses, rentals, licence fees and corporate or retail sales tax shall be deposited by the Board and the Province into the Nova Scotia Offshore Revenue Account and paid by the Government of Canada to the Province consistent with payment schedules under the Canada-Nova Scotia Tax Collection Agreement. 1987, c. 3, s. 47.

**Jurisdiction of Nova Scotia courts**

**55 (1)** Subject to any exceptions prescribed, every court in the Province has jurisdiction in respect of matters arising in respect of the collection of royalties, rentals, license fees, bonuses, deposits, consumption tax or insurance premiums tax, or in respect of any enactment determined by regulation to be applicable in the offshore area, as if those matters had arisen within the territorial limits of Halifax Regional Municipality, to the same extent as the court has jurisdiction in respect of matters occurring in Halifax Regional Municipality.

**(2)** Nothing in this Act limits the jurisdiction that a court may exercise apart from this Act.

**(3)** For the purpose of this Section, "court" includes a judge thereof and any justice or provincial magistrate. 1987, c. 3, s. 48.

**Resolution of dispute**

**56 (1)** In this Section, "agreement" means an agreement between the Government of Canada and the government of a province respecting resource management and revenue sharing in relation to activities respecting the exploration for or the production of petroleum carried out on any submarine lands.

**(2)** Where a dispute between the Province and any other province that is a party to an agreement arises in relation to the description of any portion of the limits set out in Schedule I and the Province and the Government of Canada are unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the federal Minister considers appropriate, be referred to an impartial person, tribunal or body and settled by means of the procedure determined in accordance with subsection (3).

**(3)** For the purpose of this Section, the person, tribunal or body to which a dispute is to be referred, the constitution and membership of any tribunal or body and the procedures for the settlement of a dispute may be determined by the federal Minister after consultation with the provinces concerned in the dispute.

**(4)** Where the procedure for the settlement of a dispute pursuant to this Section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modifications as the circumstances require.

**(5)** Notwithstanding Section 6, where a dispute is settled pursuant to this Section and a regulation pursuant to subsection 5(1) amending the description of the portion of the limits set out in Schedule I in relation to which the dispute arose is made in accordance with the settlement, the regulation is not subject to the procedure set out in Section 6 with respect to that description. 1987, c. 3, s. 49.

**Board to conclude memorandum of understanding**

**57 (1)** The Board shall, to ensure effective coordination and avoid duplication of work and activities, conclude with the appropriate departments and agencies of the Government of the Province and the Government of Canada memoranda of understanding in relation to

(a) environmental regulation;

(b) emergency measures;

(c) coast guard and other marine regulation;

(d) aviation regulation;

(e) employment and industrial benefits for Canadians in general and the people of the Province in particular and the review and evaluation procedures to be followed by both Governments and the Board in relation to such benefits;

(f) occupational health and safety;

(g) a Nova Scotia trunkline within the meaning of Section 43; and

(h) such other matters as are appropriate.

**(2)** The Minister and the federal Minister shall be parties to any memorandum of understanding concluded in relation to a matter referred to in clause (1)(e). 1987, c. 3, s. 50; 2013, c. 16, s. 7.

**Regulations**

**58** Subject to Section 6, the Governor in Council may make regulations for carrying out or giving effect to any of the provisions of Part I. 1987, c. 3, s. 51.

**Regulations Act**

**59** The exercise by the Governor in Council of the authority contained in Section 58 is a regulation within the meaning of the *Regulations Act*. 1987, c. 3, s. 52.

**Powers conferred by federal Implementation Act**

**60** The Minister and any corporation, agency, board, commission or tribunal of the Province may exercise such powers, duties and functions as are conferred on the Minister or the corporation, agency, board, commission or tribunal pursuant to the federal Implementation Act. 1987, c. 3, s. 53; 2012, c. 17, s. 3.

PART II

CROWN SHARE ADJUSTMENT PAYMENTS

**Regulations**

**61** Subject to Section 6, the Governor in Council may make regulations respecting information that must be provided to the Minister to permit the Minister to demonstrate and determine the payments to be calculated under section 247 of the federal Implementation Act. 2012, c. 17, s. 4.

PART III

**Interpretation of Part**

**62** In this Part,

"call for bids" means a call for bids made in accordance with Section 72;

"Canada Oil and Gas Land Regulations" means the Canada Oil and Gas Land Regulations made pursuant to the former *Public Lands Grants Act* (Canada) and the *Territorial Lands Act* (Canada);

"commercial discovery" means a discovery of petroleum that has been demonstrated to contain petroleum reserves that justify the investment of capital and effort to bring the discovery to production;

"commercial discovery area" means, in relation to a declaration of commercial discovery made pursuant to subsection 92(1) or (2), those portions of the offshore area described in the declaration;

"Crown reserve lands" means any portion of the offshore area in respect of which no interest is in force;

"holder" or "interest holder" means, in respect of an interest or a share therein, the person indicated in the register referred to in Section 105 as the holder of the interest or the share;

"interest" means any exploration licence, production licence or significant discovery licence;

"interest owner" means the interest holder who holds an interest or the group of interest holders who hold all of the shares in an interest;

"prescribed" means,

(a) in the case of a form or the information to be given on a form, prescribed by the Board; and

(b) in any other case, prescribed by the regulations made by the Governor in Council;

"share" means, with respect to an interest, an undivided share in the interest or a share in the interest held in accordance with Section 80;

"significant discovery" means a discovery indicated by the first well on a geological feature that demonstrates by flow testing the existence of hydrocarbons in that feature and, having regard to geological and engineering factors, suggests the existence of an accumulation of hydrocarbons that has potential for sustained production;

"significant discovery area" means, in relation to a declaration of significant discovery made pursuant to subsection 85(1) or (2), those portions of the offshore area described in the declaration. 1987, c. 3, s. 54.

**Form of notice**

**63** Where a notice is required to be given pursuant to this Part or the regulations, it must be given in such form and manner as may be prescribed and contain such information as may be prescribed. 1987, c. 3, s. 55.

**Part binding on the Crown**

**64** This Part is binding on the Crown in right of the Province, a province and Canada. 1987, c. 3, s. 56.

**Exercise of powers by designated person**

**65** The Board may designate any person to exercise the powers and perform the duties and functions pursuant to this Part that are specified in the designation and on such designation that person may exercise those powers and shall perform those duties and functions subject to such terms and conditions, if any, as are specified in the designation. 1987, c. 3, s. 57.

**Advisory bodies**

**66 (1)** The Board may appoint and fix the terms of reference of such advisory bodies as the Board considers appropriate to advise the Board with respect to such matters relating to the administration or operation of this Part or Part IV as are referred to them by the Board.

**(2)** The members of any advisory body appointed pursuant to subsection (1) may be paid for their services such remuneration and expenses as are fixed by the Board. 1987, c. 3, s. 58.

**Representative of interest owners**

**67 (1)** Where an interest owner consists of two or more holders, such holders shall, in the manner prescribed, appoint one of their number to act as representative of the interest owner for the purpose of this Part and the *Offshore Petroleum Royalty Act*, but such holders may, with the consent of the Board, appoint different representatives for different purposes.

**(2)** In the event that an interest owner consisting of two or more holders fails to appoint a representative for any of the purposes of this Part, the Board may designate one of such holders as the representative of the interest owner for such purposes.

**(3)** An interest owner is bound by the acts or omissions of the appointed or designated representative of such interest owner with respect to any matter to which the authority of the representative extends.

**(4)** A representative of an interest owner appointed or designated pursuant to this Section shall perform the duties in respect of the purposes for which that representative has been appointed or designated, and any operating agreement or other similar arrangement in force in respect of the relevant interest of that inter-

est owner stands varied or amended to the extent necessary to give effect to this subsection. 1987, c. 3, s. 59.

**Prohibition of issuance of interests**

**68 (1)** Subject to Sections 34 to 40, the Board may, except in a case referred to in subsection (2), by order, for such purpose and under such conditions as may be set out in the order, prohibit the issuance of interests in respect of such portions of the offshore area as are specified in the order.

**(2)** The federal Minister may, by order, in the case of a disagreement with any government concerning the location of an international boundary and under such conditions as may be set out in the order, prohibit the issuance of interests in respect of such portions of the offshore area as are specified in the order. 1987, c. 3, s. 60.

**Surrender of interest**

**69 (1)** An interest owner may, in the manner prescribed and subject to any requirements that may be prescribed respecting the minimum geographical area to which an interest may relate, surrender an interest in respect of all or any portion of the offshore area subject to the interest.

**(2)** Any liability of an interest owner or interest holder to the Crown in right of the Province, either direct or by way of indemnity, that exists at the time of any surrender pursuant to subsection (1) is not affected by the surrender. 1987, c. 3, s. 61.

**Power to prohibit**

**70 (1)** Subject to subsection (2), the Board may, in the case of

(a) an environmental or social problem of a serious nature; or

(b) dangerous or extreme weather conditions affecting the health or safety of people or the safety of equipment,

by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity in the offshore area or any portion thereof that is subject to the interest of that interest owner.

**(2)** An order of the Board made in a case referred to in clause (1)(a) is subject to Sections 34 to 40.

**(3)** The federal Minister may, in the case of a disagreement with any government concerning the location of an international boundary, by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity in the offshore area or any portion thereof that is subject to the interest of that interest owner.

**(4)** Where, by reason of an order made pursuant to subsection (1) or (3), any requirement in relation to an interest cannot be complied with while the order is in force, compliance with the requirement is suspended until the order is revoked.

**(5)** Notwithstanding any other provision in this Act, the term of an interest that is subject to an order pursuant to subsection (1) or (3) and the period provided for compliance with any requirement in relation to the interest are extended for a period equal to the period that the order is in force.

**(6)** Nothing in this Section affects the authority of the Board to relieve a person from any requirement in relation to an interest or pursuant to this Part or the regulations. 1987, c. 3, s. 62.

**Issue of interest by Board**

**71 (1)** The Board may issue interests in respect of any portions of the offshore area in accordance with this Part and the regulations.

**(2)** Subject to subsection (3), the application of any interest may be restricted to such geological formations and to such substances as may be specified in the interest.

**(3)** Subsection (2) does not apply to any interest

(a) that is in force or in respect of which negotiations were completed before or on January 5, 1990, in relation to any portion of the offshore area; or

(b) that immediately succeeds an interest referred to in clause (a) in relation to that portion of the offshore area where that portion was not Crown reserve lands on the expiration of the interest referred to in clause (a). 1987, c. 3, s. 63.

**Call for bids**

**72 (1)** Subject to Section 75, the Board shall not issue an interest in relation to Crown reserve lands unless

(a) prior thereto, the Board has made a call for bids in relation to those Crown reserve lands by publishing a notice in accordance with this Section and Section 77; and

(b) the interest is issued to the person who submitted, in response to the call, the bid selected by the Board in accordance with subsection 73(1).

**(2)** The making of a call for bids by the Board is subject to Sections 34 to 40.

**(3)** Any request received by the Board to make a call for bids in relation to particular portions of the offshore area shall be considered by the Board in selecting the portions of the offshore area to be specified in a call for bids.

**(4)** A call for bids must specify

(a) the interest to be issued and the portion of the offshore area to which the interest is to apply;

(b) where applicable, the geological formations and substances to which the interest is to apply;

(c) the other terms and conditions subject to which the interest is to be issued;

(d) any terms and conditions that a bid must satisfy to be considered by the Board;

(e) the form and manner in which a bid is to be submitted;

(f) subject to subsection (5), the closing date for the submission of bids; and

(g) the sole criterion that the Board will apply in assessing bids submitted in response to the call.

**(5)** Unless otherwise prescribed, a call for bids must be published at least 120 days before the closing date for the submission of bids specified in the call. 1987, c. 3, s. 64.

**Selection of bid**

**73 (1)** A bid submitted in response to a call for bids may not be selected unless

(a) the bid satisfies the terms and conditions and is submitted in the form and manner specified in the call; and

(b) the selection is made on the basis of the criterion specified in the call.

**(2)** Where the Board selects a bid submitted in response to a call for bids, the Board shall publish a notice in accordance with Section 77 setting out the terms and conditions of that bid.

**(3)** Where an interest is to be issued as a result of a call for bids, the terms and conditions of the interest must be substantially consistent with any terms and conditions in respect of the interest specified in the call.

**(4)** The Board shall publish a notice in accordance with Section 77 setting out the terms and conditions of any interest issued as a result of a call for bids as soon as practicable after the issuance thereof. 1987, c. 3, s. 65.

**Board not required to issue interest**

**74 (1)** The Board is not required to issue an interest as a result of a call for bids.

**(2)** Subject to Section 75, where the Board has not issued an interest with respect to a particular portion of the offshore area specified in a call for bids within six months after the closing date specified in the call for the submission of bids, the Board shall, before issuing an interest in relation to that portion of the offshore area, make a new call for bids. 1987, c. 3, s. 66.

**Issue of interest where no call for bids**

**75 (1)** Subject to Sections 34 to 40, the Board may issue an interest, in relation to any Crown reserve lands, without making a call for bids where

(a) the portion of the offshore area to which the interest is to apply has, through error or inadvertence, become Crown reserve lands and the interest owner who last held an interest in relation to such lands has, within one year after the time they so became Crown reserve lands, requested the Board to issue an interest; or

(b) the Board is issuing the interest to an interest owner in exchange for the surrender by the interest owner, at the request of the Board, of any other interest or a share in any other interest, in relation to all or any portion of the offshore area subject to that other interest.

**(2)** Where the Board proposes to issue an interest pursuant to subsection (1), the Board shall, not later than 90 days before issuing the interest, publish a notice in accordance with Section 77 setting out the terms and conditions of the proposed interest. 1987, c. 3, s. 67.

**Issue of interest not vitiated**

**76** Where an interest has been issued, it is not vitiated by reason only of a failure to comply with any of the requirements set out in Sections 72 to 75 respecting the form and content of, and time and manner of publishing, any notice required by those Sections in relation to that interest. 1987, c. 3, s. 68.

**Publication of notice**

**77** Any notice required to be published by the Board pursuant to subsection 72(1), 73(2) or (4), 75(2) or 82(2) must be published in the Royal Gazette and in any other publication the Board considers appropriate and notwithstanding those subsections, may contain only a summary of the information required to be published and a statement that the full text thereof is available for inspection by any person on request made to the Board. 1987, c. 3, s. 69; 1992, c. 12, s. 1.

**Regulations**

**78** Subject to Section 6, the Governor in Council may, for the purpose of Section 72, make regulations of general application in relation to the offshore area or any portion thereof, or in respect of any particular call for bids, prescribing the terms, conditions and criterion to be specified in a call for bids, the manner in which bids are to be submitted and requiring those terms and conditions and that criterion and manner to be specified in the call. 1987, c. 3, s. 70.

**Rights conferred by exploration licence**

**79 (1)** An exploration licence confers, with respect to the portion of the offshore area to which the licence applies,

(a) the right to explore for, and the exclusive right to drill and test for, petroleum;

(b) the exclusive right to develop that portion of the offshore area in order to produce petroleum; and

(c) the exclusive right, subject to compliance with the other provisions of this Part, to obtain a production licence.

**(2)** The making of a call for bids and the issuance of an exploration licence by the Board is subject to Sections 34 to 40. 1987, c. 3, s. 71.

**Application of exploration licence to portion only**

**80** A share in an exploration licence may, subject to any requirements that may be prescribed, be held with respect to a portion only of the offshore area subject to the exploration licence. 1987, c. 3, s. 72.

**Terms and conditions of exploration licence**

**81 (1)** An exploration licence must contain such terms and conditions as may be prescribed and may contain any other terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to Sections 34 to 40, and the interest owner of the licence.

**(2)** Subject to Section 6, the Governor in Council may make regulations prescribing terms and conditions required to be included in exploration licences issued in relation to the offshore area or any portion thereof. 1987, c. 3, s. 73.

**Amendment of exploration licence**

**82 (1)** The Board, subject to Sections 34 to 40, and the interest owner of an exploration licence may, by agreement, amend any provision of the exploration licence in any manner not inconsistent with this Part or the regulations and, without limiting the generality of the foregoing, may, subject to subsection (2), amend the licence to include any other portion of the offshore area.

**(2)** The Board shall not amend an exploration licence to include any portion of the offshore area that, immediately prior to the inclusion, was Crown reserve lands unless the Board would be able to issue an interest to that interest owner in relation to those lands pursuant to subsection 75(1) and a notice has been published in accordance with Section 77 not later than 90 days before making the amendment, setting out the terms and conditions of the amendment.

**(3)** Subject to Sections 34 to 40, the Board may, on the application of the interest owners of two or more exploration licences, consolidate those exploration licences into a single exploration licence, subject to any terms and conditions that may be agreed on by the Board and those interest owners. 1987, c. 3, s. 74.

**Effective date and term of exploration licence**

**83 (1)** The effective date of an exploration licence is the date specified in the licence as the effective date thereof.

**(2)** Subject to subsection (3) and Section 84, the term of an exploration licence shall not exceed nine years from the effective date of the licence and shall not be extended or renewed.

**(3)** Subject to Section 84, the term of an exploration licence entered into or in respect of which negotiations have been completed before December 20, 1985, may be renegotiated once only for a further term not exceeding four years and thereafter the term thereof shall not be renegotiated, extended or renewed.

**(4)** On the expiration of an exploration licence, any portion of the offshore area to which the exploration licence related and that is not subject to a production licence or a significant discovery licence becomes Crown reserve lands. 1987, c. 3, s. 75.

**Continuation of exploration licence**

**84 (1)** Where, prior to the expiration of the term of an exploration licence, the drilling of any well has been commenced on any portion of the offshore area to which the exploration licence applies, the exploration licence continues in force while the drilling of that well is being pursued diligently and for so long thereafter as may be necessary to determine the existence of a significant discovery based on the results of that well.

**(2)** Where the drilling of a well referred to in subsection (1) is suspended by reason of dangerous or extreme weather conditions or mechanical or other technical problems encountered in the drilling of the well, the drilling of that well is, for the purpose of subsection (1), deemed to be being pursued diligently during the period of suspension.

**(3)** Where the drilling of a well referred to in subsection (1) cannot be completed for mechanical or other technical problems and where, within 90 days after the cessation of drilling operations with respect to that well, or such longer period as the Board determines, the drilling of another well is commenced on any portion of the offshore area that was subject to the exploration licence, the drilling of that other well shall, for the purpose of subsection (1), be deemed to have commenced prior to the expiration of the term of the exploration licence. 1987, c. 3, s. 76.

**Declaration of significant discovery**

**85 (1)** Subject to Section 123, where a significant discovery has been made on any portion of the offshore area that is subject to an interest or a share therein held in accordance with Section 80, the Board shall, on the application of the interest holder of the interest or the share made in the form and manner and containing such information as may be prescribed, make a written declaration of significant discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the significant discovery may extend.

**(2)** Where a significant discovery has been made on any portion of the offshore area, the Board may, by order subject to Section 123, make a declaration of significant discovery in relation to that portion of the offshore area in respect of which there are reasonable grounds to believe the significant discovery may extend.

**(3)** A declaration made pursuant to subsection (1) or (2) must describe the portions of the offshore area to which the declaration applies.

**(4)** Subject to subsection (5), where a declaration of significant discovery is made pursuant to subsection (1) or (2) and, based on the results of further drilling, there are reasonable grounds to believe that a discovery is not a significant discovery or that the portions of the offshore area to which the significant discovery extends differ from the significant discovery area, the Board may, subject to Section 123 and as appropriate in the circumstances,

(a) amend the declaration of significant discovery by increasing or decreasing the significant discovery area; or

(b) revoke the declaration.

**(5)** A declaration of significant discovery may not be amended to decrease the significant discovery area or revoked earlier than,

(a) in the case of a significant discovery area that is subject to a significant discovery licence issued pursuant to subsection 87(1), the date on which the exploration licence referred to in that subsection expires; and

(b) in the case of a significant discovery area that is subject to a significant discovery licence issued pursuant to subsection 87(2), three years after the effective date of the significant discovery licence.

**(6)** A copy of a declaration of significant discovery and of any amendment or revocation thereof made pursuant to this Section in relation to any portion of the offshore area subject to an interest must be sent by registered mail to the interest owner of that interest. 1987, c. 3. s. 77.

**Rights conferred by significant discovery licence**

**86** A significant discovery licence confers, with respect to the portion of the offshore area to which the licence applies,

(a) the right to explore for, and the exclusive right to drill and test for, petroleum;

(b) the exclusive right to develop that portion of the offshore area in order to produce petroleum; and

(c) the exclusive right, subject to compliance with the other provisions of this Part, to obtain a production licence. 1987, c. 3. s. 78.

**Issue of significant discovery licence**

**87 (1)** Where a declaration of significant discovery is in force and all or a portion of the significant discovery area is subject to an exploration licence or a share therein held in accordance with Section 80, the Board shall, on the application of the interest holder of the exploration licence or the share made in the form and manner and containing such information as may be prescribed, issue to the interest holder a significant discovery licence in respect of all portions of the significant discovery area that are subject to the exploration licence or the share.

**(2)** Where a declaration of significant discovery is in force and the significant discovery area extends to Crown reserve lands, the Board may, after making a call for bids in relation to those Crown reserve lands or any portion thereof and selecting a bid submitted in response to the call in accordance with subsection 73(1), issue a significant discovery licence to the person who submitted that bid in relation to the Crown reserve lands specified in the call.

**(3)** A significant discovery licence must be in the form prescribed and may contain any other terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to Sections 34 to 40, and the interest owner of the significant discovery licence.

**(4)** The making of a call for bids and the issuance of a significant discovery licence by the Board pursuant to subsection (2) is subject to Sections 34 to 40. 1987, c. 3, s. 79.

**Change of significant discovery area**

**88** **(1)** Where a significant discovery area in relation to a declaration of significant discovery is decreased pursuant to an amendment made pursuant to subsection 85(4), any significant discovery licence that was issued on the basis of that declaration must be amended by decreasing accordingly the portion of the offshore area subject to that licence.

**(2)** Where a significant discovery area in relation to a declaration of significant discovery is increased pursuant to an amendment made pursuant to subsection 85(4), any significant discovery licence that was issued on the basis of that declaration must be amended to include all portions of the amended significant discovery area that are subject to any exploration licence held by the interest owner of that significant discovery licence at the time the significant discovery area is so increased. 1987, c. 3, s. 80.

**Effect and term of exploration licence**

**89** **(1)** On the issuance of a significant discovery licence pursuant to subsection 87(1) with respect to a significant discovery area, any exploration licence ceases to have effect in relation to that significant discovery area.

**(2)** The effective date of a significant discovery licence is the date of application for the licence.

**(3)** Subject to subsection 99(1), a significant discovery licence continues in force, in relation to each portion of the offshore area to which the licence applies, during such period as the declaration of significant discovery on the basis of which the licence was issued remains in force in relation to that portion.

**(4)** On the expiration of a significant discovery licence, any portion of the offshore area to which the significant discovery licence related and that is not subject to a production licence becomes Crown reserve lands. 1987, c. 3, s. 81.

**Requirement for activity**

**90** **(1)** Subject to subsections (2) to (4) and Sections 34 to 40, the Board may, at any time after making a declaration of significant discovery, by order subject to Section 123, require the interest owner of any interest in relation to any portion of the significant discovery area to drill a well on any portion of the significant discovery area that is subject to that interest, in accordance with such directions as may be set out in the order, and to commence the drilling within one year after the making of the order or within such longer period as the Board specifies in the order.

**(2)** No order may be made under subsection (1) with respect to any interest owner who has completed a well on the relevant portion of the offshore area within six months after the completion of that well.

**(3)** No order may be made pursuant to subsection (1) within the three years immediately following the well termination date of the well indicating the relevant significant discovery.

**(4)** No order made pursuant to subsection (1) may require an interest owner to drill more than one well at a time on the relevant portion of the offshore area.

**(5)** For the purpose of subsection (3), "well termination date" means the date on which a well has been abandoned, completed or suspended in accordance with any applicable drilling regulations. 1987, c. 3, s. 82; 2014, c. 43, s. 6.

**Board may provide information**

**91 (1)** The Board may, notwithstanding Section 118, provide information or documentation relating to a significant discovery to any interest owner who requires such information or documentation to assist the interest owner in complying with an order made pursuant to subsection 90(1).

**(2)** An interest owner shall not disclose any information or documentation provided to that interest owner pursuant to subsection (1) except to the extent necessary to enable the interest owner to comply with an order made pursuant to subsection 90(1). 1987, c. 3, s. 83.

**Declaration of commercial discovery**

**92 (1)** Subject to Section 123, where a commercial discovery has been made on any portion of the offshore area that is subject to an interest or a share therein held in accordance with Section 80, the Board shall, on the application of the interest holder of the interest or the share made in the form and manner and containing such information as may be prescribed, make a written declaration of commercial discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the commercial discovery may extend.

**(2)** Subject to Section 123, where a commercial discovery has been made on any portion of the offshore area, the Board may, by order, make a declaration of commercial discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the commercial discovery may extend.

**(3)** Subsections 85(3), (4) and (6) apply, with such modifications as the circumstances require, with respect to a declaration made pursuant to subsection (1) or (2). 1987, c. 3, s. 84.

**Order reducing term of interest**

**93 (1)** Subject to Sections 34 to 40, the Board may, at any time after making a declaration of commercial discovery, give notice to the interest owner of any interest in relation to any portion of the commercial discovery area where commercial production of petroleum has not commenced before that time stating that, after such period of not less than six months as may be specified in the notice, an order may be made reducing the term of that interest.

**(2)** During the period specified in a notice sent to an interest owner pursuant to subsection (1), the Board shall provide a reasonable opportunity for the interest owner to make such submissions as the interest owner considers relevant to determining whether the Board should make an order reducing the term of the relevant interest.

**(3)** Notwithstanding any other provision of this Act, where the Board is of the opinion that it is in the public interest, the Board may, at any time not later than six months after the expiration of the period specified in a notice in respect of an interest sent pursuant to subsection (1), by order subject to Sections 34 to 40 and 123, reduce the term of the interest to three years after the date the order is made or such longer period as may be specified in the order.

**(4)** Notwithstanding any other provision of this Act but subject to subsections (5) and (6), where an order is made pursuant to subsection (3), any interest in respect of a portion of the offshore area within the area to which the interest that is the subject of the order applied on the date the order was made ceases to have effect at the end of the period specified in the order.

**(5)** Where commercial production of petroleum on any portion of the offshore area referred to in subsection (4) commences before the expiration of the period specified in an order made pursuant to subsection (3) or the period extended pursuant to subsection (6), the order ceases to have effect and is deemed to have been vacated.

**(6)** Subject to Sections 34 to 40, the Board may extend the period specified in an order made pursuant to subsection (3) or may revoke the order. 1987, c. 3, s. 85.

**Rights conferred by production licence**

**94 (1)** A production licence confers, with respect to the portion of the offshore area to which the licence applies,

(a) the right to explore for, and the exclusive right to drill and test for, petroleum;

(b) the exclusive right to develop that portion of the offshore area in order to produce petroleum;

(c) the exclusive right to produce petroleum from that portion of the offshore area; and

(d) title to the petroleum so produced.

**(2)** Notwithstanding subsection (1), the Board may, subject to such terms and conditions as the Board considers appropriate, authorize any interest holder of an interest or a share therein to produce petroleum on any portion of the offshore area subject to the interest or share for use in the exploration or drilling for or development of petroleum on any portion of the offshore area. 1987, c. 3, s. 86.

**Issue of production licence**

**95 (1)** Subject to Section 101, the Board, on application made in the form and manner and containing such information as may be prescribed,

(a) shall issue a production licence to one interest owner, in respect of any one commercial discovery area or portion thereof that is subject to an exploration licence or a significant discovery licence held by that interest owner; and

(b) may, subject to Sections 34 to 40 and to such terms and conditions as may be agreed on by the Board and the relevant interest owners, issue a production licence to

(i) one interest owner, in respect of two or more commercial discovery areas or portions thereof that are subject to an exploration licence or a significant discovery licence held by that interest owner, or

(ii) two or more interest owners, in respect of one or more commercial discovery areas or portions thereof that are subject to an exploration licence or a significant discovery licence held by any of those interest owners.

**(2)** Where a declaration of commercial discovery is in force and the commercial discovery area extends to Crown reserve lands, the Board may, after making a call for bids in relation to those Crown reserve lands or any portion thereof and selecting a bid submitted in response to the call in accordance with subsection 73(1), issue a production licence to the person who submitted that bid in relation to the Crown reserve lands specified in the call.

**(3)** A production licence must be in the form prescribed and may contain any terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to Sections 34 to 40, and the interest owner of the production licence.

**(4)** The making of a call for bids and the issuance of a production licence pursuant to subsection (2) is subject to Sections 34 to 40. 1987, c. 3 s. 87; 1993, c. 16, s. 4.

**Consolidation of production licences**

**96** Subject to Sections 34 to 40, the Board may, on the application of the interest owners of two or more production licences, consolidate those production licences into a single production licence, on such terms and conditions as may be agreed on by the Board and those interest owners. 1987, c. 3 s. 88.

**Change of area covered by licence**

**97 (1)** Where a commercial discovery area in relation to a declaration of commercial discovery is decreased pursuant to an amendment made pursuant to subsection 92(3), any production licence that was issued on the basis of that declaration must be amended by decreasing accordingly the portion of the offshore area subject to that licence.

**(2)** Where a commercial discovery area in relation to a declaration of commercial discovery is increased pursuant to an amendment made pursuant to subsection 92(3), any production licence that was issued on the basis of that declaration must be amended to include all portions of the amended commercial discovery area that are subject to an exploration licence or a significant discovery licence held by the interest owner of that production licence at the time the commercial discovery area is so increased. 1987, c. 3, s. 89.

**Effective date and term of production licence**

**98 (1)** Subject to subsections (2) to (4), a production licence is effective from the date it is issued and must be issued for a term of 25 years.

**(2)** Where a declaration of commercial discovery on the basis of which a production licence was issued is, pursuant to subsection 92(3), revoked or amended to exclude all portions of the commercial discovery area in relation to which the production licence was issued, the production licence ceases to be in force.

**(3)** Where, on the expiration of the term of a production licence, petroleum is being produced commercially, the term is extended for such period thereafter during which commercial production of petroleum continues.

**(4)** Subject to Sections 34 to 40, the Board may, by order, on such terms and conditions as may be specified in the order, extend the term of a production licence where

(a) commercial production of petroleum from the portion of the offshore area subject to the licence ceases before or on the expiration of the 25-year term of the production licence and the Board has reasonable grounds to believe that commercial production from such portion of the offshore area will recommence; or

(b) the Board has reasonable grounds to believe that commercial production of petroleum from such portion of the offshore area will, at any time before or after the expiration of the term of the licence, cease during any period and thereafter recommence. 1987, c. 3, s. 90.

**Former interest ceases to have effect**

**99 (1)** On the issuance of a production licence, any interest in relation to the portion of the offshore area in respect of which the production licence is issued held immediately prior to the issuance of the production licence ceases to have effect in relation to such portion of the offshore area, but otherwise continues to have effect according to its terms and the provisions of this Act.

**(2)** On the expiration of a production licence, the portion of the offshore area in relation to which the production licence was issued becomes Crown reserve lands. 1987, c. 3, s. 91.

**Authorization of subsurface storage**

**100 (1)** The Board may, subject to Sections 34 to 40, and any terms and conditions it considers appropriate, issue a licence for the purpose of subsurface storage of petroleum or substances related to petroleum activity in portions of the offshore area at depths greater than 60 feet.

**(2)** No portion of the offshore area may be used for a purpose referred to in subsection (1) without a licence referred to therein. 1987, c. 3, s. 92.

**Requirements for holder of production licence**

**101** No production licence or share in a production licence may be held by any person unless that person is a corporation incorporated in Canada. 1993, c. 16, s. 5.

**Application of Part VII of Canada Petroleum Resources Act**

**102 (1)** Part VII of the *Canada Petroleum Resources Act* and the regulations made pursuant to that Part apply, with such modifications as the circumstances require, within the offshore area and the Environmental Studies Management Board established pursuant to Part VII of that Act has and may exercise in the offshore area the same powers and duties which that Board has in respect of frontier lands as defined in the *Canada Petroleum Resources Act*.

**(2)** The rates fixed by the federal Minister pursuant to section 80 of the *Canada Petroleum Resources Act* do not apply until approved by the Board.

**(3)** Notwithstanding subsection 78(2) of the *Canada Petroleum Resources Act*, as incorporated herein, one of the members of the Environmental Studies Management Board established by subsection 78(1) of that Act is to be appointed by the Board on the recommendation of the Minister.

**(4)** The Environmental Studies Management Board referred to in subsection (3) shall submit to the Board a copy of every annual report and recommendation submitted to the federal Minister pursuant to clause 79(1)(d) or (e) of the *Canada Petroleum Resources Act* and a copy of that Part and every budget submitted to the federal Minister pursuant to clause 79(1)(c) of that Act that relates to the offshore area at the same time the report or recommendation is submitted to the federal Minister. 1987, c. 3, s. 103.

**Interpretation of Sections 103 to 117**

**103 (1)** In this Section and Sections 104 to 117,

"assignment of security interest" means a notice of the assignment of a security interest or any part thereof in respect of which a security notice has been registered pursuant to this Section and Sections 104 to 117;

"court" means the Supreme Court of Nova Scotia and includes a judge thereof;

"Deputy Registrar" means such person as the Board may designate for the purpose of this Section and Sections 104 to 117;

"discharge" means a notice of the discharge of a security notice or postponement and includes a partial discharge;

"instrument" means a discharge, postponement, security notice, transfer or an assignment of a security interest;

"operator's lien" means any charge on or right in relation to an interest or a share in an interest

(a) that arises pursuant to a contract

(i) to which the interest owner or holder of the interest or share is a party,

(ii) that provides for the operator appointed thereunder to carry out any work or activity related to the exploration for or the development or production of petroleum in the portion of the offshore area to which the interest or share applies, and

(iii) that requires the interest owner or holder to make payments to the operator to cover all or part of the advances made by the operator in respect of the costs and expenses of such work or activity; and

(b) that secures the payments referred to in subclause (a)(iii);

"postponement" means a document evidencing the postponement of a security notice or operator's lien;

"Registrar" means such person as the Board may designate for the purpose of this Section and Sections 104 to 117;

"secured party" means the person claiming a security interest pursuant to a security notice;

"security interest" means any charge on or right in relation to an interest or a share in an interest that secures

(a) the payment of an indebtedness arising from an existing or future loan or advance of money;

(b) a bond, debenture or other security of a corporation; or

(c) the performance of the obligations of a guarantor under a guarantee given in respect of all or any part of an indebtedness referred to in clause (a) or all or any part of a bond, debenture or other security of a corporation,

and includes a security given pursuant to Section 177 of the *Bank Act* (Canada), but does not include an operator's lien;

"security notice" means a notice of a security interest;

"transfer" means a transfer of an interest or a share in an interest.

**(2)** Where an assignment of security interest is registered pursuant to this Section and Sections 104 to 117, a reference in this Section and Sections 104 to 117 to a secured party is to be read, in respect of the security notice to which the assignment of security interest relates, as a reference to the assignee named in the assignment of security interest. 1987, c. 3, s. 104; 2015, c. 36, s. 2.

**Notice of change of share or interest to Board**

**104** Where an interest holder of an interest or any share therein enters into an agreement or arrangement that is or may result in a transfer, assignment or other disposition of the interest or any share therein, the interest holder shall give notice of such agreement or arrangement to the Board, together with a summary of its terms and conditions or, on the request of the Board, a copy of the agreement or arrangement. 1987, c. 3, s. 105.

**Public register**

**105 (1)** A public register of all interests and instruments registered pursuant to Sections 103 to 117 must be established and maintained in accordance with Sections 103 to 117 and the regulations.

**(2)** The Registrar and Deputy Registrar shall exercise such powers and perform such duties and functions in respect of the register and the system of registration established pursuant to Sections 103 to 117 as may be prescribed. 1987, c. 3, s. 107.

**Limitation on registration**

**106 (1)** No document other than an interest or instrument may be registered pursuant to Sections 103 to 117.

**(2)** No instrument may be registered pursuant to Sections 90 to 101 unless it has been submitted for registration in the form prescribed for that instrument, in such manner and containing such information as may be prescribed, and meets any other requirement for the registration thereof prescribed by Sections 103 to 117 and the regulations. 1987, c. 3, s. 108.

**Requirements for instruments**

**107 (1)** No security notice may be registered pursuant to Sections 103 to 117 unless the security notice specifies

(a) the nature of the security interest claimed;

(b) the person from whom the security interest was acquired;

(c) the documents giving rise to the security interest; and

(d) such other particulars in respect thereof as may be prescribed.

**(2)** No instrument may be registered pursuant to Sections 103 to 117 unless a notice of official address for service in respect of that instrument is filed with the Registrar in prescribed form.

**(3)** The official address for service in respect of an instrument may be changed by filing with the Registrar another notice of official address for service, in prescribed form. 1987, c. 3, s. 110.

**Security notice continues**

**108** Where a significant discovery licence or production licence is issued at any time in respect of any portion of the offshore area that was not Crown reserve lands immediately before that time, the registration pursuant to Sections 103 to 117 of a security notice in respect of the interest in force immediately preceding the issuance of that licence and relating to that portion of the offshore area applies in respect of the licence as though the security notice referred to that licence and as though that licence had been issued prior to the registration of the security notice. 1987, c. 3, s. 111.

**Registration of documents**

**109 (1)** Every document submitted for registration pursuant to Sections 103 to 117 must be examined by the Registrar and where the Registrar determines that the document is an instrument that meets all the requirements for the registration thereof prescribed by this Part and the regulations, the Registrar shall register the instrument in accordance with this Part and the regulations.

**(2)** Where the Registrar refuses to register any document pursuant to Sections 103 to 117, the Registrar shall return the document to the person submitting the document for registration and provide that person with the reasons for the refusal.

**(3)** An instrument is registered pursuant to Sections 103 to 117 by the endorsement of a memorandum of registration on the instrument specifying the registration number of the instrument and the time and date of registration.

**(4)** Instruments accepted for registration pursuant to Sections 103 to 117 must be registered in the chronological order in which such instruments are received by the Registrar. 1987, c. 3, s. 112.

**Registration deemed actual notice**

**110** The registration of an instrument pursuant to Sections 103 to 117 is deemed to constitute actual notice of the instrument to all persons as of the time of registration of the instrument and, in the case of a security notice, is deemed to constitute actual notice to all persons who may serve a demand for information pursuant to Section 112 in respect of the security notice of the contents of the documents specified in the security notice. 1987, c. 3, s. 113.

**Priorities**

**111 (1)** Subject to subsections (2) and (5), any particular right, in relation to an interest or a share therein, in respect of which an instrument has been registered pursuant to Sections 103 to 117 at any time has priority over and is valid against any other right, in relation to that interest or share,

(a) in respect of which an instrument may be registered pursuant to Sections 103 to 117,

(i) where the instrument was not so registered, or

(ii) where the instrument was so registered after that time,

whether that other right was acquired before or after that particular right; or

(b) in respect of which an instrument may not be registered pursuant to Sections 103 to 117, acquired after that time.

**(2)** Where any right in respect of which an instrument may be registered pursuant to Sections 103 to 117 was acquired before October 1, 1990, and an instrument in respect of such right is registered pursuant to those Sections not later than 180 days after October 1, 1990, the priority and validity of such right shall be determined as though the instrument was registered pursuant to those Sections at the time the right was acquired and as though those Sections were in force at that time.

**(3)** Notwithstanding subsection (2), no right in respect of which that subsection applies has priority over and is valid against any other right in respect of which that subsection applies but in respect of which an instrument is not registered within the period referred to in that subsection, where the person claiming the right in respect of which an instrument is registered within that period acquired such right with actual knowledge of the other right.

**(4)** No instrument in respect of any right to which subsection (2) applies may be registered unless it is accompanied by the statutory declaration, in prescribed form, of the person claiming such right, attesting to the time at which such right was acquired.

**(5)** An operator's lien, in relation to an interest or share therein, has, without registration of any document evidencing the operator's lien, priority over and is valid against any other right, in relation to that interest or share, in respect of which an instrument may be registered pursuant to Sections 103 to 117, whether an instrument in respect of that other right was registered before or after the acquisition of the operator's lien or the operator's lien was acquired before or after that other right, unless the operator's lien is postponed with respect to such other rights by the registration pursuant to Sections 103 to 117 of a postponement in respect of the operator's lien and a discharge in respect of that postponement has not been registered pursuant to Sections 103 to 117. 1987, c. 3, s. 114.

**Demand for information**

**112 (1)** A person may, in accordance with this Section, serve a demand for information in respect of a security notice that has been registered pursuant to Sections 103 to 117 in relation to an interest or a share therein where that person

(a) is the holder of that interest or share;

(b) is specified in the security notice as the person from whom the security interest was acquired;

(c) is the secured party pursuant to another security notice registered pursuant to Sections 103 to 117 in relation to that interest or share;

(d) is a member of a class of persons prescribed by the regulations for the purpose of this subsection; or

(e) obtains leave to do so from the court.

**(2)** A demand for information, in respect of a security notice, may be served pursuant to subsection (1) by serving on the secured party under the security notice a demand notice, in prescribed form, requiring the secured party

(a) to inform the person serving the demand notice, within 15 days after service of the notice, of the place where the documents specified in the security notice or copies thereof are located and available for examination, and of the normal business hours during which the examination may be made; and

(b) to make such documents or copies thereof available for examination at that place during normal business hours, by or on behalf of the person serving the notice, within a reasonable period after the demand notice is served.

**(3)** A demand for information is served for the purpose of this Section if it is sent by registered mail or delivered to the official address for service in respect of the security notice according to the records of the Registrar.

**(4)** A demand for information served pursuant to subsection (1) may be complied with by mailing or delivering to the person serving the demand notice a true copy of the documents referred to in the demand notice.

**(5)** Where a secured party fails without reasonable excuse to comply with a demand for information in respect of a security notice in relation to an interest or share therein served on the secured party in accordance with this Section, the court may, on application by the person who served the demand notice, make an order requiring the secured party to comply with the demand for information within the time and in the manner specified in the order.

**(6)** Where a secured party fails to comply with an order of a court made pursuant to subsection (5), the court may, on the application of the person who applied for the order,

(a) make any other order the court considers necessary to ensure compliance with the order made pursuant to subsection (5); or

(b) make an order directing the Registrar to cancel the registration of the security notice.

**(7)** In this Section, "document" includes any amendment to the document. 1987, c. 3, s. 115.

**Other remedies**

**113 (1)** A person who may serve a demand for information in respect of a security notice in relation to an interest or a share therein pursuant to subsection 112(1) may

(a) serve on the secured party under the security notice a notice to take proceedings, in prescribed form, directing that secured party to apply to the court, within 60 days after the day on which the notice to take proceedings is served, for an order substantiating the security interest claimed in the security notice; or

(b) commence proceedings in the court, requiring the secured party to show cause why the registration of the security notice should not be cancelled.

**(2)** The court may, by order, on the *ex parte* application of a person who proposes to serve a notice to take proceedings pursuant to subsection (1), shorten the 60-day period referred to in clause (1)(a) and, if the order is made,

(a) clause (1)(a) shall, in relation to that notice to take proceedings, be deemed to refer to the shorter period; and

(b) a certified copy of the order shall be served with that notice to take proceedings.

**(3)** The court may, on the application of a secured party served with a notice to take proceedings, extend the period for applying to the court referred to in clause (1)(a), whether or not that period has been shortened pursuant to subsection (2).

**(4)** A notice to take proceedings is served for the purpose of this Section if it is sent by registered mail or delivered to the secured party at the official

address for service in respect of the security notice according to the records of the Registrar.

**(5)** The registration of a security notice shall be cancelled on submission to the Registrar of a statutory declaration showing that

(a) a notice to take proceedings was served in accordance with this Section; and

(b) no application was commenced in accordance with the notice to take proceedings or within the period extended pursuant to subsection (3) or an application so made was dismissed by the court or discontinued.

**(6)** Where the registration of a security notice in respect of a security interest is cancelled pursuant to subsection (5) or (7), the secured party under the security notice may not submit for registration pursuant to Sections 103 to 117 another security notice in respect of that security interest without leave of the court to do so.

**(7)** The registration of a security notice shall be cancelled where there is submitted to the Registrar a certified copy of an order or judgment of a court directing the Registrar to do so, whether as a result of proceedings taken pursuant to Sections 103 to 117 or otherwise. 1987, c. 3, s. 116.

**Transfer not effective until registered**

**114** A transfer of an interest or a share therein is not effective against the Crown prior to the registration of the transfer. 1987, c. 3, s. 117.

**Rights preserved**

**115** For greater certainty, the registration of an instrument

(a) does not restrict or in any manner affect any right or power of the Board, the Minister or the federal Minister pursuant to this Part, the regulations or the terms of any interest; and

(b) does not derogate from any proprietary right or any right to dispose of or exploit natural resources that the Crown in right of the Province has pursuant to this Act in respect of any portion of the offshore area. 1987, c. 3, s. 118.

**No liability for acts done in good faith**

**116** No action or other proceedings for damages may be commenced against the Registrar or Deputy Registrar or anyone acting under the authority of the Registrar or Deputy Registrar for an act done or omission in good faith in the exercise of a power or the performance of a duty pursuant to Sections 103 to 117. 1987, c. 3, s. 119.

**Regulations**

**117** Subject to Section 6, the Governor in Council may make regulations for carrying out the purpose and provisions of Sections 103 to 117 and, without restricting the generality of the foregoing, may make regulations

(a) prescribing the powers, duties and functions of the Registrar and Deputy Registrar for the purpose of Sections 103 to 117 and the time when, and manner and circumstances in which, they are to be exercised, and providing for the designation by the Board of any person or class of persons to exercise such powers and perform such duties and functions as may be specified in the regulations;

(b) governing the books, abstracts and indexes to be maintained as the register for the purpose of Sections 103 to 117 and the particulars of interests, instruments and portions of the offshore area and the orders and declarations made in relation to interests to be recorded therein;

(c) governing the filing of copies of interests, registered instruments and other documents in the register established pursuant to Section 105;

(d) governing public access to and searches of the register; and

(e) prescribing any other matter or thing that is by Sections 103 to 117 to be prescribed. 1987, c. 3, s. 120; 2014, c. 43, s. 7.

**Disclosure**

**118 (1)** In this Section,

"delineation well" means a well that is so located in relation to another well penetrating an accumulation of petroleum that there is a reasonable expectation that another portion of that accumulation will be penetrated by the first-mentioned well and that the drilling is necessary in order to determine the commercial value of the accumulation;

"development well" means a well that is so located in relation to another well penetrating an accumulation of petroleum that it is considered to be a well or part of a well drilled for the purpose of production or observation or for the injection or disposal of fluid into or from the accumulation;

"engineering research or feasibility study" includes work undertaken to facilitate the design or to analyse the viability of engineering technology, systems or schemes to be used in the exploration for or the development, production or transportation of petroleum in the offshore area;

"environmental study" means work pertaining to the measurement or statistical evaluation of the physical, chemical and biological elements of the lands, oceans or coastal zones, including winds, waves, tides, currents, precipitation, ice cover and movement, icebergs, pollution effects, flora and fauna both onshore and offshore, human activity and habitation and any related matters;

"experimental project" means work or activity involving the utilization of methods or equipment that are untried or unproven;

"exploratory well" means a well drilled on a geological feature on which a significant discovery has not been made;

"geological work" means work, in the field or laboratory, involving the collection, examination, processing or other analysis of

lithological, paleontological or geochemical materials recovered from the surface or subsurface or the seabed or its subsoil of any portion of the offshore area, and includes the analysis and interpretation of mechanical well logs;

"geophysical work" means work involving the indirect measurement of the physical properties of rocks in order to determine the depth, thickness, structural configuration or history of deposition thereof, and includes the processing, analysis and interpretation of material or data obtained from such work;

"geotechnical work" means work, in the field or laboratory, undertaken to determine the physical properties of materials recovered from the surface or subsurface or the seabed or its subsoil of any portion of the offshore area;

"well site seabed survey" means a survey pertaining to the nature of the surface or subsurface or the seabed or its subsoil of any portion of the offshore area in the area of the proposed drilling site in respect of a well and to the conditions of those portions of the offshore area that may affect the safety or efficiency of drilling operations;

"well termination date" means the date on which a well has been abandoned, completed or suspended in accordance with any applicable regulations respecting the drilling for petroleum made under Part IV.

**(2)** Subject to this Section and Section 19, information or documentation provided for the purpose of this Part or Part IV or any regulation made pursuant to either Part, whether or not such information or documentation is required to be provided pursuant to either Part or any regulation made thereunder, is privileged and shall not knowingly be disclosed without the consent in writing of the person who provided it except for the purpose of the administration or enforcement of either Part or for the purpose of legal proceedings relating to such administration or enforcement.

**(3)** No person shall be required to produce or give evidence relating to any information or documentation that is privileged pursuant to subsection (2) in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Part or Part IV.

**(4)** For greater certainty, this Section does not apply to a document that has been registered pursuant to Sections 103 to 117.

**(5)** Subsection (2) does not apply to the following classes of information or documentation obtained as a result of carrying on a work or activity that is authorized pursuant to Part IV, namely, information or documentation in respect of

(a) an exploratory well, where the information or documentation is obtained as a direct result of drilling the well and if two years have passed since the well termination date of that well;

(b) a delineation well, where the information or documentation is obtained as a direct result of drilling the well and if the later of

(i) two years since the well termination date of the relevant exploratory well, and

(ii) 90 days since the well termination date of the delineation well,

have passed;

(c) a development well, where the information or documentation is obtained as a direct result of drilling the well and if the later of

(i) two years since the well termination date of the relevant exploratory well, and

(ii) 60 days since the well termination date of the development well,

have passed;

(d) geological work or geophysical work performed on or in relation to any portion of the offshore area,

(i) in the case of a well site seabed survey where the well has been drilled, after the expiration of the period referred to in clause (a) or the later period referred to in subclause (b)(i) or (ii) or (c)(i) or (ii), according to whether clause (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the work;

(e) any engineering research or feasibility study or experimental project, including geotechnical work, carried out on or in relation to any portion of the offshore area,

(i) where it relates to a well and the well has been drilled, after the expiration of the period referred to in clause (a) or the later period referred to in subclause (b)(i) or (ii) or (c)(i) or (ii), according to whether clause (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the research, study or project or after the reversion of that portion of the offshore area to Crown reserve lands, whichever occurs first;

(f) any contingency plan formulated in respect of emergencies arising as a result of any work or activity authorized pursuant to Part IV;

(g) diving work, weather observation or the status of operational activities or of the development of or production from a pool or field;

(h) an accident, incident or petroleum spill, to the extent necessary to permit a person or body to produce and to distribute or publish a report for the administration of this Act in respect of the accident, incident or spill;

(i) any study funded from the account established pursuant to Section 102, if the study has been completed; and

(j) an environmental study, other than a study referred to in clause (i),

(i) where it relates to a well and the well has been drilled, after the expiration of the period referred to in clause (a) or the later period referred to in subclause (b)(i) or (ii) or (c)(i) or (ii), according to whether clause (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, if five years have passed since the completion of the study.

**(6)** Notwithstanding subclause (5)(d)(ii), any information or documentation in respect of geological work or geophysical work that is performed in relation to a well after the commencement of the drilling of the well may be disclosed in accordance with that subclause, but may not be disclosed prior to the expiration of the period referred to in clause (a) or the later period referred to in subclause (b)(i) or (ii) or (c)(i) or (ii), according to whether clause (a), (b) or (c) is applicable in respect of that well.

**(7)** The Board may disclose any information or documentation that it obtains under this Part or Part IV—to officials of the Government of Canada, the Government of the Province or any other provincial government, or a foreign government or to the representatives of any of their agencies—for the purpose of a federal, provincial or foreign law, as the case may be, that deals primarily with a petroleum-related work or activity, including the exploration for and the management, administration and exploitation of petroleum resources, if

(a) the government or agency undertakes to keep the information or documentation confidential and not to disclose it without the Board's written consent;

(b) the information and documentation is disclosed in accordance with any conditions agreed to by the Board and the government or agency; and

(c) in the case of disclosure to a foreign government or agency, the Minister and federal Minister consent in writing.

**(8)** The Board may disclose to the Minister and federal Minister the information or documentation that it has disclosed or intends to disclose under subsection (7), but the Minister and the federal Minister are not to further disclose that information or documentation unless the Board consents in writing to that disclosure or the Minister or the federal Minister is required by an Act of the Legislature or an Act of Parliament, as the case may be, to disclose that information or documentation.

**(9)** For the purpose of clause (7)(a) and subsection (8), the Board may consent to the further disclosure of information or documentation only if the Board itself is authorized under this Section to disclose it.

**(10)** Subsection (2) does not apply in respect of information regarding the applicant for an operating licence or authorization under subsection 139(1) or the scope, purpose, location, timing and nature of the proposed work or activity for which the authorization is sought.

**(11)** Subsection (2) does not apply in respect of information or documentation provided for the purpose of a public hearing conducted under Section 48.

**(12)** Subject to Section 119, the Board may disclose all or part of any information or documentation related to safety or environmental protection that is provided in relation to an application for an operating licence or authorization under subsection 139(1) or to an operating licence or authorization that is issued under that subsection or provided in accordance with any regulation made under this Part or Part IV.

**(13)** Notwithstanding subsection (12), the Board is not permitted to disclose information or documentation under that subsection if the Board is satisfied that

(a) disclosure of it could reasonably be expected to result in a material loss or gain to a person, or to prejudice the person's competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure;

(b) it is financial, commercial, scientific or technical information or documentation that is confidential and has been consistently treated as such by a person who would be directly affected by its disclosure, and for which the person's interest in confidentiality outweighs the public interest in its disclosure; or

(c) there is a real and substantial risk that disclosure of it will impair the security of pipelines, as defined in Section 130, installations, vessels, aircraft or systems, including computer or communication systems, used for any work or activity in respect of which this Act applies—or methods employed to protect them—and the need to prevent its disclosure outweighs the public interest in its disclosure.

**(14)** Subsections (10) to (12) do not apply in respect of information or documentation described in clauses (5)(a) to (e) and (j). 1987, c. 3, s. 121; 1992, c. 12, s. 3; 2014, c. 43, s. 8.

**Notice of intent to disclose**

**119 (1)** Where the Board intends to disclose any information or documentation under subsection 118(12), the Board shall make every reasonable effort to give the person who provided it written notice of the Board's intention to disclose it.

**(2)** Any person to whom a notice is required to be given under subsection (1) may waive the requirement, and where that person has consented to the disclosure that person is deemed to have waived the requirement.

**(3)** A notice given under subsection (1) must include

(a) a statement that the Board intends to disclose information or documentation under subsection 118(12);

(b) a description of the information or documentation that was provided by the person to whom the notice is given; and

(c) a statement that the person may, within 20 days after the day on which the notice is given, make written representations to the Board as to why the information or documentation, or a portion of it, should not be disclosed.

**(4)** Where a notice is given to a person by the Board under subsection (1), the Board shall

(a) give the person the opportunity to make, within 20 days after the day on which the notice is given, written representations to the Board as to why the information or documentation, or a portion of it, should not be disclosed; and

(b) after the person has had the opportunity to make representations, but no later than 30 days after the day on which the notice is given, make a decision as to whether or not to disclose the information or documentation and give written notice of the decision to the person.

**(5)** A notice given under clause (4)(b) of a decision to disclose information or documentation must include

(a) a statement that the person to whom the notice is given may request a review of the decision under subsection (7) within 20 days after the day on which the notice is given; and

(b) a statement that where no review is requested under subsection (7) within 20 days after the day on which the notice is given, the Board shall disclose the information or documentation.

**(6)** Where, under clause (4)(b), the Board decides to disclose the information or documentation, the Board shall disclose it on the expiry of 20 days after a notice is given under that clause, unless a review of the decision is requested under subsection (7).

**(7)** Any person to whom the Board is required under clause (4)(b) to give a notice of a decision to disclose information or documentation may, within 20 days after the day on which the notice is given, apply to the Supreme Court of Nova Scotia for a review of the decision.

**(8)** An application made under subsection (7) shall be heard and determined in a summary way in accordance with any applicable rules of practice and procedure of the Supreme Court of Nova Scotia.

**(9)** In any proceedings arising from an application under subsection (7), the Supreme Court of Nova Scotia shall take every reasonable precaution, including, where appropriate, conducting hearings in camera, to avoid the disclosure by the Court or any person of any information or documentation that, under this Act, is privileged or is not to be disclosed. 2014, c. 43, s. 9.

**Arbitration**

**120 (1)** Where a dispute of a prescribed class arises between two or more interest holders of an interest in respect of any operations conducted in carrying out a work or activity in the offshore area authorized pursuant to Part IV and an operating agreement or other similar arrangement that extends to such work or

activity is not in force or was made prior to March 5, 1982, the matters in dispute may, by order of the Board, be submitted to arbitration conducted in accordance with the regulations.

**(2)** Subsection (1) applies only in respect of

(a) interests in force on March 5, 1982, in relation to any portions of the offshore area; and

(b) interests immediately succeeding the interests referred to in clause (a) in relation to those portions of the offshore area where those portions of the offshore area were not Crown reserve lands on the expiration of the interests referred to in clause (a).

**(3)** An order of an arbitrator made pursuant to arbitration pursuant to subsection (1) is binding on all interest holders specified in the order from the date specified in the order, and the terms and conditions of the order are deemed to be terms and conditions of the interest to which the matters relate. 1987, c. 3, s. 123.

**Regulations**

**121 (1)** Subject to Section 6, the Governor in Council may make regulations for carrying out the purpose and provisions of Section 120 and, without restricting the generality of the foregoing, may make regulations

(a) governing arbitration and the making of arbitration orders;

(b) prescribing the classes of disputes that may be submitted to arbitration; and

(c) governing appeals from, and the enforcement of arbitration orders.

**(2)** Regulations made pursuant to subsection (1) may apply generally to the offshore area or any portion thereof. 1987, c. 3, s. 124; 1992, c. 12, s. 5.

**Compliance**

**122 (1)** Where the Board has reason to believe that an interest owner or holder is failing or has failed to meet any requirement of this Part or Part IV or V, the *Offshore Petroleum Royalty Act* or any regulation made under any of those Parts or that Act, the Board may give notice to that interest owner or holder requiring compliance with the requirement within 90 days after the day on which the notice is given or within any longer period that the Board considers appropriate.

**(2)** Notwithstanding anything in this Part, where an interest owner or holder fails to comply with a notice pursuant to subsection (1) within the period specified in the notice and the Board considers that the failure to comply warrants cancellation of the interest of the interest owner or holder or any share in the interest held by the holder with respect to a portion only of the offshore area subject to the interest, the Board may, by order subject to Sections 34 to 40 and Section 123, cancel that interest or share, and where the interest or share is so cancelled, the portion of the offshore area thereunder becomes Crown reserve lands.

**(3)** Notwithstanding any other provision of this Act, but subject to subsection (4), where a person is in default in accordance with the *Offshore*

*Petroleum Royalty Act* and any regulations made thereunder in the payment of any amount payable pursuant to that Act in respect of any interest issued in relation to any portion of the offshore area, the Minister may, where the amount remains unpaid, direct the Board to

(a) refuse to issue to that person any interest in relation to any portion of the offshore area;

(b) refuse to authorize, pursuant to clause 139(1)(b), that person to carry on any work or activity related to the exploration for or the production of petroleum on any portion of the offshore area and may suspend any such authorization already given; and

(c) exercise the powers pursuant to subsections (1) and (2).

**(4)** Notwithstanding any other provision of this Act, a decision of the Board made in accordance with a direction of the Minister pursuant to subsection (3) is not a fundamental decision.

**(5)** No remedy may be exercised pursuant to subsection (3) in respect of a default in payment of an amount pending any assessment, reassessment, appeal or review in respect of that default pursuant to the *Offshore Petroleum Royalty Act* and any regulations made thereunder. 1987, c. 3, s. 125; 2013, c. 16, s. 8.

**Notice by Board of pending decision or action**

**123 (1)** In this Section, "Committee" means the Oil and Gas Committee established pursuant to Part IV.

**(2)** The Board shall, not less than 30 days before making any order or decision or taking any action in respect of which it is expressly stated in this Part to be subject to this Section, give notice in writing to the persons the Board considers to be directly affected by the proposed order, decision or action.

**(3)** Any person receiving a notice pursuant to subsection (2) may, in writing, request a hearing within the 30-day period referred to in that subsection and, on receipt of such a request, the Board shall direct the Committee to appoint a time and place for a hearing and give notice thereof to the person who requested the hearing.

**(4)** Any person requesting a hearing pursuant to subsection (3) may make representations and introduce witnesses and documents at the hearing.

**(5)** For the purpose of a hearing requested pursuant to subsection (3), the Committee has, regarding the attendance, swearing and examination of witnesses and the production and inspection of documents, all such powers, rights and privileges as are vested in a superior court of record.

**(6)** On the conclusion of the hearing, the Committee shall submit to the Board its recommendations concerning the proposed order, decision or action of the Board, together with the evidence and other material that was before the Committee.

**(7)** Before making any order or decision or taking any action in respect of which a hearing has been held, the Board shall consider the recommendations of the Committee.

**(8)** Where an order, decision or action referred to in subsection (2) is made or taken, the Board shall notify the person who requested a hearing in respect of the order, decision or action pursuant to subsection (3) and, on request by that person, publish or make available to that person the reasons for the order, decision or action.

**(9)** Subject to subsection (10), an order, decision or action referred to in subsection (2) takes effect as of

(a) the day that immediately follows the last day of the 30-day period referred to in that subsection, where no hearing is requested pursuant to subsection (3); or

(b) the day that the order or decision is made or the action is taken by the Board, where a hearing is requested pursuant to subsection (3).

**(10)** Where a decision referred to in subsection (2) is a fundamental decision, or an order or action referred to in that subsection involves the making of a fundamental decision, the periods referred to in clause 36(1)(a) do not commence prior to the day referred to in clause (9)(a) or (b), as the case may be, and the order, decision or action takes effect subject to Section 36.

**(11)** Any order, decision or action, in respect of which a hearing is held pursuant to this Section, is subject to review and to be set aside by the Supreme Court of Nova Scotia upon application made, in the manner prescribed, to the Supreme Court within 30 days of the date the order, decision or action takes effect pursuant to subsection (9). 1987, c. 3, s. 126; 2015, c. 36, s. 3.

**Regulations**

**124** Subject to Section 6, the Governor in Council may make regulations for carrying out the purpose and provisions of this Part and, without restricting the generality of the foregoing, may make regulations

(a) authorizing or requiring the survey, division and subdivision of the offshore area and defining and describing those divisions and subdivisions;

(b) prescribing the information and documentation to be provided by interest owners and interest holders for the purpose of this Part, the time when and manner in which such information and documentation is to be provided, authorizing the Board to prescribe the form in which it is to be provided and requiring such information and documentation to be provided in accordance with the regulations;

(c) requiring fees and deposits to be paid in respect of interests, prescribing the amounts of such fees and deposits, the time and manner of their payment and providing for the administration of such fees and deposits and the disposition and return of deposits; and

(d) prescribing any other matter or thing that by this Part is to be prescribed or that is to be done by regulations. 1987, c. 3, s. 127.

**Forms**

**125 (1)** The Board may prescribe any form or any information to be given on a form that is by this Part or the regulations to be prescribed and may include on any form so prescribed a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is, to the best of the knowledge of that person, true, accurate and complete.

**(2)** Every form purporting to be a form prescribed or authorized by the Board is deemed to be a form prescribed by the Board, pursuant to this Part, unless called in question by the Board or some person acting for the Board or the Crown. 1987, c. 3, s. 128.

**Transitional matters**

**126 (1)** Where an exploration agreement in relation to any portion of the offshore area was entered into or negotiations in respect thereof were completed pursuant to the *Offshore Oil and Gas Act*, or an exploration agreement was ratified and confirmed by Section 41 of the *Canada-Nova Scotia Oil and Gas Agreement (Nova Scotia) Act*, before January 5, 1990, that exploration agreement shall, for the purpose of this Act, be referred to as an exploration licence and shall, subject to this Part, have effect in accordance with its terms and conditions.

**(2)** Where a declaration of significant discovery was made pursuant to Section 44 of the *Offshore Oil and Gas Act*, and is in force on January 5, 1990, it continues in force as if it were made pursuant to Section 85 of this Act.

**(3)** Where, on January 5, 1990, an exploration agreement is continuing in force pursuant to subsection 16(4) of the *Offshore Oil and Gas Act*, it is and is deemed to be a significant discovery licence issued pursuant to this Part on January 5, 1990, and is subject to this Act. 1987, c. 3, s. 129.

**Federal interest**

**127 (1)** In this Section, "federal interest" means an interest within the meaning of the federal Implementation Act.

**(2)** Notwithstanding any other provision of this Part, but subject to the regulations, a federal interest that would be in force on January 5, 1990, but for the fact that it is in relation to Crown reserve lands to which this Act applies is, subject to subsection (3) and (4), an interest for the purpose of this Act.

**(3)** An interest referred to in subsection (2) is retroactive to the date on which it would have been effective as a federal interest had it been in relation to frontier lands.

**(4)** An interest referred to in subsection (2) is subject to the same terms and conditions as would have applied had it been in relation to frontier lands and Division X of Part II of the federal Implementation Act apply with such modifications as the circumstances require. 1987, c. 3, s. 130.

**Interests replace previous rights**

**128 (1)** Subject to Section 126, the interests provided for pursuant to this Part replace all petroleum rights or prospects thereof acquired or vested in relation to any portion of the offshore area prior to January 5, 1990.

**(2)** No party has any right to claim or receive any compensation, damages, indemnity or other form of relief from the Crown in right of the Province or from any servant or agent thereof for any acquired, vested or future right or entitlement or any prospect thereof that is replaced or otherwise affected by this Part, or for any duty or liability imposed on that party by this Part. 1987, c. 3, s. 131.

**Reservation abrogated**

**129** For greater certainty, the reservation to the Crown in right of the Province of a Crown share in any interest granted or entered into pursuant to the *Offshore Oil and Gas Act* prior to January 5, 1990, is abrogated as of January 5, 1990. 1987, c. 3, s. 132.

PART IV

**Interpretation of Part**

**130** In this Part,

"Chief Conservation Officer" means the person designated as the Chief Conservation Officer pursuant to Section 150;

"Chief Safety Officer" means the person designated as the Chief Safety Officer pursuant to Section 150;

"Committee" means the Oil and Gas Committee established by Section 153;

"lease" means a production licence issued pursuant to Part III;

"pipeline" means any pipe or any system or arrangement of pipes by which petroleum or water incidental to the drilling for or production of petroleum is conveyed from any wellhead or other place at which it is produced to any other place, or from any place where it is stored, processed or treated to any other place, and includes all property of any kind used for the purpose of, or in connection with or incidental to, the operation of a pipeline in the gathering, transporting, handling and delivery of petroleum and without restricting the generality of the foregoing, includes offshore installations or vessels, tanks, surface reservoirs, pumps, racks, storage and loading facilities, compressors, compressor stations, pressure measuring and controlling equipment and fixtures, flow controlling and measuring equipment and fixtures, metering equipment and fixtures, and heating, cooling and dehydrating equipment and fixtures, but does not include any pipe or any system or arrangement of pipes that constitutes a distribution system for the distribution of gas to ultimate consumers;

"well" means any opening in the ground, not being a seismic shot hole, that is made, to be made or is in the process of being made, by drilling, boring or other method,

(a) for the production of petroleum;

(b) for the purpose of searching for or obtaining petroleum;

(c) for the purpose of obtaining water to inject into an underground formation;

(d) for the purpose of injecting gas, air, water or other substance into an underground formation; or

(e) for any purpose, if made through sedimentary rocks to a depth of at least 495 feet. 1987, c. 3, s. 133; 1992, c. 12, s. 6.

**Purpose of Part**

**131** The purpose of this Part is to promote, in respect of the exploration for and exploitation of petroleum,

(a) safety, particularly by encouraging persons exploring for and exploiting petroleum to maintain a prudent regime for achieving safety;

(b) the protection of the environment;

(c) accountability in accordance with the "polluter pays" principle;

(d) the conservation of petroleum resources; and

(e) joint production arrangements. 1992, c. 12, s. 7; 2014, c. 43, s. 10.

**Designation by Minister**

**132** The Minister may designate a member of the Oil and Gas Administration Advisory Council established by the *Canada Oil and Gas Operations Act*. 1992, c. 12, s. 7.

**Approval by Minister**

**133** The Minister may approve the establishment of the Offshore Oil and Gas Training Standards Advisory Board pursuant to the *Canada Oil and Gas Operations Act*. 1992, c. 12, s. 7.

**Conditions for activity in offshore area**

**134** No person shall carry on any work or activity related to the exploration or drilling for or the production, conservation, processing or transportation of petroleum in the offshore area unless

(a) that person is the holder of an operating licence issued pursuant to clause 139(1)(a);

(b) that person is the holder of an authorization issued, before the commencement of operations, pursuant to clause 139(1)(b) for each such work or activity; and

(c) where it is required, that person is authorized or entitled to carry on business in the place where the person proposes to carry on the work or activity. 1987, c. 3, s. 134; 1992, c. 12, s. 8.

**Prohibition in Sable Island National Park Reserve of Canada**

**135** No person shall carry on any work or activity related to the drilling for petroleum, including exploratory drilling for petroleum, in Sable Island National Park Reserve of Canada or within one nautical mile seaward of its low-water mark. 2013, c. 15, s. 2.

**Prohibition in offshore area in Schedule IV**

**136 (1)** The Minister and the federal Minister may jointly issue a written notice prohibiting the exploration and drilling for and the production, conservation and processing of petroleum in that portion of the offshore area described in

Schedule IV, and the transportation of petroleum produced in that portion of the offshore area from the date in the notice until December 31, 2022.

**(2)** Upon review of the environmental and socio-economic impact of exploration and drilling activities in that portion of the offshore area described in Schedule IV and any other relevant factors, the Minister and the federal Minister may jointly issue one or successive written notices extending the prohibition period established pursuant to subsection (1) in all or any part of that portion of the offshore area described in Schedule IV.

**(3)** Each prohibition extension notice issued pursuant to subsection (2) must be for a specified period of no more than 10 years.

**(4)** No person shall for the duration of the prohibition period established pursuant to subsection (1) or (2) engage in the prohibited activities in the area described in Schedule IV or in any part of it that is specified in the joint prohibition notice issued pursuant to subsection (1) or the extension notice issued pursuant to subsection (2). 2015, c. 36, s. 4.

**Exemption from payment into fund**

**137** The owner of an interest in lands in the offshore area described in Schedule IV is, in respect of those lands, exempt from the payment of any amount required to be paid into the Environmental Studies Research Fund pursuant to Part VII of the *Canada Petroleum Resources Act* during the periods referred to in Section 136. 1988, c. 56, s. 2; 2014, c. 43, s. 11.

**Delegation of powers**

**138** The Board may delegate any of the Board's powers under Section 139, 144, 146, 148, 149, 177 or 178 to any person, and the person shall exercise those powers in accordance with the terms of the delegation. 2014, c. 43, s. 12.

**Operating licence or authorization**

**139 (1)** The Board may, on application made in the form and containing the information fixed by it and in the prescribed manner, issue

(a) an operating licence; and

(b) subject to Section 52, an authorization with respect to each work or activity proposed to be carried on.

**(2)** An operating licence expires on March 31st immediately after the day on which it is issued and may be renewed for successive periods not exceeding one year each.

**(3)** An operating licence is subject to any requirements that are determined by the Board or that are prescribed and to any deposits that are prescribed.

**(4)** On receipt by the Board of an application for an authorization for a work or activity referred to in clause (1)(b) or an application to amend such an authorization, the Board shall provide a copy of the application to the Chief Safety Officer.

**(5)** An authorization is subject to such approvals as the Board determines or as may be granted in accordance with the regulations and such requirements and deposits as the Board determines or as may be prescribed, including

(a) requirements relating to liability for loss, damage, costs or expenses;

(b) requirements for the carrying out of environmental programs or studies; and

(c) requirements for the payment of expenses incurred by the Board in approving the design, construction and operation of production facilities and production platforms, as those terms are defined in the regulations.

**(6)** The approvals, requirements and deposits that are determined, granted or prescribed may not be inconsistent with the provisions of this Act or the regulations.

**(7)** The Board may suspend or revoke an operating licence or an authorization for failure to comply with, contravention of or default in respect of

(a) a requirement, approval or deposit, determined by the Board in accordance with the provisions of this Part or Part V or granted or prescribed by the regulations made under either of those Parts, subject to which the licence or authorization was issued;

(b) a fee or charge payable in accordance with regulations made under Section 32;

(c) a requirement undertaken in a declaration referred to in subsection 148(1);

(d) subsection 148(2), 149(3), 177(4) or (5) or 178(4), (5) or (9);

(e) any provision of Part V; or

(f) any applicable regulation. 1992, c. 12, s. 10; 2013, c. 16, s. 9; 2014, c. 43, ss. 13, 35.

**Authorizations in Sable Island National Park Reserve of Canada**

**140 (1)** Where the Board receives an application for an authorization with respect to a work or activity proposed to be carried on in Sable Island National Park Reserve of Canada, it shall, within 60 days after the day on which it received the application, provide a copy of the application to the Parks Canada Agency.

**(2)** The Parks Canada Agency shall, within 60 days after the day on which it received the copy of the application, advise the Board in writing about any potential impact of the proposed work or activity on the management of the surface of Sable Island National Park Reserve of Canada.

**(3)** Before deciding whether to issue the authorization, the Board shall consider any advice that it receives under subsection (2).

**(4)** Where the Board issues the authorization, it may include in it terms and conditions, including mitigation or remedial measures, to address the

potential impact of the proposed work or activity on the management of the surface of Sable Island National Park Reserve of Canada. 2013, c. 15, s. 3.

**Decision statement**

**141 (1)** Where an application for an authorization under clause 139(1)(b) or an application made under subsection 147(2) is in respect of a physical activity described in subsection (2), the Board shall issue the decision statement referred to in section 54 of the *Canadian Environmental Assessment Act, 2012* in respect of the physical activity within 12 months after the day on which the applicant has, in the Board's opinion, provided a complete application.

**(2)** The physical activity in question is a physical activity that

(a) is carried out in the offshore area;

(b) is designated by regulations made under paragraph 84(a) of the *Canadian Environmental Assessment Act, 2012* or in an order made under subsection 14(2) of that Act;

(c) is one for which the Board is the responsible authority as defined in subsection 2(1) of that Act; and

(d) is one in relation to which an environmental assessment was not referred to a review panel under section 38 of that Act,

and includes any physical activity that is incidental to the physical activity described in clauses (a) to (d).

**(3)** Where the Board requires the applicant to provide information or undertake a study with respect to the physical activity, the period that is taken by the applicant, in the Board's opinion, to comply with the requirement is not included in the calculation of the period referred to in subsection (1).

**(4)** The Board shall, without delay, make public

(a) the date on which the 12-month period referred to in subsection (1) begins; and

(b) the dates on which the period referred to in subsection (3) begins and ends. 2014, c. 43, s. 14.

**Participant funding program**

**142** The Board may establish a participant funding program to facilitate the participation of the public in the environmental assessment as defined in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012* of any physical activity described in subsection 141(2) that meets the condition set out in paragraph 58(1)(a) of that Act and that is the subject of an application for an authorization under clause 139(1)(b) or an application made under subsection 147(2). 2014, c. 43, s. 14.

**Right of entry**

**143 (1)** Subject to subsection (2), any person may, for the purpose of exploring for or exploiting petroleum, enter on and use any portion of the offshore area in order to carry on a work or activity authorized pursuant to clause 139(1)(b).

**(2)** Where a person occupies a portion of the offshore area under a lawful right or title, other than an authorization pursuant to clause 139(1)(b) or an interest as defined in Part III, no person may enter on or use that portion for a purpose referred to in subsection (1) without the consent of the occupier or, where consent has been refused, except in accordance with the terms and conditions imposed by a decision of an arbitrator made in accordance with the regulations.

**(3)** With respect to Sable Island National Park Reserve of Canada, the surface access rights provided for under this Section are limited to the following:

(a) access to existing wellheads for the purpose of safety and environmental protection;

(b) petroleum exploration activities with a low impact on the environment, including seismic, geological or geophysical programs;

(c) emergency evacuation capacity for offshore workers; and

(d) the operation, maintenance and inspection of emergency facilities, including helicopter landing and fuel storage facilities. 1992, c. 12, s. 10; 2013, c. 15, ss. 3, 4; 2014, c. 43, s. 14.

**Matters to be considered**

**144** The Board shall, before issuing an authorization for a work or activity referred to in clause 139(1)(b), consider the safety of the work or activity by reviewing, in consultation with the Chief Safety Officer, the system as a whole and its components, including its structures, facilities, equipment, operating procedures and personnel. 1992, c. 12, s. 10.

**Spill-treating agent use restricted**

**145** The Board shall not permit the use of a spill-treating agent in an authorization issued under clause 139(1)(b) unless the Board determines, taking into account any prescribed factors and any factors the Board considers appropriate, that the use of the spill-treating agent is likely to achieve a net environmental benefit. 2014, c. 43, s. 15.

**Compliance with requirements**

**146** The Board shall, before issuing an authorization for a work or activity referred to in clause 139(1)(b), ensure that the applicant has complied with the requirements of subsections 177(1) or (2) and 178(1) or (2) in respect of that work or activity. 2014, c. 43, s. 16.

**Consent of Ministers**

**147 (1)** No approval that is

(a) applicable to an authorization pursuant to clause 139(1)(b) to carry on work or activity in relation to developing a pool or field; and

(b) prescribed by the regulations for the purpose of this subsection,

may be granted, except with the consent of both Ministers, unless the Board, on application submitted in accordance with subsection (2), has approved a development plan relating to the pool or field pursuant to clauses (4)(a) and (b).

**(2)** For the purpose of subsection (1), an application for the approval of a development plan must be submitted to the Board in the form and containing the information fixed by the Board, at such time and in such manner as may be prescribed by the regulations, together with the proposed development plan in the form and containing the information described in subsection (3).

**(3)** A development plan relating to the proposed development of a pool or field submitted pursuant to this Section must be set out in two parts, containing

(a) in Part I, a description of the general approach of developing the pool or field, and in particular, information, in such detail as may be prescribed, with respect to

(i) the scope, purpose, location, timing and nature of the proposed development,

(ii) the production rate, evaluations of the pool or field, estimated amounts of petroleum proposed to be recovered, reserves, recovery methods, production monitoring procedures, costs and environmental factors in connection with the proposed development, and

(iii) the production system and any alternative production systems that could be used for the development of the pool or field; and

(b) in Part II, all technical or other information and proposals, as may be prescribed, necessary for a comprehensive review and evaluation of the proposed development.

**(4)** After reviewing an application and development plan submitted by any person pursuant to this Section the Board may, subject to such requirements as the Board considers appropriate or as may be prescribed, approve

(a) subject to Sections 34 to 40, Part I of the development plan; and

(b) Part II of the development plan.

**(5)** Where a development plan has been approved pursuant to subsection (4), no amendment of Part I or II of the development plan may be made unless it is approved by the Board in accordance with clause (4)(a) or (b), as the case may be.

**(6)** Subsections (2) to (5) apply, with such modifications as the circumstances require, with respect to a proposed amendment to a development plan. 1987, c. 3, s. 136; 1992, c. 12, s. 11.

**Conditions for authorization**

**148 (1)** No authorization pursuant to clause 139(1)(b) may be issued unless the Board has received, from the applicant for the authorization, a declaration in the form fixed by the Board that states that

(a) the equipment and installations that are to be used in the work or activity to be authorized are fit for the purposes for which they are to be used, the operating procedures relating to them are appropriate for those uses, and the personnel who are to be employed in connection with them are qualified and competent for their employment; and

(b) the applicant shall ensure, while the work or activity that is authorized continues, that the equipment and installations continue to be fit for the purposes for which they are used, the operating procedures continue to be appropriate for those uses, and the personnel continue to be so qualified and competent.

**(2)** Where the equipment, an installation, the operating procedures or any of the personnel specified in the declaration changes and no longer conforms to the declaration, the holder of the authorization shall provide the Board with a new declaration as soon as possible after the change occurs.

**(3)** The Board or any delegate of the Board is not liable to any person by reason only of having issued an authorization in reliance on a declaration made pursuant to this Section. 1992, c. 12, s. 12; 2013, c. 16, s. 10.

**Certificate by certifying authority**

**149 (1)** For the purpose of this Section, "certifying authority" has the meaning assigned by the regulations.

**(2)** No authorization pursuant to clause 139(1)(b) may be issued with respect to any prescribed equipment or installation, or any equipment or installation of a prescribed class, unless the Board has received, from the applicant for the authorization, a certificate issued by a certifying authority in the form fixed by the Board.

**(3)** The holder of an authorization shall ensure that the certificate referred to in subsection (1) remains in force while the equipment or installation to which the certificate relates is used in the work or activity in respect of which the authorization is issued.

**(4)** A certificate referred to in subsection (2) must state that the equipment or installation in question

(a) is fit for the purposes for which it is to be used and may be operated safely without posing a threat to persons or to the environment in the location and for the time set out in the certificate; and

(b) is in conformity with all of the requirements and conditions that are imposed for the purpose of this Section by subsection 139(5), whether they are imposed by regulation or by the Board.

**(5)** A certificate referred to in subsection (1) is not valid if the certifying authority

(a) has not complied with any prescribed procedure or any procedure that the Board may establish; or

(b) is a person or an organization that has participated in the design, construction or installation of the equipment or installation in respect of which the certificate is issued, to any extent greater than that prescribed.

**(6)** An applicant shall permit the certifying authority to have access to the equipment and installations in respect of which the certificate is required and to any information that relates to them.

**(7)** The Board or any delegate of the Board is not liable to any person by reason only of having issued an authorization in reliance on a certificate issued pursuant to this Section. 1992, c. 12, s. 12.

**Designations of Chief Safety Officer and Chief Conservation Officer**

**150 (1)** The Board may, for the purpose of this Act, designate any person as the Chief Safety Officer and another person as the Chief Conservation Officer.

**(2)** For greater certainty, the Chief Executive Officer may not be designated as the Chief Safety Officer. 2013, c. 16, s. 11.

**Exemption from Regulations Act**

**151** For the purpose of this Act, an order made by an operational safety officer, the Chief Safety Officer, a conservation officer, the Chief Conservation Officer, the Committee or a health and safety officer as defined in subsection 252(1) is not a regulation as defined in the *Regulations Act*. 2013, c. 16, s. 11.

**Title to petroleum**

**152 (1)** Subject to subsection (2), title to petroleum produced during an extended formation flow test vests in the person who conducts the test in accordance with an authorization pursuant to clause 139(1)(b), with every approval and requirement subject to which such an authorization is issued and with any applicable regulation, whether or not the person has a production licence issued pursuant to Part III.

**(2)** Title to petroleum referred to in subsection (1) is conditional on compliance with the terms of the authorization, approval or regulation, including the payment of royalties or other payment in lieu of royalties.

**(3)** This Section applies only in respect of an extended formation flow test that provides significant information for determining the best recovery system for a reservoir or for determining the limits of a reservoir or the productivity of a well producing petroleum from a reservoir and that does not adversely affect the ultimate recovery from a reservoir. 1992, c. 12, s. 13.

**Oil and Gas Committee**

**153 (1)** The Board may establish a committee, for the purpose of this Act and the federal Implementation Act, to be known as the Oil and Gas Committee, consisting of not more than five members, not more than three of whom may be employees in the public service of the Province or of Canada.

**(2)** The members of the Committee shall be appointed by the Board to hold office for a term of three years and one member shall be designated as chair for such term as may be fixed by the Board.

**(3)** A retiring chair or retiring member may be reappointed to the Committee in the same or another capacity. 1987, c. 3, s. 138.

**Qualifications for appointment, staff and remuneration**

**154 (1)** The Board shall appoint as members of the Committee at least two persons who appear to the Board to have specialized, expert or technical knowledge of petroleum.

**(2)** The members and employees of the Board and the Chief Conservation Officer are not eligible to be members of the Committee.

**(3)** The Board shall provide the Committee with such officers, clerks and employees as may be necessary for the proper conduct of the affairs of the Committee, and may provide the Committee with such professional or technical assistance for temporary periods or for specific work as the Committee may request, but no such assistance shall be provided otherwise than from the staff of the Board except with the approval of the Minister and the federal Minister.

**(4)** The members of the Committee who are not employees of the public service of Canada or of the Province shall be paid such remuneration as may be authorized by the Board.

**(5)** The members of the Committee are entitled to be paid reasonable travelling and living expenses while absent from their ordinary place of residence in the course of their duties. 1987, c. 3, s. 139.

**Conflict of interest**

**155** No member of the Committee shall have a pecuniary interest of any description, directly or indirectly, in any property in petroleum to which this Part applies or own shares in any company engaged in any phase of the petroleum industry in Canada in an amount in excess of five per cent of the issued shares thereof and no member who owns any shares of any company engaged in any phase of the petroleum industry in Canada shall vote when a question affecting such a company is before the Committee. 1987, c. 3. s. 140.

**Practice and procedure, including quorum**

**156 (1)** A majority of the members, including one member who is not an employee in the public service of the Province or of Canada, constitutes a quorum of the Committee.

**(2)** The Committee may make general rules not inconsistent with this Part regulating its practice and procedure and the places and times of its sittings. 1987, c. 3, s. 141.

**Inquiry**

**157 (1)** Where, pursuant to this Part, the Committee is charged with a duty to hold an inquiry or to hear an appeal, the Committee has full jurisdiction to inquire into, hear and determine the matter of any such inquiry or appeal and to make any order, or give any direction that pursuant to this Part the Committee is authorized to make or give or with respect to any matter, act or thing that by this Part may be prohibited or approved by the Committee or required by the Committee to be done.

**(2)** For the purpose of any inquiry, hearing or appeal, or the making of any order pursuant to this Part the Committee has, regarding the attendance, swearing and examination of witnesses, the production and inspection of documents, the entry upon and inspection of property, the enforcement of its orders and regarding other matters necessary or proper for the due exercise of its jurisdiction pursuant to this Part, all such powers, rights and privileges as are vested in a superior court of record.

**(3)** The finding or determination of the Committee upon any question of fact within its jurisdiction is binding and conclusive. 1987, c. 3, s. 142.

**Delegation by Committee**

**158 (1)** The Committee may authorize and depute any member thereof to inquire into such matter before the Committee as may be directed by the Committee and to report the evidence and findings, if any, thereon to the Committee, and when such report is made to the Committee, it may be adopted as a finding of the Committee or otherwise dealt with as the Committee considers advisable.

**(2)** Where an inquiry is held by a member pursuant to subsection (1) the member has all the powers of the Committee for the purpose of taking evidence or acquiring information for the purpose of the report to the Committee. 1987, c. 3, s. 143.

**Reference to Committee**

**159** The Board may at any time refer to the Committee for a report or recommendation any question, matter or thing arising pursuant to this Part or relating to the conservation, production, storage, processing or transportation of petroleum. 1987, c. 3, s. 144.

**Enforceability of order**

**160 (1)** Any order made by the Committee may, for the purpose of enforcement thereof, be made an order of the Supreme Court of Nova Scotia and shall be enforced in like manner as any order of that Court.

**(2)** To make such decision or order referred to in subsection (1) an order of the Supreme Court of Nova Scotia, the chair may make a certified copy of such decision or order, upon which shall be made the following endorsement, signed by the chair:

"Make the within an order of the Supreme Court of Nova Scotia
Dated this . . . . . day of . . . . . A.D., 20. . . . .
. . . . . .
Chair"

and the chair may forward such certified copy, so endorsed, to a prothonotary of such Court, who shall on receipt thereof enter the same as a record and it shall thereupon become and be an order of the Supreme Court and enforceable as any rule, order, decree or judgment thereof.

**(3)** When an order of the Committee has been made an order of the Supreme Court of Nova Scotia, any order of the Committee, or of the Board pursuant to Section 202, rescinding or replacing the first-mentioned order of the Committee, is and is deemed to cancel the order of the Court and may in like manner be made an order of the Court. 1987, c. 3, s. 145; 2015, c. 36, s. 6.

**Regulations**

**161 (1)** Subject to Section 6, the Governor in Council may, for the purposes of safety, the protection of the environment, and accountability as well as for the production and conservation of oil and gas resources, make regulations

(a) defining "oil" and "gas" for the purpose of Sections 161 to 199, "installation" and "equipment" for the purpose of Sections 148 and 149 and "serious" for the purpose of Section 181;

(b) concerning the exploration and drilling for, and the production, processing and transportation of, petroleum and works and activities related to such exploration, drilling, production, processing and transportation;

(c) concerning the measures to be taken in preparation for or in the case of a spill, as defined in subsection 172(1), including measures concerning the use of a spill-treating agent;

(d) concerning the process for the determination of net environmental benefit;

(e) concerning the variation or revocation of an approval referred to in subsection 174(1);

(f) authorizing the Board, or any person, to make such orders as may be specified in the regulations, and to exercise such powers and perform such duties as may be necessary for

(i) the management and control of petroleum production,

(ii) the removal of petroleum from the offshore area, and

(iii) the design, construction, operation or abandonment of pipeline within the offshore area;

(g) concerning arbitration for the purpose of subsection 143(2), including the costs of or incurred in relation to such arbitrations;

(h) concerning the approvals to be granted as conditions of authorizations issued pursuant to clause 139(1)(b);

(i) concerning certificates for the purpose of Section 149;

(j) prohibiting the introduction into the environment of substances, classes of substances and forms of energy, in prescribed circumstances;

(k) authorizing the discharge, emission or escape of petroleum for the purpose of subsection 172(1) in such quantities, at such locations, under such conditions and by such persons as may be specified in the regulations;

(l) establishing the requirements for a pooled fund for the purpose of subsection 178(2);

(m) concerning the circumstances under which the Board may make a recommendation for the purpose of subsection 179(1) and the information to be submitted with respect to that recommendation;

(n) concerning the creation, conservation and production of records; and

(o) prescribing anything that is required to be prescribed for the purpose of this Part.

**(2)** Unless otherwise provided in this Part, regulations made pursuant to subsection (1) may incorporate by reference the standards or specifications of any government, person or organization, either as of a fixed time or as amended. 1987, c. 3, s. 146; 1992, c. 12, s. 14; 2014, c. 43, s. 17.

**Amendment of Schedule**

**162 (1)** The Governor in Council may, by order, amend Schedule V or VI to add, amend or remove a reference to an Act or regulation of the Province, or to a provision of an Act or regulation of the Province.

**(2)** The order shall be made on the recommendation of the Minister and every minister of the Executive Council responsible for the administration of the provision. 2014, c. 43, s. 18.

**Powers of Chief Safety Officer and Chief Conservation Officer**

**163 (1)** Subject to subsection (2), the Chief Safety Officer and Chief Conservation Officer may

(a) authorize the use of equipment, methods, measures or standards in lieu of any required by any regulation made under Section 161, if those Officers are satisfied that the use of that other equipment or those other methods, measures or standards would provide a level of safety, protection of the environment and conservation equivalent to that provided by compliance with the regulations; or

(b) grant an exemption from any requirement imposed, by any regulation made under Section 161, in respect of equipment, methods, measures or standards, if those Officers are satisfied with the level of safety, protection of the environment and conservation that will be achieved without compliance with that requirement.

**(2)** The Chief Safety Officer alone may exercise the powers referred to in clause 1(a) or (b) if the regulatory requirement referred to in that clause does not relate to protection of the environment or conservation, and the Chief Conservation Officer alone may exercise those powers if the regulatory requirement does not relate to safety.

**(3)** No person contravenes the regulations if that person acts in compliance with an authorization or exemption pursuant to subsection (1) or (2). 1992, c. 12, s. 15; 2013, c. 16, s. 12.

**Publication of guidelines**

**164** The Board may issue and publish, in any manner the Board considers appropriate, guidelines and interpretation notes with respect to the application and administration of Sections 52, 139 and 147 and subsection 178(2) and any regulations made under Sections 32 and 161. 2014, c. 43, s. 19.

**Orders by Chief Conservation Officer re production**

**165 (1)** Where the Chief Conservation Officer on reasonable grounds is of the opinion that

(a) with respect to an interest in any portion of the offshore area, the capability exists to commence, continue or increase production of petroleum; and

(b) a production order would stop waste,

the Chief Conservation Officer may order the commencement, continuation or increase of production of petroleum at such rates and in such quantities as are specified in the order.

**(2)** Where the Chief Conservation Officer on reasonable grounds is of the opinion that an order pursuant to this subsection would stop waste, the Chief Conservation Officer may order a decrease or the cessation or suspension of production of petroleum for any periods specified in the order.

**(3)** Subsections 167(2) to (4) and Section 169 apply, with such modifications as the circumstances require, to an order made pursuant to subsection (1) or (2) as if it were an order made pursuant to subsection 167(2).

**(4)** A person subject to an order made pursuant to subsection (1) or (2) shall, on request, afford the Chief Conservation Officer or a person designated by the Chief Conservation Officer access to premises, files and records for all reasonable purposes related to the order. 1987, c. 3, s. 150; 1992, c. 12, s. 17.

**Offence**

**166 (1)** In this Part, "waste", in addition to its ordinary meaning, means waste as understood in the petroleum industry and in particular, but without limiting the generality of the foregoing, includes

(a) the inefficient or excessive use or dissipation of reservoir energy;

(b) the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well

that, having regard to sound engineering and economic principles, results or tends to result in a reduction in the quantity of petroleum ultimately recoverable from a pool;

(c) the drilling, equipping, completing, operating or producing of any well in a manner that causes or is likely to cause the unnecessary or excessive loss or destruction of petroleum after removal from the reservoir;

(d) the inefficient storage of petroleum above ground or underground;

(e) the production of petroleum in excess of available storage, transportation or marketing facilities;

(f) the escape or flaring of gas that could be economically recovered and processed or economically injected into an underground reservoir; or

(g) the failure to use suitable artificial, secondary or supplementary recovery methods in a pool when it appears that such methods would result in increasing the quantity of petroleum, ultimately recoverable under sound engineering and economic principles.

**(2)** Subject to subsection 216(9), any person who commits waste is guilty of an offence pursuant to this Part, but a prosecution may be instituted for such an offence only with the consent of the Board. 1987, c. 3, s. 151.

**Order to cease operations re waste**

**167 (1)** Where the Chief Conservation Officer, on reasonable grounds, is of the opinion that waste, other than waste as defined in clause 166(1)(f) or (g), is being committed, the Chief Conservation Officer may, subject to subsection (2), order that all operations giving rise to such waste cease until the Chief Conservation Officer is satisfied that the waste has stopped.

**(2)** Before making any order pursuant to subsection (1), the Chief Conservation Officer shall hold an investigation at which interested persons shall be given an opportunity to be heard.

**(3)** Notwithstanding subsection (2), the Chief Conservation Officer may, without an investigation, make an order pursuant to this Section requiring all operations to be shut down if in the opinion of the Chief Conservation Officer it is necessary to do so to prevent damage to persons or property or to protect the environment, but as soon as possible after making any such order and in any event within 15 days thereafter, the Chief Conservation Officer shall hold an investigation at which interested persons shall be given an opportunity to be heard.

**(4)** At the conclusion of an investigation made pursuant to subsection (3), the Chief Conservation Officer may set aside, vary or confirm the order made, or make a new order. 1987, c. 3, s. 152; 1992, c. 12, s. 18.

**Delegation by Chief Conservation Officer**

**168 (1)** For the purpose of giving effect to an order made pursuant to Section 167, the Chief Conservation Officer may authorize such persons as may be

necessary to enter the place where the operations giving rise to the waste are being carried out and take over the management and control of those operations and any works connected therewith.

**(2)** A person authorized pursuant to subsection (1) to take over the management and control of operations shall manage and control those operations and do all things necessary to stop the waste and the cost thereof shall be borne by the person who holds any interest that is subject to Part III or any lease issued pursuant to Part III, and until paid constitutes a debt recoverable by action in any court of competent jurisdiction as a debt due to the Board. 1987, c. 3, s. 153.

**Appeal from order of Chief Conservation Officer**

**169 (1)** A person aggrieved by an order of the Chief Conservation Officer after an investigation pursuant to Section 167 may appeal to the Committee to have the order reviewed.

**(2)** After hearing the appeal the Committee may

(a) set aside, confirm or vary the order made by the Chief Conservation Officer;

(b) order such works to be undertaken as may be considered necessary to prevent waste, the escape of petroleum or any other contravention of this Part or the regulations; or

(c) make such other or further order as the Committee considers appropriate. 1987, c. 3, s. 154.

**Application to Committee by Chief Conservation Officer**

**170 (1)** When the Chief Conservation Officer, on reasonable grounds, is of the opinion that waste as defined in clause 166(1)(f) or (g) is occurring in the recovery of petroleum from a pool, the Chief Conservation Officer may apply to the Committee for an order requiring the operators within the pool to show cause at a hearing to be held on a day specified in the order why the Committee should not make a direction in respect thereof.

**(2)** On the day specified in the order made pursuant to subsection (1), the Committee shall hold a hearing at which the Chief Conservation Officer, the operators and other interested persons shall be given an opportunity to be heard. 1987, c. 3, s. 155.

**Order following hearing**

**171 (1)** Where, after the hearing mentioned in Section 170, the Committee is of the opinion that waste as defined in clause 166(1)(f) or (g) is occurring in the recovery of petroleum from a pool, the Committee may, by order,

(a) direct the introduction of a scheme for the collection, processing, disposition or reinjection of any gas produced from such pool; or

(b) direct repressurizing, recycling or pressure maintenance for the pool or any part of the pool and for, or incidental to such purpose, direct the introduction or injection into that pool, or part thereof, of gas, water or other substance,

and the order may further direct that the pool or part thereof specified in the order be shut in if the requirements of the order are not met or unless a scheme is approved by the Committee and in operation by a date fixed by the order.

**(2)** Notwithstanding subsection (1), the Committee may permit the continued operation of a pool or any part of a pool after the date fixed by an order made pursuant to subsection (1) if in the opinion of the Committee a scheme for the repressurizing, recycling or pressure maintenance or the processing, storage or disposal of gas is in course of preparation, but any such continuation of operations is subject to any conditions imposed by the Committee. 1987, c. 3, s. 156.

**Interpretation of Sections 173 to 181 and exception from liability**

**172 (1)** In Sections 173 to 181, "spill" means a discharge, emission or escape of petroleum, other than one the authorization of which is approved under Section 175, the regulations or any other law of the Province or that constitutes a discharge from a vessel to which Part 8 or 9 of the *Canada Shipping Act, 2001* applies or from a ship to which Part 6 of the *Marine Liability Act* (Canada) applies.

**(2)** In Section 176, "actual loss or damage" includes loss of income, including future income, and, with respect to any Aboriginal peoples of Canada, loss of hunting, fishing and gathering opportunities, but does not include loss of income recoverable under subsection 42(3) of the *Fisheries Act* (Canada).

**(3)** In Sections 176 to 178 and 181, "debris" means any installation or structure that was put in place in the course of any work or activity required to be authorized under clause 139(1)(b) and that has been abandoned without an authorization that may be required by or under this Part, or any material that has broken away or been jettisoned or displaced in the course of any of that work or activity.

**(4)** The Crown in right of the Province incurs no liability whatever to any person arising out of the authorization by regulations made by the Governor in Council of any discharge, emission or escape of petroleum. 1987, c. 3, s. 157; 1992, c. 12, s. 19; 2014, c. 43, s. 20.

**Spills**

**173 (1)** No person shall cause or permit a spill on or from any portion of the offshore area.

**(2)** Where a spill occurs in any portion of the offshore area, any person who at the time of the spill is carrying on any work or activity related to the exploration for or development or production of petroleum in the area of the spill shall, in the manner prescribed by the regulations, report the spill to the Chief Conservation Officer.

**(3)** Every person required to report a spill under subsection (2) shall, as soon as possible, take all reasonable measures consistent with safety and the protection of health and the environment to prevent any further spill, to repair or remedy any condition resulting from the spill and to reduce or mitigate any damage or danger that results or may reasonably be expected to result from the spill.

**(4)** Where the Chief Conservation Officer is satisfied, on reasonable grounds, that

(a) a spill has occurred in any portion of the offshore area and immediate action is necessary in order to effect any reasonable measures referred to in subsection (3); and

(b) such action is not being taken or will not be taken pursuant to subsection (3),

the Chief Conservation Officer may take such action or direct that it be taken by such persons as may be necessary.

**(5)** For the purpose of subsection (4), the Chief Conservation Officer may authorize and direct such persons as may be necessary to enter the place where the spill has occurred and take over the management and control of any work or activity being carried on in the area of the spill.

**(6)** A person authorized and directed to take over the management and control of any work or activity pursuant to subsection (5) shall manage and control that work or activity and take all reasonable measures in relation to the spill that are referred to in subsection (3).

**(7)** Any costs incurred pursuant to subsection (6) shall be borne by the person who obtained an authorization pursuant to clause 139(1)(b) in respect of the work or activity from which the spill emanated and until paid constitute a debt recoverable by action in any court of competent jurisdiction as a debt due to the Board.

**(8)** Where a person, other than a person referred to in subsection (7), takes action pursuant to subsection (3) or (4), the person may recover from the Crown in right of the Province the costs and expenses reasonably incurred by that person in taking the action.

**(9)** Section 169 applies, with such modifications as the circumstances require, to any action or measure taken or authorized or directed to be taken pursuant to subsections (4) to (6) as if it were taken or authorized or directed to be taken by order pursuant to subsection 167(1) and as if such order were not subject to an investigation.

**(10)** No person required, directed or authorized to act pursuant to this Section is personally liable in respect of any act or omission in the course of complying with this Section unless it is shown that that person did not act reasonably in the circumstances. 1987, c. 3, s. 158; 1992, c. 12, s. 20; 2013, c. 16, s. 14.

**Exception for spill-treating agent**

**174 (1)** The provisions referred to in Schedule V do not apply to the deposit of a spill-treating agent and those referred to in Schedule VI do not apply in respect of any harm that is caused by the spill-treating agent or by the interaction between the spill-treating agent and the spilled oil, if

(a) the authorization issued under clause 139(1)(b) permits the use of the spill-treating agent;

(b) other than in the case of a small-scale test that meets the prescribed requirements, the Chief Conservation Officer approves in writing the use of the agent in response to the spill and it is used in accordance with any requirements set out in the approval;

(c) the agent is used for the purpose of subsection 173(3) or (4); and

(d) the agent is used in accordance with the regulations.

**(2)** The provisions referred to in Schedule VI continue to apply to the holder of an authorization referred to in clause (1)(a) in respect of any harm that is caused by the spill or, notwithstanding subsection (1), by the interaction between the spill-treating agent and the spilled oil.

**(3)** Other than in the case of a small-scale test, the Chief Conservation Officer shall not approve the use of a spill-treating agent unless the Officer determines, taking into account any prescribed factors and any factors the Officer considers appropriate, that the use of the spill-treating agent is likely to achieve a net environmental benefit. 2014, c. 43, s. 21.

**Approval for research**

**175 (1)** For the purpose of a particular research project pertaining to the use of a spill-treating agent in mitigating the environmental impacts of a spill, the Minister may grant approval to the federal Minister for the Minister of Environment and Climate Change for Canada to authorize, and establish conditions for, the deposit of a spill-treating agent, oil or oil surrogate.

**(2)** The Minister shall not grant approval to the federal Minister for the Minister of Environment and Climate Change for Canada to authorize the deposit of an oil surrogate unless the Minister of Environment and Climate Change for Canada has determined that the oil surrogate poses fewer safety, health or environmental risks than oil.

**(3)** Where the conditions set out in the authorization are met, the provisions referred to in Schedules V and VI do not apply in respect of the spill-treating agent, oil and oil surrogate required for the research project. 2014, c. 43, s. 21.

**Liability for spill**

**176 (1)** Where any discharge, emission or escape of petroleum that is authorized by regulation, or any spill, occurs in any portion of the offshore area,

(a) all persons to whose fault or negligence the spill or the authorized discharge, emission or escape of petroleum is attributable or who are by law responsible for others to whose fault or negligence the spill or the authorized discharge, emission or escape of petroleum is attributable are jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for

(i) all actual loss or damage incurred by any person as a result of the spill or the authorized discharge, emission or escape of petroleum or as a result of any action or

measure taken in relation to the spill or the authorized discharge, emission or escape of petroleum,

(ii) the costs and expenses reasonably incurred by the Board or the Crown in right of the Province or Canada or any other person in taking any action or measure in relation to the spill or the authorized discharge, emission or escape of petroleum, and

(iii) all loss of non-use value relating to a public resource that is affected by a spill or the authorized discharge, emission or escape of petroleum or as a result of any action or measure taken in relation to the spill or the authorized discharge, emission or escape of petroleum; and

(b) the person who is required to obtain an authorization under clause 139(1)(b) in respect of the work or activity from which the spill or the authorized discharge, emission or escape of petroleum emanated is liable, without proof of fault or negligence, up to the applicable limit of liability that is set out in subsection (4) for the actual loss or damage, the costs and expenses and the loss of non-use value described in subclauses (a)(i) to (iii).

**(2)** Where, as a result of debris or as a result of any action or measure taken in relation to debris, there is a loss of non-use value relating to a public resource or any person incurs actual loss or damage or, where the Board or the Crown in right of the Province or Canada reasonably incurs any costs or expenses in taking any action or measure in relation to debris,

(a) all persons to whose fault or negligence the debris is attributable or who are by law responsible for others to whose fault or negligence the debris is attributable are jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for that loss, actual loss or damage, and for those costs and expenses; and

(b) the person who is required to obtain an authorization under clause 139(1)(b) in respect of the work or activity from which the debris originated is liable, without proof of fault or negligence, up to the applicable limit of liability that is set out in subsection (4), for that loss, actual loss or damage, and for those costs and expenses.

**(3)** A person who is required to obtain an authorization under clause 139(1)(b) and who retains, to carry on a work or activity in respect of which the authorization is required, the services of a contractor to whom clause (1)(a) or clause (2)(a) applies is jointly and severally liable with that contractor for any actual loss or damage, costs and expenses and loss of non-use value described in subclauses (1)(a)(i) to (iii) and subsection (2).

**(4)** For the purpose of clause (1)(b) and clause (2)(b), the limit of liability is $1,000,000,000.

**(5)** Subject to Section 6, the Governor in Council may, by regulation, increase the amount referred to in subsection (4).

**(6)** Where a person is liable under clause (1)(b) or clause (2)(b) with respect to an occurrence and the person is also liable under any other Act, without proof of fault or negligence, for the same occurrence, the person is liable up to the greater of the applicable limit of liability that is set out in subsection (4) and the limit up to which the person is liable under the other Act and, where the other Act does not set out a limit of liability, the limits set out in subsection (4) do not apply.

**(7)** Only the Crown in right of the Province or Canada may bring an action to recover a loss of non-use value described in subsections (1) and (2).

**(8)** All claims under this Section may be sued for and recovered in any court of competent jurisdiction in Canada and shall rank, firstly, in favour of persons incurring actual loss or damage, described in subsections (1) and (2), without preference, secondly, without preference, to meet any costs and expenses described in those subsections and, lastly, to recover a loss of non-use value described in those subsections.

**(9)** Subject to subsection (7), nothing in this Section suspends or limits

(a) any legal liability or remedy for an act or omission by reason only that the act or omission is an offence pursuant to this Part or gives rise to liability pursuant to this Section;

(b) any recourse, indemnity or relief available at law to a person who is liable under this Section against any other person; or

(c) the operation of any applicable law or rule of law that is not inconsistent with this Section.

**(10)** Proceedings in respect of claims pursuant to this Section may be instituted within three years after the day when the loss, damage, costs or expenses occurred but in no case after six years after the day the spill or the discharge, emission or escape of petroleum occurred or, in the case of debris, after the day the installation or structure in question was abandoned or the material in question broke away or was jettisoned or displaced. 1987, c. 3, s. 159; 1992, c. 12, s. 21; 2014, c. 43, s. 22.

**Proof of financial resources**

**177 (1)** An applicant for an authorization under clause 139(1)(b) for the drilling for or development or production of petroleum shall provide proof, in the prescribed form and manner, that it has the financial resources necessary to pay the limit of liability referred to in subsection 176(4) and, where the Board considers it necessary, the Board may determine a greater amount and require proof that the applicant has the financial resources to pay that greater amount.

**(2)** An applicant for an authorization under clause 139(1)(b) for any other work or activity shall provide proof, in the prescribed form and manner, that it has the financial resources necessary to pay an amount that is determined by the Board.

**(3)** When the Board determines an amount under subsection (1) or (2), the Board is not required to consider any potential loss of non-use value

relating to a public resource that is affected by a spill or the authorized discharge, emission or escape of petroleum or as a result of debris.

**(4)** The holder of an authorization under clause 139(1)(b) shall ensure that the proof referred to in subsections (1) and (2) remains in force for the duration of the work or activity in respect of which the authorization is issued.

**(5)** The holder of an authorization under clause 139(1)(b) shall also ensure that the proof referred to in subsection (1) remains in force for a period of one year beginning on the day on which the Board notifies the holder that it has accepted a report submitted by the holder indicating that the last well in respect of which the authorization is issued is abandoned, and the Board may reduce that period and may decide that the proof that is to remain in force during that period is proof that the holder has the financial resources necessary to pay an amount that is less than the amount referred to in subsection (1) and that is determined by the Board. 2014, c. 43, s. 23.

**Financial responsibility**

**178 (1)** An applicant for an authorization under clause 139(1)(b) shall provide proof of financial responsibility in the form of a letter of credit, guarantee or indemnity bond or in any other form satisfactory to the Board,

(a) in the case of the drilling for or development or production of petroleum in the offshore area, in the amount of $100,000,000 or, where the Board considers it necessary, in a greater amount that the Board determines; or

(b) in any other case, in an amount that is satisfactory to, and determined by, the Board.

**(2)** An applicant to which clause (1)(a) applies may, rather than provide proof of financial responsibility in the amount referred to in that clause, provide proof that it participates in a pooled fund that is established by the oil and gas industry, that is maintained at a minimum of $250,000,000 and that meets any other requirements that are established by regulation.

**(3)** Subject to Section 6, the Governor in Council may, by regulation, increase the amount referred to in subsection (2).

**(4)** The holder of an authorization under clause 139(1)(b) shall ensure that the proof of financial responsibility referred to in subsection (1) or (2) remains in force for the duration of the work or activity in respect of which the authorization is issued.

**(5)** The holder of an authorization under 139(1)(b) shall also ensure that the proof referred to in clause (1)(a) or subsection (2) remains in force for a period of one year beginning on the day on which the Board notifies the holder that it has accepted a report submitted by the holder indicating that the last well in respect of which the authorization is issued is abandoned, and the Board may reduce that period and may decide, other than in the case of a holder that participates in a pooled fund, that the proof that is to remain in force during that period is for an amount that is less than the amount referred to in clause (1)(a) and that is determined by the Board.

**(6)** The Board may require that money in an amount not exceeding the amount prescribed for any case or class of cases, or determined by the Board in the absence of regulations, be paid out of the funds available under the letter of credit, guarantee or indemnity bond or other form of financial responsibility provided under subsection (1), or be paid out of the pooled fund referred to in subsection (2), in respect of any claim for which proceedings may be instituted under Section 176, whether or not those proceedings have been instituted.

**(7)** Where payment is required pursuant to subsection (6), it shall be made in such manner, subject to such conditions and procedures and to or for the benefit of such persons or classes of persons as may be prescribed by the regulations for any case or class of cases, or as may be required by the Board in the absence of regulations.

**(8)** Where a claim is sued for pursuant to Section 176, there shall be deducted from any award made pursuant to the action on that claim any amount received by the claimant pursuant to this Section in respect of the loss, damage, costs or expenses claimed.

**(9)** The holder of an authorization under clause 139(1)(b) that is liable for a discharge, emission or escape of petroleum that is authorized by regulation or for any spill or debris in respect of which a payment has been made under subsection (6) out of the pooled fund, shall reimburse the amount of the payment in the prescribed manner. 1987, c. 3, s. 160; 1992, c. 12, s. 22; 2014, c. 43, s. 24.

**Approval of lesser amount**

**179 (1)** The Minister may, by order, on the recommendation of the Board and with the federal Minister's approval, approve an amount that is less than the amount referred to in subsection 176(4) or clause 178(1)(a) in respect of an applicant for, or a holder of, an authorization under clause 139(1)(b).

**(2)** Where the Minister approves an amount that is less than the amount referred to in subsection 176(4) in respect of an applicant for an authorization under clause 139(1)(b), that applicant, for the purpose of subsection 177(1), shall only provide proof that it has the financial resources necessary to pay the adjusted amount approved by the Minister.

**(3)** No applicant for an authorization under clause 139(1)(b) contravenes clause 178(1)(a) if that applicant provides proof of financial responsibility in the amount that is approved by the Minister under this Section. 2014, c. 43, s. 25.

**Committee respecting Sections 176 and 178**

**180 (1)** A committee, consisting of members appointed by each Government and by representatives of the petroleum industry and of the fisheries industry, is established by the joint operation of this Act and the federal Implementation Act to review and monitor the application of Sections 176 and 178 and any claims and the payment thereof made pursuant to those Sections.

**(2)** The committee referred to in subsection (1) may be dissolved only by the joint operation of an Act of the Legislature and an Act of Parliament.

**(3)** The Board shall promote and monitor compensation policies for fish harvesters sponsored by the fishing industry respecting damages of a non-attributable nature. 1987, c. 3, s. 161.

**Inquiry**

**181 (1)** Where a spill or debris or an accident or incident, related to any activity to which this Part applies, occurs or is found in any portion of the offshore area and results in death or injury or danger to public safety or the environment, the Board may direct an inquiry to be made and may authorize any person it considers qualified to conduct the inquiry.

**(2)** Where a spill or debris or an accident or incident related to any activity to which this Part applies occurs or is found in any portion of the offshore area and is serious, as defined by regulation, the Board shall direct that an inquiry referred to in subsection (1) be made and shall ensure that the person who conducts the inquiry is not employed by the Board.

**(3)** For the purpose of an inquiry pursuant to subsection (1), a person authorized by the Board pursuant to that subsection has and may exercise all the powers, privileges and immunities of a person appointed as a commissioner pursuant to the *Public Inquiries Act*.

**(4)** The person or persons authorized to conduct an inquiry pursuant to subsection (1) shall ensure that, as far as practicable, the procedures and practices for the inquiry are compatible with investigation procedures and practices followed by any appropriate federal authorities, and for such purpose may consult with any such authorities concerning compatible procedures and practices.

**(5)** As soon as possible after the conclusion of an inquiry pursuant to subsection (1), the person or persons authorized to conduct the inquiry shall submit a report to the Board, together with the evidence and other material that was before the inquiry.

**(6)** A report made pursuant to subsection (5) must be published by the Board within 30 days after the Board has received it.

**(7)** The Board may supply copies of a report published pursuant to subsection (6) in such manner and on such terms as the Board considers proper. 1987, c. 3, s. 162; 1992, c. 12, s. 23.

**Interpretation of Sections 183 to 199**

**182** In this Section and Sections 183 to 199,

"pooled spacing unit" means the area that is subject to a pooling agreement or a pooling order;

"pooled tract" means the portion of a pooled spacing unit defined as a tract in a pooling agreement or a pooling order;

"pooling agreement" means an agreement to pool the interests of owners in a spacing unit and to provide for the operation or the drilling and operation of a well thereon;

"pooling order" means an order made pursuant to Section 184 or as altered pursuant to Section 186;

"royalty interest" means any interest in, or the right to receive a portion of, any petroleum produced and saved from a field or pool or part of a field or pool or the proceeds from the sale thereof, but does not include a working interest or the interest of any person whose sole interest is as a purchaser of petroleum from the pool or part thereof;

"royalty owner" means a person, including the Crown, who owns a royalty interest;

"spacing unit" means the area allocated to a well for the purpose of drilling for or producing petroleum;

"tract participation" means the share of production from a unitized zone that is allocated to a unit tract pursuant to a unit agreement or unitization order or the share of production from a pooled spacing unit that is allocated to a pooled tract pursuant to a pooling agreement or pooling order;

"unit agreement" means an agreement to unitize the interests of owners in a pool or a part thereof exceeding in area a spacing unit, or such an agreement as varied by a unitization order;

"unit area" means the area that is subject to a unit agreement;

"unit operating agreement" means an agreement, providing for the management and operation of a unit area and a unitized zone, that is entered into by working interest owners who are parties to a unit agreement with respect to that unit area and unitized zone, and includes a unit operating agreement as varied by a unitization order;

"unit operation" means those operations conducted pursuant to a unit agreement or a unitization order;

"unit operator" means a person designated as unit operator pursuant to a unit operating agreement;

"unit tract" means the portion of a unit area that is defined as a tract in a unit agreement;

"unitization order" means an order of the Committee made pursuant to Section 192;

"unitized zone" means a geological formation that is within a unit area and subject to a unit agreement;

"working interest" means a right, in whole or in part, to produce and dispose of petroleum from a pool or part of a pool, whether such right is held as an incident of ownership of an estate in fee simple in the petroleum or pursuant to a lease issued pursuant to Part III, agreement or other instrument, if the right is chargeable with and the holder thereof is obligated to pay or bear, either in cash or out of production, all or a portion of the costs in connection with the drilling for, recovery and disposal of petroleum from the pool or part thereof;

"working interest owner" means a person who owns a working interest. 1987, c. 3, s. 163.

**Pooling of interests**

**183 (1)** Where one or more working interest owners have leases issued pursuant to Part III or separately owned working interests within a spacing

unit, the working interest owners and the royalty owners who own all of the interests in the spacing unit may pool their working interests and royalty interests in the spacing unit for the purpose of drilling for or producing, or both drilling for and producing, petroleum if a copy of the pooling agreement and any amendment thereto has been filed with the Chief Conservation Officer.

**(2)** The Board may, on behalf of the Crown, enter into a pooling agreement on such terms and conditions as it considers advisable and, notwithstanding any enactment, the pooling agreement is binding on the Crown. 1987, c. 3, s. 164.

**Pooling order**

**184 (1)** In the absence of a pooling agreement a working interest owner in a spacing unit may apply for a pooling order directing the working interest owners and royalty owners within the spacing unit to pool their interests in the spacing unit for the purpose of drilling for and producing, or producing, petroleum from the spacing unit.

**(2)** An application pursuant to subsection (1) must be made to the Board, which shall refer the application to the Committee for the purpose of holding a hearing to determine whether a pooling order should be made and at such hearing the Committee shall afford all interested parties an opportunity to be heard.

**(3)** Prior to a hearing held pursuant to subsection (2), the working interest owner making application shall provide the Committee, and such other interested parties as the Committee may direct, with a proposed form of pooling agreement, and the working interest owners who have interests in the spacing unit to which the proposed pooling agreement relates shall provide the Committee with such information as the Committee considers necessary.

**(4)** After a hearing pursuant to subsection (2), the Committee may order that all working interest owners and royalty owners who have an interest in the spacing unit shall be deemed to have entered into a pooling agreement as set out in the pooling order.

**(5)** Every pooling order must provide

(a) for the drilling and operation of a well on the spacing unit or, where a well that is capable of or that can be made capable of production has been drilled on the spacing unit before the making of the pooling order, for the future production and operation of that well;

(b) for the appointment of a working interest owner as operator to be responsible for the drilling, operation or abandoning of the well whether drilled before or after the making of the pooling order;

(c) for the allocation to each pooled tract of its share of the production of the petroleum from the pooled spacing unit that is not required, consumed or lost in the operation of the well, which allocation must be on a prorated area basis unless it can be shown to the satisfaction of the Committee that such basis is unfair, whereupon the Committee may make an allocation on some other more equitable basis;

(d) in the event that no production of petroleum is obtained, for the payment by the applicant of all costs incurred in the drilling and abandoning of the well;

(e) where production has been obtained, for the payment of the actual costs of drilling the well, whether drilled before or after the making of the pooling order, and for the payment of the actual costs of the completion, operation and abandoning of the well; and

(f) for the sale by the operator of any petroleum allocated pursuant to clause (c) to a working interest owner where the working interest owner thereof fails to take in kind and dispose of such production, and for the deduction out of the proceeds by the operator of the expenses reasonably incurred in connection with such sale.

**(6)** A pooling order may provide for a penalty for a working interest owner who does not, within the time specified in the order, pay the portion of the costs attributable to that person as that person's share of the cost of drilling and completion of the well, but such penalty may not exceed an amount equal to one half of that working interest owner's share of such costs.

**(7)** Where a working interest owner does not, within the time specified therefor in the pooling order, pay the share of the costs of the drilling, completing, operating and abandoning of the well, the portion of the costs and the penalty, if any, are recoverable only out of that person's share of production from the spacing unit and not in any other manner. 1987, c. 3, s. 165.

**Deemed pooling agreement**

**185** Where a pooling order is made, all working interest owners and royalty owners having interests in the pooled spacing unit shall, upon the making of the pooling order, be deemed to have entered into a pooling agreement as set out in the pooling order and that order shall be deemed to be a valid contract between the parties having interests in the pooled spacing unit, and all its terms and provisions, as set out therein or as altered pursuant to Section 186, are binding upon and enforceable against the parties thereto, including the Crown. 1987, c. 3, s. 166.

**Hearing of application to vary**

**186 (1)** The Committee shall hear any application to vary, amend or terminate a pooling order where such application is made by the owners of over 25% of the working interests in the pooled spacing unit, calculated on a prorated area basis, and may, in its discretion, order a hearing on the application of any working interest owner or royalty owner.

**(2)** After a hearing held pursuant to subsection (1), the Committee may vary or amend the pooling order to supply any deficiency therein or to meet changing conditions and may vary or revoke any provision that the Committee considers to be unfair or inequitable or it may terminate the pooling order.

**(3)** Where a pooling order is varied or amended, no change shall be made that will alter the ratios of tract participations between the pooled tracts as originally set out in the pooling order. 1987, c. 3, s. 167.

**Pooling agreement required**

**187 (1)** No person shall produce any petroleum within a spacing unit in which there are two or more leases issued pursuant to Part III or two or more separately owned working interests unless a pooling agreement has been entered into in accordance with Section 183 or in accordance with a pooling order made pursuant to Section 184.

**(2)** Subsection (1) does not prohibit the production of petroleum for testing in any quantities approved by the Chief Conservation Officer. 1987, c. 3, s. 168.

**Unit agreement**

**188 (1)** Any one or more working interest owners in a pool or part thereof exceeding in area a spacing unit, together with the royalty owners, may enter into a unit agreement and operate their interests pursuant to the terms of the unit agreement or any amendment thereto if a copy of the agreement and any amendment has been filed with the Chief Conservation Officer.

**(2)** The Board may enter into a unit agreement binding on the Crown, on such terms and conditions as it may consider advisable, and the provisions of any enactment in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement.

**(3)** Where a unit agreement filed pursuant to this Section provides that a unit operator shall be the agent of the parties thereto with respect to their powers and responsibilities pursuant to this Part, the performance or non-performance thereof by the unit operator shall be deemed to be the performance or non-performance by the parties otherwise having those powers and responsibilities pursuant to this Part. 1987, c. 3, s. 169.

**Application by Chief Conservation Officer to require agreements**

**189 (1)** Notwithstanding anything in this Part, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, the Chief Conservation Officer may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.

**(2)** Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.

**(3)** Where, after the hearing mentioned in subsection (2), the Committee is of the opinion that unit operation of a pool or part thereof would prevent waste, the Committee may, by order, require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.

**(4)** Where, in the time specified in the order referred to in subsection (3), being not less than six months after the date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing

operations within the pool or part thereof in respect of which the order was made must cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.

**(5)** Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of the opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations is subject to any conditions prescribed by the Committee. 1987, c. 3, s. 170.

**Application for unitization order**

**190 (1)** One or more working interest owners who are parties to a unit agreement and a unit operating agreement and own in the aggregate 65% or more of the working interests in a unit area may apply for a unitization order with respect to the agreements.

**(2)** An application pursuant to subsection (1) must be made to the Board, which shall refer the application to the Committee for the purpose of holding a hearing thereon in accordance with Section 192.

**(3)** An application pursuant to subsection (1) may be made by the unit operator or proposed unit operator on behalf of the working interest owners referred to in subsection (1). 1987, c. 3, s. 171.

**Contents of application and agreements**

**191 (1)** An application for a unitization order must contain

(a) a plan showing the unit area that the applicant desires to be made subject to the order;

(b) one copy each of the unit agreement and the unit operating agreement;

(c) a statement of the nature of the operations to be carried out; and

(d) a statement showing

(i) with respect to each proposed unit tract, the names and addresses of the working interest owners and royalty owners in that tract, and

(ii) the tracts that are entitled to be qualified as unit tracts pursuant to the provisions of the unit agreement.

**(2)** The unit agreement referred to in subsection (1) must include

(a) a description of the unit area and the unit tracts included in the agreement;

(b) an allocation to each unit tract of a share of the production from the unitized zone not required, consumed or lost in the unit operation;

(c) a provision specifying the manner in which and the circumstances under which the unit operation shall terminate; and

(d) a provision specifying that the share of the production from a unit area that has been allocated to a unit tract shall be deemed to have been produced from that unit tract.

**(3)** The unit operating agreement referred to in subsection (1) must make provision for the

(a) contribution or transfer to the unit, and any adjustment among the working interest owners, of the investment in wells and equipment within the unit area;

(b) charging of the costs and expenses of the unit operation to the working interest owners;

(c) supervision of the unit operation by the working interest owners through an operating committee composed of their duly authorized representatives and for the appointment of a unit operator to be responsible, under the direction and supervision of the operating committee, for the carrying out of the unit operation;

(d) determination of the percentage value of the vote of each working interest owner; and

(e) determination of the method of voting upon any motion before the operating committee and the percentage value of the vote required to carry the motion. 1987, c. 3, s. 172.

**Referral to Committee**

**192 (1)** Where an application made pursuant to Section 190 is referred by the Board to the Committee, the Committee shall hold a hearing thereon at which all interested persons shall be afforded an opportunity to be heard.

**(2)** Where the Committee finds that

(a) at the date of the commencement of a hearing referred to in subsection (1)

(i) the unit agreement and the unit operating agreement have been executed by one or more working interest owners who own in the aggregate 65% or more of the total working interests in the unit area, and

(ii) the unit agreement has been executed by one or more royalty owners who own in the aggregate 65% or more of the total royalty interests in the unit area; and

(b) the unitization order applied for would accomplish the more efficient or more economical production of petroleum from the unitized zone,

the Committee may order

(c) that the unit agreement be a valid contract enuring to the benefit of all the royalty owners and working interest owners in the unit area and binding upon and enforceable against all such owners; and

(d) that the unit operating agreement be a valid contract enuring to the benefit of all the working interest owners in the unit area and binding upon and enforceable against all such owners,

and subject to Section 193, the unit agreement and the unit operating agreement have the effect given them by the order of the Committee.

**(3)** In a unitization order the Committee may vary the unit agreement or the unit operating agreement by adding provisions or by deleting or amending any provision thereof. 1987, c. 3, s. 173.

**Effective date of orders**

**193 (1)** Subject to subsection (2), a unitization order becomes effective on the day that the Committee determines in the order, but that day must be not less than 30 days after the day on which the order is made.

**(2)** Where a unit agreement or unit operating agreement is varied by the Committee in a unitization order, the effective date prescribed in the order must be a date not less than 30 days following the day the order is made, but the order becomes ineffective if, before the effective date, the applicant files with the Committee a notice withdrawing the application on behalf of the working interest owners or there are filed with the Committee statements in writing objecting to the order and signed

(a) in the case of the unit agreement by

(i) one or more working interest owners who own in the aggregate more than 25% of the total working interests in the area and were included within the group owning 65% or more of the total working interests as described in subclause 192(2)(a)(i), and

(ii) one or more royalty owners who own in the aggregate more than 25% of the total royalty interests in the unit area and were included within the group owning 65% or more of the total royalty interests as described in subclause 192(2)(a)(ii); or

(b) in the case of the unit operating agreement, by one or more working interest owners who own in the aggregate more than 25% of the total working interests in the unit area and were included within the group owning 65% or more of the total working interests as described in subclause 192(2)(a)(i).

**(3)** Where a unitization order becomes ineffective pursuant to subsection (2), the Committee shall forthwith revoke the order. 1987, c. 3, s. 174; 1992, c. 12, s. 24.

**Order not invalidated**

**194** A unitization order is not invalid by reason only of the absence of notice or of any irregularities in giving notice to any owner in respect of the application for the order or any proceedings leading to the making of the order. 1987, c. 3, s. 175.

**Amendment of unitization order**

**195 (1)** A unitization order may be amended upon the application of a working interest owner, but before amending a unitization order the Committee shall hold a hearing at which all interested parties shall have an opportunity to be heard.

**(2)** Where the Committee finds that, at the date of the commencement of a hearing of an application for the amendment of a unitization order, one or more working interest owners who own, in the aggregate, 65% or more of the total working interests and one or more royalty interest owners who own, in the aggregate, 65% or more of the total royalty interests in the unit area have consented to the proposed amendment, the Committee may amend the unitization order in accordance with the amendment proposed. 1987, c. 3, s. 176.

**Ratios not affected by order**

**196** No amendment may be made pursuant to Section 195 that will alter the ratios between the tract participations of those tracts that were qualified for inclusion in the unit area before the commencement of the hearing, and, for the purpose of this Section, the tract participations must be those indicated in the unit agreement when it became subject to a unitization order. 1987, c. 3, s. 177.

**Compliance with agreement**

**197** After the date on which a unitization order comes into effect and while the order remains in force, no person shall carry on any operations within the unit area for the purpose of drilling for or producing petroleum from the unitized zone, except in accordance with the provisions of the unit agreement and the unit operating agreement. 1987, c. 3, s. 178.

**Calculation of interest percentage**

**198** The percentages of interests referred to in subsections 190(1), 192(2), 193(2) and 195(2) must be determined,

(a) as to royalty interests, on a prorated area basis; and

(b) as to working interests, on the basis of tract participations shown in the unit agreement. 1987, c. 3, s. 179.

**Conflict between order and agreement**

**199 (1)** A pooled spacing unit that has been pooled pursuant to a pooling order and on which a well has been drilled may be included in a unit area as a single unit tract and the Committee may make such amendments to the pooling order as it considers necessary to remove any conflict between the provisions of the pooling order and the provisions of the unit agreement, or the unit operating agreement or the unitization order, if any.

**(2)** Where a pooled spacing unit is included in a unit area pursuant to subsection (1), the provisions of the unit agreement, the unit operating agreement and the unitization order, if any, prevail over the provisions of the pooling order in the event of a conflict.

**(3)** Notwithstanding subsection (2),

(a) the share of the unit production that is allocated to the pooled spacing unit must in turn be allocated to the separately owned tracts in the pooled spacing unit on the same basis and in the same proportion as production actually obtained from the pooled spacing unit would have been shared pursuant to the pooling order;

(b) the costs and expenses of the unit operation that are allocated to the pooled spacing unit must be shared and borne by the owners of the working interests therein on the same basis and in the same proportion as would apply pursuant to the pooling order; and

(c) the credits allocated pursuant to a unit operating agreement to a pooled spacing unit for adjustment of investment for wells and equipment thereon must be shared by the owners of the working interests therein in the same proportion as would apply to the sharing of production pursuant to the pooling order. 1987, c. 3, s. 180.

**Decision of Committee final**

**200 (1)** Except as provided in Sections 200 to 203, every decision or order of the Committee is final and conclusive.

**(2)** Any minute or other record of the Committee or any document issued by the Committee in the form of a decision or order shall, for the purpose of this Section, be deemed to be a decision or order of the Committee. 1987, c. 3, s. 181.

**Stated case**

**201 (1)** The Committee may, of its own motion or at the request of the Board, state a case, in writing, for the opinion of the Nova Scotia Court of Appeal upon any question that in the opinion of the Committee is a question of law or of the jurisdiction of the Committee.

**(2)** The Nova Scotia Court of Appeal shall hear and determine the case stated, and remit the matter to the Committee with the opinion of the Court thereon. 1987, c. 3, s. 182; 2015, c. 36, s. 7.

**Variation of Committee decision**

**202** The Board may, at any time in its discretion, either upon petition of any interested person or of its own motion, vary or rescind any decision or order of the Committee made pursuant to this Part, whether such order is made between two or more parties or otherwise and any order that the Board makes with respect thereto becomes a decision or order of the Committee and, subject to Section 203, is binding upon the Committee and upon all parties. 1987, c. 3, s. 183.

**Appeal from Committee upon leave to Supreme Court**

**203 (1)** An appeal lies from a decision or order of the Committee to the Supreme Court of Nova Scotia upon a question of law, in the manner prescribed, upon leave therefor being obtained from that Court, upon application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court may allow.

**(2)** Where leave to appeal is granted pursuant to subsection (1), any order of the Committee in respect of which the appeal is made shall be stayed until the matter of the appeal is determined.

**(3)** After the hearing of the appeal the Court shall certify its opinion to the Committee and the Committee shall make any order necessary to comply with that opinion.

**(4)** Any order made by the Committee pursuant to subsection (3), unless that order has already been dealt with by the Board pursuant to Section 202, is subject to that Section. 1987, c. 3, s. 184; 2015, c. 36, s. 8.

**Officers**

**204 (1)** Subject to subsection (6), the Minister and the federal Minister shall jointly designate as an operational safety officer for the purpose of the administration and enforcement of this Part an individual who has been recommended by the Board.

**(2)** The Minister and the federal Minister shall make the designation referred to in subsection (1) within 30 days after the day on which they receive the name of the individual from the Board.

**(3)** Subject to subsection (6), the Minister and the federal Minister shall jointly designate as a conservation officer for the purpose of the administration and enforcement of this Part an individual who has been recommended by the Board.

**(4)** The Minister and the federal Minister shall make the designation referred to in subsection (3) within 30 days after the day on which they receive the name of the individual from the Board.

**(5)** The Minister and the federal Minister shall, without delay after making a designation, notify the Board, in writing, that the designation has been made.

**(6)** The Minister and the federal Minister shall not designate an individual if they are not satisfied that the individual is qualified to exercise the powers and carry out the duties and functions of an operational safety officer or a conservation officer, as the case may be, under this Part.

**(7)** Where an individual who is recommended by the Board is not designated, the Minister and the federal Minster shall without delay notify the Board of it, in writing.

**(8)** An individual designated under subsection (1) or (3) who is not an employee of the Board is deemed to be an officer for the purpose of Section 17. 2013, c. 16, s. 15.

**Powers of officers**

**205 (1)** An operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer may, for the purpose of verifying compliance with this Part, order any person in charge of a place that is used for any work or activity in respect of which this Part applies or any other place in which that

officer has reasonable grounds to believe that there is anything to which this Part applies

(a) to inspect anything in the place;

(b) to pose questions, or conduct tests or monitoring, in the place;

(c) to take photographs or measurements, or make recordings or drawings, in the place;

(d) to accompany or assist the officer while the officer is in the place;

(e) to produce a document or another thing that is in the person's possession or control, or to prepare and produce a document based on data or documents that are in the person's possession or control, in the form and manner that the officer may specify;

(f) to provide, to the best of the person's knowledge, information relating to any matter to which this Part applies, or to prepare and produce a document based on that information, in the form and manner that the officer may specify;

(g) to ensure that all or part of the place, or anything located in the place, that is under the person's control, not be disturbed for a reasonable period specified by the officer pending the exercise of any powers under this Section; and

(h) to remove anything from the place and to provide it to the officer, in the manner that the officer specifies, for examination, testing or copying.

**(2)** An operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer may, for the purpose of verifying compliance with this Part, and subject to Section 207 enter a place that is used for any work or activity in respect of which this Part applies or any other place in which that officer has reasonable grounds to believe that there is anything to which this Part applies, and may for that purpose

(a) inspect anything in the place;

(b) pose questions, or conduct tests or monitoring, in the place;

(c) take samples from the place, or cause them to be taken, for examination or testing, and dispose of those samples;

(d) remove anything from the place, or cause it to be removed, for examination, testing or copying;

(e) while at the place, take or cause to be taken photographs or measurements, make or cause to be made recordings or drawings or use systems in the place that capture images or cause them to be used;

(f) use any computer system in the place, or cause it to be used, to examine data contained in or available to it;

(g) prepare a document, or cause one to be prepared, based on data contained in or available to the computer system;

(h) use any copying equipment in the place, or cause it to be used, to make copies;

(i) be accompanied while in the place by any individual, or be assisted while in the place by any person, that the officer considers necessary; and

(j) meet in private with any individual in the place, with the agreement of that individual.

**(3)** For greater certainty, an officer who has entered a place under subsection (2) may order any individual in the place to do anything described in clauses (1)(a) to (h).

**(4)** Anything removed under clause (1)(h) or clause (2)(d) for examination, testing or copying shall, where requested by the person from whom it was removed, be returned to that person after the examination, testing or copying is completed, unless it is required for the purpose of a prosecution under this Part. 2013, c. 16, s. 15.

**Written report verifying compliance**

**206** An operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer, as the case may be, shall provide written reports to the holder of an authorization about anything inspected, tested or monitored, by or on the order of the officer, for the purpose of verifying compliance with this Part, at any place that is used for a work or activity for which the authorization is issued. 2013, c. 16, s. 15.

**Living quarters**

**207 (1)** In this Section, "living quarters" means sleeping quarters provided for employees, as defined in subsection 252(1), on a marine installation or structure, as defined in that subsection, and any room for the exclusive use of the occupants of those quarters that contains a toilet or a urinal.

**(2)** Where the place referred to in subsection 205(2) is living quarters

(a) neither a conservation officer nor the Chief Conservation Officer is authorized to enter those quarters for the purpose of verifying compliance with this Part; and

(b) an operational safety officer or the Chief Safety Officer is not authorized to enter those quarters without the consent of the occupant except

(i) to execute a warrant issued under subsection (5), or

(ii) to verify that those quarters, where on a marine installation or structure as defined in subsection 252(1), are in a structurally sound condition.

**(3)** The officer shall provide reasonable notice to the occupant before entering living quarters under subclause (2)(b)(ii).

**(4)** Notwithstanding subclause (2)(b)(ii), any locker in the living quarters that is fitted with a locking device and that is assigned to the occupant shall not be opened by the officer without the occupant's consent except under the authority of a warrant issued under subsection (5).

**(5)** On *ex parte* application, a justice of the peace may issue a warrant authorizing an operational safety officer who is named in the warrant or the Chief Safety Officer to enter living quarters subject to any conditions specified in the warrant if the justice is satisfied by information on oath that

(a) the living quarters are a place referred to in subsection 205(2);

(b) entry to the living quarters is necessary to verify compliance with this Part; and

(c) entry was refused by the occupant or there are reasonable grounds to believe that entry will be refused or that consent to entry cannot be obtained from the occupant.

**(6)** The warrant may also authorize a locker described in subsection (4) to be opened, subject to any conditions specified in the warrant, if the justice of the peace is satisfied by information on oath that

(a) it is necessary to open the locker to verify compliance with this Part; and

(b) the occupant to whom it is assigned refused to allow it to be opened or there are reasonable grounds to believe that the occupant to whom it is assigned will refuse to allow it to be opened or that consent to opening it cannot be obtained from the occupant.

**(7)** The officer who executes a warrant issued under subsection (5) shall not use force unless the use of force has been specifically authorized in the warrant.

**(8)** A warrant may be issued under this Section by telephone or other means of telecommunication on information submitted by an operational safety officer or the Chief Safety Officer by one of those means and section 487.1 of the *Criminal Code* (Canada) applies for that purpose, with any modifications that the circumstances require. 2013, c. 16, s. 15.

**Certificate of appointment or designation**

**208** The Board shall provide every operational safety officer and conservation officer and the Chief Safety Officer and the Chief Conservation Officer with a certificate of appointment or designation and, on entering any place under the authority of this Part, the officer shall, where so required, produce the certificate to the person in charge of the place. 2013, c. 16, s. 15.

**Assistance**

**209 (1)** The owner of, and every person in charge of, a place entered by an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer under subsection 205(2), and every person found in that place, shall give all assistance that is reasonably required to enable the officer to

verify compliance with this Part and provide any documents, data or information that are reasonably required for that purpose.

**(2)** Where the place referred to in subsection 205(2) is a marine installation or structure as defined in subsection 252(1), the person in charge of the marine installation or structure shall provide to the officer, and to every individual accompanying the officer, free of charge,

(a) suitable transportation between the usual point of embarkation on shore and the marine installation or structure, between the marine installation or structure and the usual point of disembarkation on shore, and between marine installations or structures, if the marine installation or structure or marine installations or structures are situated in the offshore area; and

(b) suitable accommodation and food at the marine installation or structure. 2013, c. 16, s. 15.

**Prohibition**

**210** No person shall obstruct or hinder, or make a false or misleading statement either orally or in writing to, an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer while the officer is engaged in carrying out the officer's duties or functions under this Part. 2013, c. 16, s. 15.

**Warrant**

**211 (1)** On *ex parte* application, a justice of the peace may issue a warrant if the justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place anything that will provide evidence or information relating to the commission of an offence under this Part.

**(2)** The warrant may authorize an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer, and any other individual named in the warrant, to at any time enter and search the place and to seize anything specified in the warrant, or do any of the following as specified in the warrant, subject to any conditions that may be specified in the warrant:

(a) conduct examinations, tests or monitoring;

(b) take samples for examination or testing, and dispose of those samples; or

(c) take photographs or measurements, make recordings or drawings, or use systems in the place that capture images.

**(3)** An operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer may exercise the powers described in this Section without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be feasible to obtain one.

**(4)** Exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or the environment or the loss or destruction of evidence.

**(5)** An individual authorized under this Section to search a computer system in a place may

(a) use or cause to be used any computer system at the place to search any data contained in or available to the computer system;

(b) reproduce or cause to be reproduced any data in the form of a printout or other intelligible output;

(c) seize any printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment at the place to make copies of the data.

**(6)** Every person who is in charge of a place in respect of which a search is carried out under this Section shall, on presentation of the warrant, permit the individual carrying out the search to do anything described in subsection (5).

**(7)** The person in charge of a marine installation or structure, as defined in subsection 253(1), shall provide to an individual who is executing a warrant under this Section at the marine installation or structure, free of charge,

(a) suitable return transportation between the marine installation or structure and any location from which transportation services to that marine installation or structure are usually provided, and between marine installations or structures, if the marine installation or structure or marine installations or structures are situated in the offshore area; and

(b) suitable accommodation and food at the marine installation or structure.

**(8)** A warrant may be issued under this Section by telephone or other means of telecommunication on information submitted by an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer by one of those means and section 487.1 of the *Criminal Code* (Canada) applies for that purpose, with any modifications that the circumstances require. 2013, c. 16, s. 15.

**Care of item seized**

**212 (1)** A thing seized under this Part may be stored in the place where it was seized or may, at the discretion of an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer, be removed to any other place for storage.

**(2)** The owner of the thing seized under subsection (1) or the person who is lawfully entitled to possess it shall pay the costs of storage or removal.

**(3)** Where the thing seized is perishable, an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer may destroy the thing, or otherwise dispose of it in any manner the officer considers appropriate.

**(4)** Any proceeds realized from the disposition of the thing seized must be paid to the Receiver General for Canada. 2013, c. 16, s. 15.

**Order to cease or restrict operation**

**213 (1)** Where an operational safety officer or the Chief Safety Officer, on reasonable grounds, is of the opinion that continuation of an operation in relation to the exploration or drilling for or the production, conservation, processing or transportation of petroleum in any portion of the offshore area is likely to result in serious bodily injury, the operational safety officer or Chief Safety Officer, as the case may be, may order that the operation cease or be continued only in accordance with the terms of the order.

**(2)** The officer who makes an order under subsection (1) shall affix at or near the scene of the operation a notice of the order in prescribed form.

**(3)** An order made by an operational safety officer under subsection (1) expires 72 hours after it is made unless it is confirmed before that time by order of the Chief Safety Officer.

**(4)** Immediately after an operational safety officer makes an order under subsection (1), the officer shall advise the Chief Safety Officer accordingly, and the Chief Safety Officer may modify or revoke the order.

**(5)** The person carrying out the operation to which an order pursuant to subsection (1) makes reference or any person having a pecuniary interest in that operation may by notice in writing request the Chief Safety Officer to refer it, in the manner prescribed, to the Supreme Court of Nova Scotia for review, and thereupon the Chief Safety Officer shall do so.

**(6)** The Supreme Court of Nova Scotia shall inquire into the need for the order.

**(7)** Where an order has been referred to the Supreme Court of Nova Scotia pursuant to this Section, the burden of establishing that the order is not needed is on the person who requested that the order be so referred.

**(8)** The Supreme Court of Nova Scotia may confirm or set aside the order, and the decision of the Supreme Court is final and conclusive.

**(9)** No person shall continue an operation in respect of which an order has been made pursuant to this Section, except in accordance with the terms of the order or until the order has been set aside by the Supreme Court of Nova Scotia pursuant to this Section. 1992, c. 12, s. 25; 2013, c. 16, s. 16; 2015, c. 36, s. 9.

**Inconsistent orders**

**214** An order made by an operational safety officer or the Chief Safety Officer prevails over an order made by a conservation officer or the Chief Conservation Officer to the extent of any inconsistency between the orders. 2013, c. 16, s. 17.

**Installation manager**

**215 (1)** Every holder of an authorization pursuant to clause 139(1)(b) with respect to a work or activity for which a prescribed installation is to be used

shall put in command of the installation a manager who meets any prescribed qualifications, and the installation manager is responsible for the safety of the installation and the persons at it.

**(2)** Subject to this Act and any other Act of the Legislature, an installation manager has the power to do such things as are required to ensure the safety of the installation and the persons at it and, more particularly, may

(a) give orders to any person who is at the installation;

(b) order that any person who is at the installation be restrained or removed; and

(c) obtain any information or documents.

**(3)** In a prescribed emergency situation, an installation manager's powers are extended so that they also apply to each person in charge of a vessel, vehicle or aircraft that is at the installation or that is leaving or approaching it. 1992; c. 12, s. 25; 2013, c. 16, s. 18.

**Offences and penalties**

**216 (1)** Every person is guilty of an offence who

(a) contravenes this Part or the regulations;

(b) makes any false entry or statement in any report, record or document required by this Part or the regulations or by any order made under this Part or the regulations;

(c) destroys, mutilates or falsifies any report or other document required by this Part or the regulations or by any order made under this Part or the regulations;

(d) produces any petroleum from a pool or field under the terms of a unit agreement within the meaning of Part IV, or any amended unit agreement, before the unit agreement or amended unit agreement is filed with the Chief Conservation Officer;

(e) undertakes or carries on a work or activity without an authorization under clause 139(1)(b) or without complying with the approvals or requirements, determined by the Board in accordance with the provisions of this Part or granted or prescribed by the regulations made under this Part, of an authorization issued under that clause; or

(f) fails to comply with a direction, requirement or order of an operational safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer or with an order of an installation manager or the Committee.

**(2)** Every person who is guilty of an offence pursuant to subsection (1) is liable on summary conviction to a fine not exceeding $1,000,000 or to imprisonment for a term not exceeding five years, or to both.

**(3)** In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the *Criminal Code* (Canada), the court shall consider the following principles when sentencing a person who is found guilty of an offence under this Part:

(a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (4); and

(b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

**(4)** The aggravating factors are the following:

(a) the offence caused harm or risk of harm to human health or safety;

(b) the offence caused damage or risk of damage to the environment or to environmental quality;

(c) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable component of the environment;

(d) the damage or harm caused by the offence is extensive, persistent or irreparable;

(e) the offender committed the offence intentionally or recklessly;

(f) the offender failed to take reasonable steps to prevent the commission of the offence;

(g) by committing the offence or failing to take action to prevent its commission, the offender increased the offender's revenue or decreased the offender's costs or intended to increase the offender's revenue or decrease the offender's costs;

(h) the offender has a history of non-compliance with federal or provincial legislation that relates to safety or environmental conservation or protection; and

(i) after the commission of the offence, the offender

(i) attempted to conceal its commission,

(ii) failed to take prompt action to prevent, mitigate or remediate its effects, or

(iii) failed to take prompt action to reduce the risk of committing similar offences in the future.

**(5)** The absence of an aggravating factor set out in subsection (4) is not a mitigating factor.

**(6)** For the purpose of clauses (4)(b) to (d), "damage" includes loss of use value and non-use value.

**(7)** Where the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (4) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

**(8)** No person shall be found guilty of an offence under this Part if that person establishes that the person exercised due diligence to prevent the commission of the offence.

**(9)** No person commits an offence pursuant to subsection 166(2) by reason of committing waste as defined in clause 166(1)(f) or (g) unless that person has been ordered by the Committee to take measures to prevent the waste and has failed to comply. 1987, c. 3, s. 191; 1992, c. 12, s. 26; 2013, c. 16, s. 19; 2014, c. 43, ss. 26, 36.

**Offence by corporation**

**217 (1)** Where a corporation commits an offence under this Part, any of the following individuals who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted:

(a) an officer, director or agent of the corporation; and

(b) any other individual exercising managerial or supervisory functions in the corporation.

**(2)** In a prosecution for an offence under this Part, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence. 2013, c. 16, s. 20.

**No default imprisonment**

**218** Where an individual is convicted of an offence under this Part on proceedings by way of summary conviction, no imprisonment may be imposed in default of payment of any fine imposed as punishment. 2013, c. 16, s. 20.

**Orders**

**219 (1)** Where a person is found guilty of an offence under this Part, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any other punishment that may be imposed under this Part, make an order that has any or all of the following effects:

(a) prohibiting the offender from committing an act or engaging in an activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the offender to take any action that the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;

(c) directing the offender to take any measures that the court considers appropriate to avoid any injury or damage that may result from the act or omission that constituted the offence, or to remedy any injury or damage resulting from it;

(d) directing the offender to carry out environmental effects monitoring in the manner established by the Board or directing the offender to pay, in the manner specified by the court, an

amount of money for the purpose of environmental effects monitoring;

(e) directing the offender to make changes to the offender's environmental management system that are satisfactory to the Board;

(f) directing the offender to have an environmental audit conducted by a person of a class and at the times specified by the Board and directing the offender to remedy any deficiencies revealed during the audit;

(g) directing the offender to pay to the Crown in right of Canada, for the purpose of promoting the conservation, protection or restoration of the environment, or to pay into the Environmental Damages Fund, an account in the accounts of Canada, an amount of money that the court considers appropriate;

(h) directing the offender to pay to the Board an amount of money that the court considers appropriate for the purpose of conducting research, education and training in matters related to the protection of the environment, conservation of petroleum resources or safety of petroleum operations;

(i) directing the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;

(j) directing the offender to submit to the Chief Safety Officer, on application by the Chief Safety Officer within three years after the conviction, any information with respect to the offender's activities that the court considers appropriate in the circumstances;

(k) directing the offender to notify, at the offender's own cost and in the manner specified by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;

(l) directing the offender to post a bond or pay an amount of money into court that the court considers appropriate to ensure that the offender complies with any prohibition, direction, requirement or condition that is specified in the order;

(m) directing the offender to perform community service, subject to any reasonable conditions that may be imposed by the court;

(n) directing the offender to pay, in the manner specified by the court, an amount of money to environmental, health or other groups to assist in their work;

(o) directing the offender to pay, in the manner specified by the court, an amount of money to an educational institution including for scholarships for students enrolled in studies related to the environment;

(p) requiring the offender to comply with any conditions that the court considers appropriate in the circumstances for securing

the offender's good conduct and for preventing the offender from repeating the same offence or committing another offence under this Part;

(q) prohibiting the offender from taking measures to acquire an interest or from applying for any new licence or other authorization under this Act during any period that the court considers appropriate.

**(2)** An order made under subsection (1) comes into force on the day on which the order is made or on any other day that the court may determine, but shall not continue in force for more than three years after that day.

**(3)** Where an offender does not comply with an order requiring the publication of facts relating to the offence and the details of the punishment, the Board may, in the manner that the court directed the offender, publish those facts and details and recover the costs of publication from the offender.

**(4)** Where the Board incurs publication costs under subsection (3), the costs constitute a debt due to the Board and may be recovered in any court of competent jurisdiction. 2014, c. 43, ss. 27, 37.

**Variation of order**

**220 (1)** Subject to subsection (2), where a court has made, in relation to an offender, an order under Section 219, the court may, on application by the offender or the Board, require the offender to appear before it and, after hearing the offender and the Board, vary the order in one or more of the following ways that the court considers appropriate because of a change in the offender's circumstances since the order was made:

(a) by making changes to any prohibition, direction, requirement or condition that is specified in the order for any period or by extending the period during which the order is to remain in force, not exceeding one year; or

(b) by decreasing the period during which the order is to remain in force or by relieving the offender of compliance with any condition that is specified in the order, either absolutely or partially or for any period.

**(2)** Before making an order under subsection (1), the court may direct that notice be given to any persons that the court considers to be interested, and may hear any of those persons. 2014, c. 43, s. 27.

**Single application**

**221** Where an application made under subsection 220(1) in relation to an offender has been heard by a court, no other application may be made under Section 220 in relation to the offender except with leave of the court. 2014, c. 43, s. 27.

**Judgment of Supreme Court**

**222** Where a person is convicted of an offence under this Part and a fine that is imposed is not paid when required or where a court orders an offender to pay an amount under subsection 219(1) or 220(1), the prosecutor may, by filing the con-

viction or order, as the case may be, enter as a judgment the amount of the fine or the amount ordered to be paid, and costs, if any, in the Supreme Court of Nova Scotia, and the judgment is enforceable against the person in the same manner as if it were a judgment rendered against them in that Court in civil proceedings. 2014, c. 43, s. 27.

**Continuing offence**

**223** Where an offence pursuant to this Part is committed on more than one day or is continued for more than one day, it is deemed to be a separate offence for each day on which the offence is committed or continued. 1987, c. 3, s. 194.

**Limitation period**

**224** Proceedings by way of summary conviction for an offence under this Part may be instituted at any time within but no later than three years after the day on which the subject-matter of the proceedings arose, unless the prosecutor and the defendant otherwise agree. 2013, c. 16, s. 21.

**Copy of order as proof**

**225** In any prosecution for an offence pursuant to this Part, a copy of any order or other document purporting to have been made pursuant to this Part or the regulations, and purporting to have been signed by the person authorized by this Part or the regulations to make that order or document is, in the absence of any evidence to the contrary, proof of the matters set out therein. 1987, c. 3, s. 197.

**Jurisdiction for hearing**

**226** Any complaint or information in respect of an offence pursuant to this Part may be heard, tried or determined by a justice or judge if the accused is resident or carrying on business within the territorial jurisdiction of that justice or judge although the matter of the complaint or information did not arise in that territorial jurisdiction. 1987, c. 3, s. 198.

**Right of action by Board**

**227 (1)** Notwithstanding that a prosecution has been instituted in respect of an offence pursuant to this Part, the regulations or any order made pursuant to this Part or the regulations, the Board may commence and maintain an action to enjoin the committing of any contravention of this Part, the regulations or any order made pursuant to this Part or the regulations.

**(2)** No civil remedy for any act or omission is suspended or affected by reason that the act or omission is an offence pursuant to this Part. 1987, c. 3, s. 199.

**Multiple offences**

**228** In any proceedings for an offence under this Part,

(a) an information may include more than one offence committed by the same person;

(b) all those offences may be tried concurrently; and

(c) one conviction for any or all offences so included may be made. 2013, c. 16, s. 22.

Administrative Monetary Penalties

Powers

**Regulations**

**229** **(1)** Subject to Section 6, the Governor in Council may make regulations

(a) designating as a violation that may be proceeded with in accordance with this Part

(i) the contravention of any specified provision of this Part or of any of its regulations,

(ii) the contravention of any direction, requirement, decision or order, or of any direction, requirement, decision or order of a specified class of directions, requirements, decisions or orders, made under this Part, or

(iii) the failure to comply with any term or condition of

(A) an operating licence or authorization, or a specified class of operating licences or authorizations, issued under this Part, or

(B) any approval or exemption or a specified class of approvals or exemptions, granted under this Part;

(b) respecting the determination of, or the method of determining, the amount payable as the penalty, which may be different for individuals and other persons, for each violation; and

(c) respecting the service of documents required or authorized under Section 234, 239 or 242, including the manner and proof of service and the circumstances under which documents are considered to be served.

**(2)** The amount that may be determined under any regulations made under clause (1)(b) as the penalty for a violation shall not be more than $25,000, in the case of an individual, and $100,000, in the case of any other person. 2014, c. 43, s. 28.

**Powers of Board**

**230** The Board may

(a) establish the form of notices of violation;

(b) designate persons or classes of persons who are authorized to issue notices of violation;

(c) establish, in respect of each violation, a short-form description to be used in notices of violation; and

(d) designate persons or classes of persons to conduct reviews under Section 241. 2014, c. 43, s. 28.

Violations

**Violation by person**

**231 (1)** Every person who contravenes or fails to comply with a provision, direction, requirement, decision or order, or term or condition the contravention of which, or the failure to comply with which, is designated to be a violation by a regulation made under clause 229(1)(a) commits a violation and is liable to a penalty of an amount to be determined in accordance with the regulations.

**(2)** The purpose of the penalty is to promote compliance with this Part and not to punish. 2014, c. 43, s. 28.

**Violation by corporation**

**232** Where a corporation commits a violation, any director, officer, or agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to the violation and is liable to a penalty of an amount to be determined in accordance with the regulations, whether or not the corporation has been proceeded against in accordance with this Part. 2014, c. 43, s. 28.

**Violation by employee, agent or mandatary**

**233** In any proceedings under this Part against a person in relation to a violation, it is sufficient proof of the violation to establish that it was committed by an employee, or agent or mandatary, of the person, whether or not the employee, or agent or mandatary is identified or proceeded against in accordance with this Part. 2014, c. 43, s. 28.

**Notice of violation**

**234 (1)** Where a person designated under clause 230(b) believes on reasonable grounds that a person has committed a violation, the designated person may issue a notice of violation and cause it to be served on the person.

**(2)** The notice of violation must

(a) name the person that is believed to have committed the violation;

(b) set out the relevant facts surrounding the violation;

(c) set out the amount of the penalty for the violation;

(d) inform the person of the person's right, under Section 239, to request a review with respect to the amount of the penalty or the facts of the violation, and of the prescribed period within which that right is to be exercised;

(e) inform the person of the manner of paying the penalty set out in the notice; and

(f) inform the person that, where the person does not pay the penalty or exercise the person's right referred to in clause (d), the person will be considered to have committed the violation and that the person is liable to the penalty set out in the notice. 2014, c. 43, s. 28.

Rules About Violations

**No due diligence**

**235 (1)** A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the commission of the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

**(2)** Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Part applies in respect of a violation to the extent that it is not inconsistent with this Part. 2014, c. 43, s. 28.

**Continuing violation**

**236** A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued. 2014, c. 43, s. 28.

**Violation precludes offence**

**237 (1)** Proceeding with any act or omission as a violation under this Part precludes proceeding with it as an offence under this Part, and proceeding with it as an offence under this Part precludes proceeding with it as a violation under this Part.

**(2)** For greater certainty, a violation is not an offence and, accordingly, Section 34 of the *Summary Proceedings Act* does not apply in respect of a violation. 2014, c. 43, s. 28.

**Limitation period**

**238** No notice of violation is to be issued more than two years after the day on which the matter giving rise to the violation occurred. 2014, c. 43, s. 28.

Reviews

**Request for review**

**239** A person who is served with a notice of violation may, within 30 days after the day on which it is served, or within any longer period that the Board allows, make a request to the Board for a review of the amount of the penalty or the facts of the violation, or both. 2014, c. 43, s. 28.

**Correction of error**

**240** At any time before a request for a review in respect of a notice of violation is received by the Board, a person designated under clause 230(b) may cancel the notice of violation or correct an error in it 2014, c. 43, s. 28.

**Conduct of review**

**241 (1)** On receipt of a request made under Section 239, the Board shall conduct the review or cause the review to be conducted by a person designated under clause 230(d).

**(2)** The Board shall conduct the review if the notice of violation was issued by a person designated under clause 230(d). 2014, c. 43, s. 28.

**Determination of review**

**242 (1)** The Board or the person conducting the review shall determine, as the case may be, whether the amount of the penalty for the violation was determined in accordance with the regulations or whether the person committed the violation, or both.

**(2)** The Board or the person conducting the review shall render a determination and the reasons for it in writing and cause the person who requested the review to be served with a copy of them.

**(3)** Where the Board or the person conducting the review determines that the amount of the penalty for the violation was not determined in accordance with the regulations, the Board or the person, as the case may be, shall correct the amount of the penalty.

**(4)** Where the Board or the person conducting the review determines that the person who requested the review committed the violation, the person who requested the review is liable to the penalty as set out in the notice issued under Section 234 or as set out in the determination if the amount of the penalty was corrected under subsection (3).

**(5)** A determination made under this Section is final and binding and, subject to review by the Supreme Court of Nova Scotia, is not subject to appeal or to review by any court. 2014, c. 43, s. 28.

**Standard of proof**

**243** Where the facts of a violation are reviewed, the person who issued the notice of violation shall establish, on a balance of probabilities, that the person named in it committed the violation identified in it. 2014, c. 43, s. 28.

Responsibility

**Where penalty paid**

**244** Where a person pays the penalty set out in a notice of violation, the person is considered to have committed the violation and proceedings in respect of it are ended. 2014, c. 43, s. 28.

**Where penalty not paid**

**245** A person who neither pays the penalty imposed under this Part nor requests a review in the period referred to in Section 239 is considered to have committed the violation and is liable to the penalty. 2014, c. 43, s. 28.

Recovery of Penalties

**Recovery of penalty**

**246 (1)** A penalty constitutes a debt due to the Crown in right of the Province and may be recovered in the Supreme Court of Nova Scotia.

**(2)** No proceedings to recover the debt are to be instituted more than five years after the day on which the debt becomes payable. 2014, c. 43, s. 28.

**Certificate of non-payment**

**247 (1)** The Board may issue a certificate of non-payment certifying the unpaid amount of any debt referred to in subsection 246(1).

**(2)** Registration in the Supreme Court of Nova Scotia of a certificate of non-payment issued under subsection (1) has the same effect as a judgment of that court for a debt of the amount specified in the certificate and all related registration costs. 2014, c. 43, s. 28.

General

**Presumed authenticity of notice**

**248** In the absence of evidence to the contrary, a document that appears to be a notice issued under subsection 234(1) is presumed to be authentic and is proof of its contents in any proceeding in respect of a violation. 2014, c. 43, s. 28.

**Publication**

**249** The Board may make public the nature of a violation, the name of the person who committed it and the amount of the penalty. 2014, c. 43, s. 28.

REGULATIONS

**Regulations**

**250** Subject to Section 6, the Governor in Council may make such regulations not inconsistent with this Part as may be considered necessary for carrying out the purpose of this Part, and, without limiting the generality of the foregoing, may make regulations defining and distinguishing more particularly for the purpose of this Part the expressions “oil” and “gas”. 1987, c. 3, s. 200.

APPLICATION

**Application of Part**

**251** This Part applies to every interest or right in petroleum acquired or vested before January 5, 1990, and is binding on the Crown in right of the Province, a province or Canada. 1987, c. 3, s. 201.

PART V

OCCUPATIONAL HEALTH AND SAFETY

INTERPRETATION

**Interpretation**

**252 (1)** In this Part,

"authorization" means an authorization issued under clause 139(1)(b);

"Chief Safety Officer" means the person designated as the Chief Safety Officer under Section 150;

"committee" means a special committee and a workplace committee;

"coordinator" means an employee designated under subsection 298(1) to act as an occupational health and safety coordinator;

"declaration" means a declaration referred to in subsection 148(1);

"employee" means an individual who, in return for monetary compensation, performs work or services for an employer in respect of a work or activity for which an authorization has been issued;

"employer" means a person who employs or contracts for the services of any individual in respect of a work or activity for which an authorization has been issued, if that person has the power to exercise direction and control over the individual's work at the workplace;

"hazardous substance" includes a controlled product and any chemical, biological or physical agent that, by reason of a property that the agent possesses, is hazardous to the health or safety of an individual exposed to it;

"health and safety officer" means an occupational health and safety officer or a special officer;

"interest holder" has the same meaning as in Section 62;

"Labour Board" means the Board as defined in the *Occupational Health and Safety Act*;

"marine installation or structure" includes

(a) any ship, including any ship used for construction, production or diving or for geotechnical or seismic work;

(b) any offshore drilling unit, including a mobile offshore drilling unit;

(c) any production platform, subsea installation, pipeline as defined in Section 130, pumping station, living accommodation, storage structure or loading or landing platform; and

(d) any other work, or work within a class of works, prescribed under clause (5)(a),

but does not include

(e) any vessel, including any supply vessel, standby vessel, shuttle tanker or seismic chase vessel, that provides any supply or support services to a ship, installation, structure, work or anything else described in clauses (a) to (d), unless the vessel is within a class of vessels that is prescribed under clause (5)(b); or

(f) any ship or vessel within a class of ships or vessels prescribed under clause (5)(c);

"Minister" means the minister of the Government of the Province who is responsible for occupational health and safety;

"Nova Scotia social legislation" means the provisions of the following Acts:

(a) the *Human Rights Act*;

(b) the *Labour Standards Code*;

(c) the *Workers' Compensation Act*; and

(d) the *Health Protection Act*;

"occupational health and safety officer" means an individual designated by the Minister under Section 324;

"operator" means a person who holds an authorization;

"owner" means a person who has a right, title or interest, including a leasehold interest, recognized by law, in a marine installation or structure that is used or is to be used as a workplace, or any entity in which the person has vested all or any part of the person's right, title or interest;

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

"person" includes individuals, corporations and partnerships;

"personal protective equipment" includes personal protective clothing, personal protective devices and personal protective materials;

"provider of services" means a person who, for commercial gain,

(a) provides services related to the placement with an operator or employer of individuals who, in return for monetary compensation, perform work or services for the operator or employer at a workplace; or

(b) provides services that affect or could affect the health or safety of employees or other individuals at a workplace or on a passenger craft, including engineering services, architectural services, the services of a certifying authority referred to in subsection 149(1), or the services of any person

who provides information or advice, issues a certificate or affixes a professional seal or stamp;

"special committee" means a special committee established under Section 298;

"special officer" means an individual designated under Section 325;

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

"supplier" means a person who, for commercial gain, manufactures, supplies, sells, leases, distributes or installs any tool, equipment, machine or device, any biological, chemical, or physical agent or any other prescribed thing, to be used at a workplace or on a passenger craft;

"union" means a trade union, as defined in the *Trade Union Act*, that has the status of a bargaining agent under that Act in respect of any bargaining unit at a workplace, or any organization representing employees that has exclusive bargaining rights under any other Act of the Legislature of the Province in respect of those employees;

"workplace" means

(a) any marine installation or structure where an employee is employed in connection with a work or activity for which an authorization has been issued;

(b) any workboat used by an employee, and operated from a marine installation or structure, to perform routine maintenance or repair work in connection with a work or activity for which an authorization has been issued; and

(c) any dive site from which, and any underwater area at which, a diving operation is conducted by an employee in connection with a work or activity for which an authorization has been issued;

"workplace committee" means a workplace committee established under Section 295.

**(2)** In this Part, "controlled product", "hazard symbol", "Ingredient Disclosure List", "label" and "material safety data sheet" have the same meanings as in section 2 and subsection 11(1) of the *Hazardous Products Act* (Canada).

**(3)** Subsection 11(2) of the *Hazardous Products Act* (Canada) applies for the purpose of this Part.

**(4)** Subject to Section 6 and on the recommendation of the Minister, the Governor in Council may make regulations

(a) defining "danger", "dive site", "diving operation" and "incident" for the purpose of this Part;

(b) amending the definition of "Nova Scotia social legislation" in subsection (1) to add any Act of the Province or to remove any Act of the Province from the definition.

**(5)** Subject to Section 6 and on the recommendation of the Minister, the Governor in Council may make regulations

(a) prescribing a work or a class of works for the purpose of clause (d) of the definition of "marine installation or structure" in subsection (1);

(b) prescribing a class of vessels for the purpose of clause (e) of the definition of "marine installation or structure" in subsection (1);

(c) prescribing a class of ships or vessels for the purpose of clause (f) of the definition of "marine installation or structure" in subsection (1).

**(6)** For the purpose of Sections 257, 259 and 260, an employee is deemed to be at a workplace within the offshore area while, and immediately before, the employee is being transported on a passenger craft between the last point of embarkation on shore and the workplace, between the workplace and the first point of disembarkation on shore, or between workplaces. 2013, c. 16, s. 23.

## THE CROWN

**The Crown**

**253** This Part is binding on the Crown in right of the Province, a province or Canada. 2013, c. 16, s. 23.

## APPLICATION

**Application**

**254 (1)** This Part applies to and in respect of a workplace that is situated within the offshore area for the purpose of the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area.

**(2)** This Part also applies to employees and other passengers while, and immediately before, being transported on a passenger craft between the last point of embarkation on shore and the workplace, between the workplace and the first point of disembarkation on shore, or between workplaces. 2013, c. 16, s. 23.

**Occupational Health and Safety Act**

**255** Except to the extent provided for under this Part, the *Occupational Health and Safety Act* does not apply to or in respect of a workplace that is situated within the offshore area for the purpose of the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area. 2013, c. 16, s. 23.

**Canada Labour Code**

**256** Notwithstanding subsections 123(1) and 168(1) of the *Canada Labour Code* and any other Act of Parliament, Parts II and III of the *Canada Labour Code* do not apply to and in respect of a workplace that is situated within the offshore area for the purpose of the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area. 2013, c. 16, s. 23.

**Canadian Human Rights Act**

**257** The *Canadian Human Rights Act* does not apply to or in respect of a workplace that is situated within the offshore area for the purpose of the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area. 2013, c. 16, s. 23.

**Non-smokers' Health Act (Canada)**

**258** The *Non-smokers' Health Act* (Canada) does not apply to or in respect of a workplace that is situated within the offshore area for the purpose of the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area. 2013, c. 16, s. 23.

**Nova Scotia social legislation**

**259 (1)** Nova Scotia social legislation and any regulations made under it apply to and in respect of a workplace that is situated within the offshore area for the purpose of the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area.

**(2)** In the event of an inconsistency or conflict between the provisions of this Act, or any regulations made under it, and the provisions of Nova Scotia social legislation, or any regulations made under that legislation, the provisions of this Act and the regulations made under it prevail to the extent of the inconsistency or conflict. 2013, c. 16, s. 23.

**Marine installation or structure, workboat, dive site**

**260 (1)** Notwithstanding section 4 of the *Canada Labour Code* and any other Act of Parliament, the provisions of the *Trade Union Act*, and any regulations made under it, apply to and in respect of

(a) a marine installation or structure that is situated within the offshore area in connection with the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area and that is in the offshore area for the purpose of becoming, or that is, permanently attached to, permanently anchored to or permanently resting on the seabed or subsoil of the submarine areas of the offshore area;

(b) any workboat used by an employee, and operated from a marine installation or structure, to perform routine maintenance or repair work in connection with a work or activity for which an authorization has been issued; and

(c) a dive site from which, and any underwater area at which, a diving operation is conducted by an employee in connection with a work or activity for which an authorization has been issued.

**(2)** Part I of the *Canada Labour Code* applies to and in respect of a marine installation or structure that is situated within the offshore area in connection with the exploration or drilling for, or the production, conservation or processing of, petroleum within the offshore area if subsection (1) does not apply to or in respect of the marine installation or structure. 2013, c. 16, s. 23.

PURPOSE

**Purpose**

**261 (1)** The purpose of this Part is to prevent accidents and injury arising out of, linked to or occurring in the course of employment to which this Part applies, in particular by

(a) allocating responsibility for occupational health and safety among the Board and the persons, unions and committees having obligations under this Part; and

(b) establishing a framework for them to exercise their rights and carry out their obligations.

**(2)** Preventive measures should first aim at the elimination of hazards, then the reduction of the risks posed by the hazards and finally, the taking of protective measures, all with the goal of ensuring the health and safety of employees. 2013, c. 16, s. 23.

ALLOCATION OF RESPONSIBILITY

**Responsibility and specific obligation**

**262 (1)** The allocation of responsibility for occupational health and safety is based on the following principles:

(a) operators have overall responsibility; and

(b) operators, employers, suppliers, providers of services, employees, supervisors, owners and interest holders have individual and shared responsibilities, and are responsible for cooperating with each other and coordinating their activities related to occupational health and safety.

**(2)** For greater certainty, the imposition of any specific obligation under this Part is not to be construed as limiting the generality of any other obligation under this Part. 2013, c. 16, s. 23.

DUTIES OF OPERATORS

**Occupational health and safety policy**

**263 (1)** Every operator shall develop an occupational health and safety policy governing its workplaces.

**(2)** The policy must be set out in writing and must contain

(a) the commitments of the operator related to occupational health and safety, including its commitment to co-operate with employees with regard to health and safety;

(b) the responsibilities of the employers at any of the operator's workplaces related to occupational health and safety; and

(c) any prescribed requirements.

**(3)** The operator shall review the policy at least every three years in consultation with each workplace committee that it establishes and with each employer at any of the operator's workplaces. 2013, c. 16, s. 23.

**Reasonable health and safety measures**

**264** Every operator shall take all reasonable measures to ensure the health and safety of all employees and other individuals at its workplaces and of all employees or other passengers while, and immediately before, being transported on a passenger craft to or from any of those workplaces. 2013, c. 16, s. 23.

**Workplace safety**

**265** Every operator shall, in respect of each of its workplaces,

(a) ensure the coordination of all work and activities for which an authorization has been issued to the operator;

(b) comply with its occupational health and safety management system, and ensure that all employers, supervisors and employees at, owners of and providers of services to the workplace comply with that system;

(c) ensure that information necessary for the health and safety of employees and other individuals at the workplace is communicated to them;

(d) ensure that all employers, supervisors and employees at, owners of and suppliers and providers of services to the workplace comply with the provisions of this Part and the regulations made under this Part;

(e) ensure that each employee at the workplace is made aware of known or foreseeable health or safety hazards;

(f) ensure that all work and activities for which an authorization has been issued are conducted so as to minimize the exposure to hazards, including hazardous substances, of all employees and other individuals at the workplace;

(g) ensure that any installations, facilities, equipment and materials at the workplace are properly installed, stored and maintained and are safe for their intended use;

(h) ensure that all employees and other individuals at the workplace conduct themselves so as to minimize their exposure to hazards, including hazardous substances;

(i) ensure that all employees and other individuals at the workplace are provided with the facilities and personal protective equipment, including any that are prescribed, necessary for their health and safety;

(j) ensure that all employees and other individuals at the workplace are provided with the information and training, including any that are prescribed, required for the proper use of personal protective equipment that is prescribed or that is required by the operator be used or worn;

(k) ensure that all employees and other individuals at the workplace are provided with the instruction, training and supervision, including any that are prescribed, necessary for their health and safety;

(l) comply with the occupational health and safety requirements of any authorization issued to them, and those undertaken in the declaration

related to the authorization, and record all instances of failures to comply with those requirements as well as any measures taken to rectify the failure or to prevent further such failures;

(m) ensure that all employers, supervisors and employees at, owners of and providers of services to the workplace comply with the occupational health and safety requirements of any authorization related to that workplace that is issued to the operator, and those undertaken in the declaration related to the authorization, and report any instances of failures to comply with those requirements to the operator;

(n) inform the relevant interest holders of the occupational health and safety requirements of any authorization related to that workplace that is issued to the operator, and those undertaken in the declaration related to the authorization, and of any failure to comply with those requirements;

(o) ensure that members of committees established for the workplace are provided with the support, opportunities and training, including any that are prescribed, necessary to enable the members to fulfill their duties and functions as a member of the committee;

(p) co-operate with those committees and facilitate communications between the employees and the committees;

(q) ensure that all or part of the workplace as described in subclauses (a) and (b) of the definition of "marine installation or structure" in subsection 252(1) is inspected by or on behalf of the operator at least once a month, so that every part of that workplace is inspected at least once a year, and ensure that the workplace committee participates;

(r) ensure that a record is kept of each inspection referred to in clause (q), including any corrective action taken as a consequence; and

(s) co-operate with the Board and with persons carrying out duties or functions under this Part. 2013, c. 16, s. 23.

**Transport safety**

**266 (1)** Every operator shall, each time before employees or other passengers are transported on a passenger craft to or from any of its workplaces,

(a) ensure that the employees and other passengers are provided with any information and instruction, including any that are prescribed, necessary for their health and safety; and

(b) ensure that the employees are provided with the operator's contact information for the purpose of subsection 306(2).

**(2)** Every operator shall ensure that a passenger craft going to or from any of its workplaces

(a) meets the requirements of any Act or other law that relates to the health or safety of the employees and other passengers on the passenger craft; and

(b) is equipped with any equipment, devices and materials necessary to ensure the health and safety of the employees and other passengers, including any that are prescribed.

**(3)** Every operator shall ensure that all employees and other passengers on a passenger craft going to or from any of its workplaces

(a) are provided with any personal protective equipment necessary to ensure their health and safety, including any that is prescribed; and

(b) are provided with the information and training, including any that are prescribed, required for the proper use of personal protective equipment provided under clause (a) and the equipment, devices and materials referred to in clause (2)(b). 2013, c. 16, s. 23.

**Occupational health and safety management system**

**267 (1)** Every operator shall develop, implement and maintain an occupational health and safety management system that fosters a culture of workplace safety and that is adapted to the circumstances of the work or activity specified in each authorization issued to the operator, for the purpose of

(a) implementing its occupational health and safety policy;

(b) ensuring that the provisions of this Part and the regulations made under this Part are complied with; and

(c) complying with the occupational health and safety requirements of each of those authorizations, and those undertaken in a declaration related to any of those authorizations.

**(2)** The system must be set out in writing and include provisions regarding

(a) the management of risks to the health and safety of employees, including any prescribed risks, and procedures for

(i) the ongoing and systematic identification and reporting of all hazards,

(ii) the assessment of risks associated with identified hazards, and

(iii) the implementation of hazard control measures;

(b) the role of any committee established for any of the operator's workplaces and the interaction between those committees;

(c) the roles and accountability of the employers, employees, providers of services and suppliers that are responsible for implementing the operator's occupational health and safety policy and occupational health and safety management system;

(d) the allocation of sufficient resources to ensure that employees continue to be qualified and competent, that there is proper quality control of documents, facilities, equipment and materials and that there is effective cooperation among employers;

(e) the procedures for carrying out work or activities, dealing with changes in operations and responding to emergencies;

(f) the procedures for dealing with failures to comply with the system and the procedures for the reporting and investigating of

occupational diseases and of accidents, incidents and other hazardous occurrences and the keeping of related records and statistical analysis;

(g) the auditing of the adequacy and effectiveness of the system, including

(i) determining the ability of the system to achieve the purposes set out in subsection (1), and

(ii) identifying improvements that could be made to the system; and

(h) the implementation of the improvements identified during the audit referred to in clause (g).

**(3)** The operator shall review the system at least every three years in consultation with each workplace committee that it establishes.

**(4)** Where the regulations establish requirements in respect of anything described in any of clauses 2(a) to (h), the system must meet the requirements of those regulations. 2013, c. 16, s. 23.

**Code of practice**

**268 (1)** The Chief Safety Officer may, in writing, require an operator to establish a code of practice in respect of occupational health and safety, or to adopt a code of practice in respect of occupational health and safety that is specified by the Officer, in respect of

(a) any of its workplaces or any work or activity carried out at any of its workplaces; or

(b) the transportation of employees to or from any of its workplaces.

**(2)** The code of practice may be revised by the Chief Safety Officer from time to time, or the Officer may require the operator to revise it from time to time. 2013, c. 16, s. 23.

**Occupational disease, accident or incident**

**269 (1)** Every operator shall, as soon as it becomes known to the operator, notify the Chief Safety Officer of

(a) any occupational disease at any of its workplaces; or

(b) any accident, incident or other hazardous occurrence at any of its workplaces, or on a passenger craft going to or from any of those workplaces, that causes a death or serious injury or in which a death or serious injury is narrowly avoided.

**(2)** Every operator shall investigate any occupational disease, or any accident, incident or other hazardous occurrence, described in clause (1)(a) or (b) and shall keep adequate records of its investigation, including any records that are prescribed, for the period that is prescribed.

**(3)** An operator shall, no later than April 1 of each year, submit to each workplace committee that it establishes, to the Chief Safety Officer and, on request, to any special committee established for any of the operator's workplaces, a written report for the immediately preceding calendar year, in a form determined by the Officer.

**(4)** The report must set out data on all occupational diseases, and all accidents, incidents and other hazardous occurrences, that have occurred at any of the operator's workplaces or on a passenger craft going to or from any of those workplaces during the calendar year covered by the report, including the number of deaths, the number of serious injuries and the number of minor injuries.

**(5)** In this Section, "serious injury" means an injury that

(a) results in the loss by an individual of a body member or part of a body member or in the complete loss by an individual of the usefulness of a body member or part of a body member;

(b) results in the permanent impairment of a body function of an individual; or

(c) prevents an employee from reporting for work or from effectively performing all the functions connected with the employee's regular work on any day subsequent to the day on which the injury occurred, whether or not that subsequent day is a working day for the employee. 2013, c. 16, s. 23.

DUTIES OF EMPLOYERS

**Reasonable health and safety measures**

**270** Every employer shall take all reasonable measures to ensure

(a) the health and safety of its employees and other individuals at a workplace under its control;

(b) the health and safety of its employees at a workplace that is not under its control, to the extent that it controls their activities at the workplace; and

(c) the health and safety of its employees while, and immediately before, the employees are transported on a passenger craft. 2013, c. 16, s. 23.

**Workplace safety**

**271 (1)** Every employer shall, in respect of each workplace under its control, and in respect of any activity performed by any of its employees at a workplace that is not under its control, to the extent that it controls the activity,

(a) coordinate its undertaking with the work and activities of the operator and of any other employer at the workplace who may be affected by that undertaking;

(b) ensure that the operator's occupational health and safety management system is complied with and carry out any responsibilities assigned to the employer under that system;

(c) determine, in consultation with the operator, the impact of its undertaking on occupational health and safety and

ensure that other employers at the workplace who may be affected by that undertaking are provided with adequate information;

(d) communicate to its employees and, in respect of a workplace under its control, to other individuals at the workplace, all information necessary to their health and safety, or ensure that the information is communicated to them;

(e) ensure that its employees comply with the provisions of this Part and the regulations made under this Part;

(f) ensure that each of its employees, and particularly each supervisor, is made aware of known or foreseeable health or safety hazards;

(g) ensure that its undertaking is conducted so as to minimize its employees' exposure to hazards and, in respect of any other individuals at a workplace under its control, to minimize their exposure to hazards;

(h) provide to its employees, and, in respect of a workplace under its control, to other individuals at the workplace, the facilities and personal protective equipment, including any that are prescribed, necessary for their health and safety;

(i) provide to its employees, and, in respect of a workplace under its control, to other individuals at the workplace, the information and training, including any that are prescribed, required for the proper use of all personal protective equipment that are prescribed or that is required by the operator to be used or worn;

(j) provide its employees with the instruction, training and supervision, including any that are prescribed, necessary for their health and safety;

(k) ensure that the occupational health and safety requirements of any authorization related to the workplace are complied with;

(l) record and report to the operator all instances of failures to comply with the provisions of this Part or of the regulations made under this Part, or with the occupational health and safety requirements of any authorization related to the workplace;

(m) ensure that all equipment, machines, devices, materials and other things at the workplace are properly installed, stored and maintained, are safe for their intended use and are used as intended;

(n) co-operate with and facilitate communication with committees established for the workplace;

(o) provide to members of any special committee it establishes for the workplace the support, opportunities and training, including any that are prescribed, necessary to enable the members to fulfill the duties and functions conferred on the committee;

(p) ensure that all or part of the workplace as described in clauses (a) and (b) of the definition of "marine installation or structure" in subsection 252(1) under its control is inspected by it or on its behalf at least once a month, so that every part of that workplace is

inspected at least once a year, and ensure that the workplace committee participates; and

(q) co-operate with the Board and with persons carrying out duties or functions under this Part.

**(2)** An employee who, with the approval of the employee's employer, is receiving training that is required under this Part shall be paid the same wages and granted the same benefits that the employee would have received had the employee been working. 2013, c. 16, s. 23.

**Occupational health and safety program**

**272 (1)** For the purpose of implementing the operator's occupational health and safety policy, every employer shall, in consultation with the workplace committee, develop, implement and maintain, in respect of each workplace under the employer's control, an occupational health and safety program that fosters a culture of workplace safety, if

(a) five or more employees are normally employed at the workplace by the employer;

(b) the program is required by the Chief Safety Officer; or

(c) the requirement for such a program is prescribed.

**(2)** The program must be set out in writing and must include provisions regarding

(a) the management of risks to the health and safety of the employees, including any prescribed risks, and procedures for

(i) the ongoing and systematic identification and reporting of all hazards,

(ii) the assessment of risks associated with identified hazards, and

(iii) the implementation of hazard control measures;

(b) the training and supervision of the employees that are necessary to ensure their health and safety and that of other individuals at the workplace;

(c) the establishment of special committees, the operation of workplace committees and special committees, the access by committees to a level of management with authority to resolve occupational health and safety matters and the information required under this Part to be maintained in relation to those committees;

(d) the roles of committees and their interaction in implementing the operator's occupational health and safety policy;

(e) the roles and accountability of the employers, employees, providers of services and suppliers that are responsible for implementing the operator's occupational health and safety policy;

(f) the procedures, including those required under this Part, to be followed to protect the employees' health and safety, and the identification of types of work to which those procedures apply;

(g) the procedures to be followed to deal with

(i) failures to comply with the program and with the reporting and investigating of occupational diseases, and of accidents, incidents and other hazardous occurrences, at the workplace, and

(ii) the keeping of related records and statistical analysis;

(h) the auditing of the adequacy and effectiveness of the program, including

(i) determining the ability of the program to meet the requirements of the operator's occupational health and safety policy and occupational health and safety management system, and

(ii) identifying improvements that could be made to the program; and

(i) the implementation of the improvements identified during the audit referred to in clause (h).

**(3)** Where the regulations establish requirements in respect of anything described in any of clauses 2(a) to (i), the program must meet the requirements of those regulations. 2013, c. 16, s. 23.

**Code of practice**

**273 (1)** The Chief Safety Officer may, in writing, require an employer to establish, in respect of a workplace under the employer's control or any work or activity carried out at any of those workplaces, a code of practice in respect of occupational health and safety, or to adopt, in respect of such a workplace, work or activity, a code of practice in respect of occupational health and safety that is specified by the Officer.

**(2)** The code of practice may be revised by the Chief Safety Officer from time to time, or the Officer may require the employer to revise it from time to time. 2013, c. 16, s. 23.

**Hazardous substances**

**274** Subject to any exceptions that are prescribed, every employer shall, in respect of each workplace under its control, and in respect of any activity performed by any of its employees at a workplace that is not under its control, to the extent that it controls the activity,

(a) ensure that concentrations of hazardous substances at the workplace are controlled in accordance with any standards that are prescribed;

(b) ensure that all hazardous substances at the workplace are stored and handled in the manner that is prescribed;

(c) ensure that all hazardous substances at the workplace, other than controlled products, are identified in the manner that is prescribed;

(d) subject to the *Hazardous Materials Information Review Act* (Canada), ensure that each controlled product at the workplace or each container at the workplace in which a controlled product is contained has applied to it a label that discloses information that is prescribed and has displayed on it, in the manner that is prescribed, all applicable hazard symbols that are prescribed;

(e) subject to the *Hazardous Materials Information Review Act* (Canada), make available to every employee at the workplace, in the manner that is prescribed, a material safety data sheet that discloses the following information with respect to each controlled product to which the employee may be exposed, namely,

(i) where the controlled product is a pure substance, its chemical identity, and where it is not a pure substance, the chemical identity of any of its ingredients that is a controlled product and the concentration of that ingredient,

(ii) where the controlled product contains an ingredient that is included in the Ingredient Disclosure List and the ingredient is in a concentration that is equal to or greater than the concentration specified in that List for that ingredient, the chemical identity and concentration of that ingredient,

(iii) the chemical identity of any ingredient of the controlled product that the employer believes on reasonable grounds may be harmful to an employee at the workplace and the concentration of that ingredient,

(iv) the chemical identity of any ingredient of the controlled product whose toxicological properties are not known to the employer and the concentration of that ingredient, and

(v) any other information that is prescribed with respect to the controlled product;

(f) where employees at the workplace may be exposed to hazardous substances, investigate and assess the potential exposure in the manner that is prescribed, with the assistance of the workplace committee or the coordinator, as the case may be; and

(g) ensure that all records of exposure to hazardous substances are kept and maintained in the manner that is prescribed and that personal records of exposure are made available to the affected employees. 2013, c. 16, s. 23.

**Information respecting controlled product**

**275 (1)** Every employer shall, in respect of each workplace under its control, and in respect of an activity performed by any of its employees at a workplace that is not under its control, to the extent that it controls the activity, provide, in respect of any controlled product to which an employee may be exposed, as soon as the circumstances permit, any information referred to in clause 274(e) that is in the employer's possession to any physician, or any other medical professional that is prescribed, who requests that information for the purpose of making a medical diagnosis of, or rendering medical treatment to, an employee in an emergency.

**(2)** Any physician, or any other medical professional that is prescribed, to whom information is provided by an employer under subsection (1) shall keep confidential any information specified by the employer as being confidential, except for the purpose for which it is provided. 2013, c. 16, s. 23.

DUTIES OF SUPERVISORS

**Reasonable measures**

**276** Every supervisor shall take all reasonable measures to ensure the health and safety of employees and other individuals that the supervisor supervises at a workplace. 2013, c. 16, s. 23.

**Duties**

**277** Every supervisor shall

(a) ensure that the employees that the supervisor supervises comply with the provisions of this Part and the regulations made under this Part;

(b) inform the supervisor's employer and each of those employees of known or foreseeable health or safety hazards;

(c) where required to do so by the supervisor's employer or the operator, provide those employees with written instructions as to the measures to be taken and the procedures to be followed for the protection of the employees; and

(d) report to the supervisor's employer any failure to comply with the provisions of this Part or of the regulations made under this Part, or with the occupational health and safety requirements of any authorization related to the workplace that is issued to the operator. 2013, c. 16, s. 23.

DUTIES OF EMPLOYEES

**Reasonable measures**

**278** Every employee at a workplace or on a passenger craft shall take all reasonable measures to protect the employee's own health and safety and that of other individuals at the workplace or on the passenger craft. 2013, c. 16, s. 23.

**Duties**

**279** Every employee at a workplace shall

(a) co-operate with the operator and with all employers and other employees to protect the health and safety of individuals at the workplace;

(b) use or wear, in the manner intended, all personal protective equipment that is prescribed or that is required by the operator or the employee's employer to be used or worn;

(c) take all reasonable measures to ensure that other employees use or wear, in the manner intended, all personal protective equipment referred to in clause (b);

(d) consult and co-operate with committees established for the workplace;

(e) co-operate with the Board and with persons carrying out duties or functions under this Part;

(f) follow all instructions of the employee's employer given for the purpose of ensuring occupational health and safety; and

(g) report to the employee's employer any thing or circumstance at the workplace that is likely to be hazardous to the health or safety of the employee or other individuals at the workplace. 2013, c. 16, s. 23.

**During transport**

**280** Every employee shall

(a) while, and immediately before, being transported on a passenger craft, co-operate with the individual providing the employee with information and instruction on behalf of the operator, with the employee's employer and with any individual who operates or assists in operating the passenger craft, so as to protect the health and safety of individuals on the passenger craft; and

(b) while being transported on a passenger craft, use or wear, in the manner intended, all personal protective equipment that is prescribed or that is required by the operator, or by any individual who operates or assists in operating the passenger craft, to be used or worn on the passenger craft. 2013, c. 16, s. 23.

**No personal liability**

**281** No employee who, at the workplace or while, or immediately before, being transported on a passenger craft, comes to the assistance of another individual or carries out an emergency measure is personally liable for any injury or damage that may result from it, unless the injury or damage is a result of the employee's gross negligence or wilful misconduct. 2013, c. 16, s. 23.

DUTIES OF SUPPLIERS AND PROVIDERS OF SERVICES

**Reasonable measures by supplier**

**282** Every supplier shall, to protect the health and safety of individuals at a workplace or on a passenger craft, take all reasonable measures to ensure that any thing it supplies for use at the workplace or on the passenger craft is in a safe condition. 2013, c. 16, s. 23.

**Duties of supplier**

**283** Every supplier shall ensure

(a) that any thing it supplies for use at a workplace or on a passenger craft meets the requirements of the regulations made under this Part; and

(b) where there is an obligation in an agreement for the supplier to maintain the thing in safe condition, that is complies with that obligation. 2013, c. 16, s. 23.

**Reasonable measures by provider of services**

**284** Every provider of services shall take all reasonable measures to ensure that no individual at a workplace or on a passenger craft is endangered as a result of the services that it provides in connection with the workplace or passenger craft. 2013, c. 16, s. 23.

**Duties of provider of services**

**285** Every provider of services shall

(a) when it provides services in connection with a workplace that are related to the placement, with an operator or employer, of individuals who, in return for monetary compensation, perform work or services for the operator or employer at the workplace, ensure that those individuals have the qualifications and certifications, including any that are prescribed, that are necessary for them to perform the work or services in a manner that protects the individuals' health and safety and that of employees and other individuals at the workplace;

(b) ensure that any information that it provides in connection with the services that it provides is accurate and sufficiently complete so as to enable the operator or employer, as the case may be, to make a competent judgment on the basis of the information; and

(c) ensure, to the extent that it is possible to do so, that any operator, employer, employee, supplier or owner, or any other provider of services, will not, as a result of relying in good faith on its advice, or on a certificate, seal or stamp provided by it, be in contravention of the provisions of this Part or of the regulations made under this Part, or of the occupational health and safety requirements of the authorization or those undertaken in the declaration related to the authorization. 2013, c. 16, s. 23.

## DUTIES OF OWNERS, INTEREST HOLDERS AND CORPORATE OFFICIALS

**Reasonable measures by owner**

**286** Every owner shall take all reasonable measures to ensure that any workplace in respect of which the owner is an owner is delivered and maintained so as to ensure the health and safety of individuals at that workplace, including measures to inform the operator of known or foreseeable health or safety hazards that could assist the operator in

(a) reducing the risks posed by hazards at the workplace; and

(b) assessing whether the provisions of this Part and the regulations made under this Part, the occupational health and safety requirements of any authorization related to the workplace that is issued to the operator and the occupational health and safety requirements undertaken in the declaration related to the authorization, are being complied with. 2013, c. 16, s. 23.

**Reasonable measures by interest holder**

**287** Every interest holder shall take all reasonable measures to ensure that the operator for a workplace in any portion of the offshore area subject to the interest, or the share of the interest, of that interest holder complies with

(a) the provisions of this Part and the regulations made under this Part; and

(b) the occupational health and safety requirements of any authorization related to that workplace that is issued to the operator, and the occupational health and safety requirements undertaken in the declaration related to the authorization. 2013, c. 16, s. 23.

**Reasonable measures by corporate official**

**288 (1)** Every director and every officer of a corporation that holds an authorization shall take all reasonable measures to ensure that the corporation complies with

(a) the provisions of this Part and the regulations made under this Part; and

(b) the occupational health and safety requirements of the authorization, and the occupational health and safety requirements undertaken in the declaration related to the authorization.

**(2)** Every director and every officer of a corporation that is a supplier or a provider of services shall take all reasonable measures to ensure that the corporation complies with Sections 282 to 285.

**(3)** Every director and every officer of a corporation shall, where the corporation has duties under Section 287, take all reasonable measures to ensure that the corporation complies with that Section. 2013, c. 16, c. 23.

COMMUNICATION OF INFORMATION

**Duties of operator**

**289 (1)** Every operator shall post in printed form, in a prominent place at each of its workplaces,

(a) its occupational health and safety policy;

(b) contact information to enable the reporting of health or safety concerns to the Board; and

(c) the names of the members of any committees established by the operator for that workplace, the members' contact information and the minutes of the most recent meeting of those committees.

**(2)** Every operator shall make the following information and documents readily available at each of its workplaces in a prominent place accessible to every employee at the workplace, in printed or electronic form:

(a) a copy of this Part and the regulations made under this Part;

(b) a copy of the document describing the operator's occupational health and safety management system;

(c) any code of practice required by the Chief Safety Officer under Section 268 to be established or adopted by the operator for that workplace;

(d) any code of practice required by the Chief Safety Officer under Section 273 to be established or adopted by any employer at that workplace;

(e) information relating to the equipment, methods, measures, standards or other things permitted to be used at the workplace under any permission granted under Section 322, any conditions placed on the use of that equipment or those methods, measures, standards or other things and the duration of the permission; and

(f) information relating to the equipment, methods, measures, standards or other things permitted to be used on a passenger craft, or whose use is permitted in respect of employees or other passengers being transported on a passenger craft, under any permission granted to the operator under Section 323, any conditions placed on the use of that equipment or those methods, measures, standards or other things and the duration of the permission.

**(3)** Every operator shall, at the request of any employee or employer at any of the operator's workplaces or by any committee established for any of those workplaces, make readily available for examination by the employee, employer or committee any material incorporated by reference in the regulations made under this Part, in printed or electronic form.

**(4)** Every operator shall provide to any committee established for any of its workplaces, or to any employer or employee at any of those workplaces, in printed or electronic form, within seven days after the day on which an occupational health and safety officer requires it, any information that enables employees to become acquainted with their rights and responsibilities under this Part as the officer may require.

**(5)** An obligation imposed on an operator under subsection (1) is satisfied if the operator provides a copy of the information or document to each employee at the workplace. 2013, c. 16, s. 23.

**Duties of employer**

**290 (1)** Every employer shall post, in a prominent place at each workplace for which it has established a special committee, in printed form, the names of the members of the special committee, the members' contact information and the minutes of the most recent meeting of that committee.

**(2)** Every employer shall, in respect of a workplace under its control, provide to the operator, and make readily available in a prominent place accessible to its employees at the workplace, in printed or electronic form,

(a) a copy of the occupational health and safety program for the workplace; and

(b) any code of practice required by the Chief Safety Officer under Section 273 to be established or adopted by the employer for the workplace.

**(3)** Every employer shall make available to the Board, where required by an occupational health and safety officer, and to any persons, unions and committees that an occupational health and safety officer may require, in

printed or electronic form, within and for the time that the officer requires, any material or information referred to in subsections 289(3) and (4).

**(4)** An obligation imposed on an employer under subsection (1) is satisfied if the employer provides a copy of the information or document to each of its employees at the workplace. 2013, c. 16, s. 23.

**Information required to be communicated by Chief Safety Officer**

**291 (1)** Every operator shall communicate to employees at a workplace and the workplace committee any information that the Chief Safety Officer requires to be communicated to them, within the time and in the manner specified by the Officer.

**(2)** An employer shall communicate to its employees at a workplace any information that the Chief Safety Officer requires to be communicated to them, within the time and in the manner specified by the Officer. 2013, c. 16, s. 23.

**Inspection report**

**292 (1)** Every operator and every employer shall immediately after preparing or being provided with a report respecting anything inspected, tested or monitored under this Part at the operator's workplace or at a workplace under the employer's control, as the case may be, including a report under Section 327, notify all committees established for the workplace of the report and, subject to Section 293, within seven days after the day on which a request is received from any of those committees, shall provide that committee with a copy of it.

**(2)** Every operator shall make available to any employee at the workplace, and the employer shall make available to any of its employees at the workplace, on request, a copy of any report that has been provided to a committee established for the workplace. 2013, c. 16, s. 23.

**Trade secrets and personal information**

**293 (1)** Where a report referred to in subsection 292(1) contains a trade secret, the operator or employer, as the case may be, may edit the report to protect the trade secret.

**(2)** Where a report referred to in subsection 292(1) contains information relating to the medical history of an identifiable individual or other prescribed information relating to an identifiable individual, the operator or employer, as the case may be, shall edit the report to protect that information before providing it to a committee, unless the individual to whom the information relates consents in writing to the disclosure of the information to the committee.

**(3)** The edited report must be provided to the committee within 21 days after the day on which the committee's request is received. 2013, c. 16, s. 23.

**Requests for information**

**294 (1)** Subject to subsections (3) and (4), every operator who receives from a committee established for any of its workplaces or any employee at any of its workplaces a written request for any information related to occupational health and safety, other than a request for report referred to in subsection 292(1),

shall provide a written response to the request within 21 days after the day on which it is received.

**(2)** Subject to subsections (3) and (4), every employer who receives from a special committee it has established or any of its employees a written request for any information related to occupational health and safety, other than a request for a report referred to in subsection 292(1), shall provide a written response to the request within 21 days after the day on which it is received.

**(3)** Where the request is made by a special committee, the operator or employer is required to respond only if the information is necessary for the particular purpose for which the committee was established.

**(4)** Subsections 299(3) to (8) apply to the request with any modifications that the circumstances require. 2013, c. 16, s. 23.

COMMITTEES AND COORDINATOR

**Occupational health and safety workplace committee**

**295 (1)** Every operator shall establish one workplace committee for each of its workplaces, other than a workplace established for six months or less, for purposes related to occupational health and safety.

**(2)** Notwithstanding subsection (1), the Chief Safety Officer may authorize an operator to establish a single workplace committee in respect of two or more workplaces if the Officer is satisfied that the circumstances warrant it.

**(3)** An occupational health and safety committee described in subsection 297(1) is deemed to be a workplace committee in respect of the workplace referred to in that subsection and to have been established by the operator for that workplace.

**(4)** A workplace committee shall

(a) receive, consider, investigate if necessary and promptly dispose of matters and complaints related to occupational health and safety;

(b) participate in inspections referred to in clauses 265(q) and 271(p), in the investigation of any matter under clause 274(f) and in the activities of any health and safety officers that pertain to a matter under Section 301 or subsection 302(10) or 306(10), and, at the discretion of a health and safety officer, participate in the officer's activities that pertain to occupational diseases and to accidents, incidents and other hazardous occurrences;

(c) maintain records in a form and manner approved by the Chief Safety Officer, and provide a copy of those records, on request, to a health and safety officer, or to any person within a class of persons that is prescribed;

(d) keep minutes of committee meetings in a form and manner approved by the Chief Safety Officer and provide a copy of those minutes, on request, to a health and safety officer, or to any person within a class of persons that is prescribed; and

(e) perform any other duties that are assigned to it by the Chief Safety Officer or that are assigned to it under an agreement between the operator and any employers and employees, or the union representing them, at the workplace.

**(5)** A workplace committee may

(a) seek to identify those things and circumstances at the workplace that are likely to be hazardous to the health or safety of employees, and advise on effective procedures to eliminate the hazards, to reduce the risks posed by the hazards and to protect against the hazards;

(b) advise the operator and the employers at the workplace on the occupational health and safety policy, the occupational health and safety management system and the occupational health and safety programs, and any procedures, required under this Part;

(c) advise on the provision of personal protective equipment suited to the needs of the employees;

(d) make recommendations, for the improvement of occupational health and safety, to the operator and the employers and employees at the workplace and to any supplier, owner or provider of services that carries out duties or functions under this Part; and

(e) participate in the activities described in subsection 332(1).

**(6)** An individual who serves as a member of a workplace committee is not personally liable for anything done or omitted to be done by the individual in good faith while carrying out the individual's duties or functions. 2013, c. 16, s. 23.

**Workplace committee composition and rules**

**296 (1)** A workplace committee consists of any number of individuals that may be agreed to by the operator and the employees at the workplace or the unions representing them.

**(2)** The operator shall select no more than half of the members of a workplace committee from among employees at the workplace, at least one of whom shall be a representative of the operator.

**(3)** The other members of a workplace committee, who represent the employees, shall be selected by the employees, or the unions representing them, from among employees at the workplace who do not exercise managerial functions.

**(4)** A workplace committee shall meet at least once every month, or more frequently if the Chief Safety Officer requires it.

**(5)** An employee who is a member of a workplace committee is entitled to any time off from work that is necessary to enable the employee to fulfill the employee's duties and functions as a member of the committee, including time off to take training, which time off is considered to be work time for which the employee shall be paid the same wages and granted the same benefits that the employee would have received had the employee worked for that time.

**(6)** A workplace committee may establish its own rules of procedure, but in establishing those rules it shall comply with any requirements that are prescribed.

**(7)** A workplace committee is to be co-chaired by two of its members, one chosen by members that have been selected by employees, or unions representing them, and the other chosen by members that have been selected by the operator.

**(8)** Where there is disagreement as to the size of a workplace committee, the selection of members or any other matter that prevents or impairs the proper functioning of the committee, the Chief Safety Officer shall determine the matter and provide those concerned with a written determination.

**(9)** A determination by the Chief Safety Officer under subsection (8) is final and binding and not subject to review or appeal. 2013, c. 16, s. 23.

**Occupational health and safety coordinator**

**297 (1)** Where an operator establishes a workplace for six months or less, the operator shall, unless there is already an occupational health and safety committee for the workplace that meets the requirements of subsections 296(1), (2), (3) and (7), designate an employee at that workplace who has been approved by the Chief Safety Officer to act as an occupational health and safety coordinator in respect of that workplace.

**(2)** The coordinator shall

(a) receive, consider, investigate if necessary and promptly dispose of matters and complaints related to occupational health and safety;

(b) assist the employer in carrying out the employer's duties under clause 274(f);

(c) maintain records in a form and manner approved by the Chief Safety Officer, and provide a copy of those records, on request, to a health and safety officer, or to any person within a class of persons that is prescribed; and

(d) perform any other duties that are assigned to the coordinator by the Chief Safety Officer.

**(3)** The coordinator may make recommendations, for the improvement of occupational health and safety, to the operator and the employers and employees at the workplace and to any supplier, owner or provider of services that has duties or functions under this Part.

**(4)** The operator shall

(a) ensure that the coordinator is informed of the coordinator's responsibilities as coordinator under this Section;

(b) ensure that the coordinator is provided with the training in health and safety, including any that is prescribed, necessary to enable the coordinator to fulfill the coordinator's duties and functions as coordinator; and

(c) make readily available to employees at the workplace, in printed form, the name of the coordinator and the coordinator's contact information.

**(5)** The operator and the employers at the workplace shall co-operate with the coordinator and facilitate communications between the coordinator and the employees at the workplace.

**(6)** An individual who serves as a coordinator is not personally liable for anything done or omitted to be done by the individual in good faith while carrying out the individual's duties or functions.

**(7)** An employee who is a coordinator is entitled to any time off from work that is necessary to enable the employee to fulfill the coordinator's duties and functions as a coordinator, including time off to take training, which time off is considered to be work time for which the employee shall be paid the same wages and granted the same benefits that the employee would have received had the employee worked for that time. 2013, c. 16, s. 23.

**Special committee**

**298 (1)** The Chief Safety Officer may, after consultation with an operator, order the operator to establish a special committee for any of its workplaces for particular purposes related to occupational health and safety.

**(2)** The Chief Safety Officer may, after consultation with an employer having control over a workplace, the operator, and the employer's employees at the workplace or the union representing them, order the employer to establish a special committee for that workplace for particular purposes related to occupational health and safety.

**(3)** The order must set out the mandate, duties and functions of the special committee and the responsibilities of the operator or employer, as the case may be.

**(4)** The operator or employer, as the case may be, shall establish the special committee within 15 days after the day on which it receives the order.

**(5)** Clauses 295(5)(b) and (d), subsection 295(6) and Section 296 apply, with any modifications that the circumstances require, in respect of a special committee. 2013, c. 16, s. 23.

**Response to committee recommendations**

**299 (1)** Subject to subsections (4), (6) and (7), an operator or employer who receives recommendations from a committee established for any of the operator's workplaces or for a workplace under the employer's control, as the case may be, together with a written request to respond to the recommendations, shall provide a written response within 21 days after the day on which it receives the request.

**(2)** The response must indicate the recommendations being accepted as well as the action, if any, that will be taken and the date by which it will

be taken, and the recommendations being rejected, together with the reasons for the rejection.

**(3)** Where it is not possible to provide a response within 21 days, the operator or employer, as the case may be, shall within that period provide the committee with a written explanation for the delay and propose a date on which the response will be provided.

**(4)** Unless the committee notifies the operator or employer, as the case may be, that it is not satisfied that the explanation provided or the proposed date is reasonable, the operator or employer shall provide the response by that date.

**(5)** Where the committee is not satisfied that the explanation provided or the proposed date indicated is reasonable, the committee shall promptly report the matter to an occupational health and safety officer.

**(6)** Where the occupational health and safety officer is satisfied that the explanation provided and the proposed date are reasonable, the officer shall notify the committee, and the operator or employer, as the case may be, that the operator or employer is to provide the response by the date indicated, and the operator or employer, as the case may be, shall provide the response by that date.

**(7)** Where the occupational health and safety officer is not satisfied that the explanation provided or the proposed date is reasonable, the officer shall determine the date on which the response is to be provided and notify the committee, and the operator or employer, as the case may be, of that date, and the operator or employer, as the case may be, shall provide the response by that date.

**(8)** Where the committee has not been provided with a response to its recommendations within the period required or where it considers that the response is not satisfactory, it shall inform an occupational health and safety officer of the matter. 2013, c. 16, s. 23.

WORKPLACE MONITORING

**Procedure**

**300 (1)** A workplace committee may choose an employee at the workplace to observe

(a) the set-up of, or any change to, systems for monitoring conditions at the workplace that affect the health or safety of employees, including systems for taking samples and measurements; and

(b) the subsequent monitoring of the conditions referred to in clause (a), including the taking of samples and measurements.

**(2)** Every employer who conducts an activity described in clause (1)(a) or (b) at the workplace, and the operator, where the operator conducts such an activity, shall permit the observer to observe the activity.

**(3)** Subsection (2) does not apply in an emergency situation, or in respect of monitoring referred to in clause (1)(b) that is carried out continuously or on a regular and frequent basis.

**(4)** When an operator or an employer monitors health and safety conditions at a workplace, the following requirements apply:

(a) where an employer is carrying out the monitoring, the employer shall give reasonable notice to the operator to enable the operator to comply with clause (b);

(b) where an operator is carrying out the monitoring or is notified under clause (a), the operator shall give reasonable notice of the commencement of monitoring to all employers at the workplace;

(c) the operator or the employer carrying out the monitoring shall give reasonable notice of the commencement of monitoring to the observer, and shall provide the observer with access to the workplace for the purpose of observing the monitoring; and

(d) the operator or employer carrying out the monitoring shall, at the request of the observer, explain the monitoring process to the observer.

**(5)** Monitoring may be carried out on the order of a health and safety officer under Section 327 even if the notices referred to in clauses (4)(a) to (c) have not been given.

**(6)** An employee acting as an observer shall be paid the same wages and granted the same benefits that the employee would have received had the employee been working. 2013, c. 16, s. 23.

REPORTING OF OCCUPATIONAL HEALTH AND SAFETY CONCERNS

**Procedure**

**301 (1)** An employee who has reasonable cause to believe that a provision of this Part or of the regulations made under this Part has been contravened or that there is likely to be an accident or injury arising out of, linked to or occurring in the course of employment shall report the employee's concern to the employee's supervisor.

**(2)** The employee and the supervisor shall try to resolve the employee's concern between themselves as soon as possible.

**(3)** Where the employee's concern is not resolved, the employee may notify the employee's employer, and when so notified the employer shall in turn notify the workplace committee or the coordinator, as the case may be, and the operator.

**(4)** Where the employee's concern is not resolved after the employee notifies the employee's employer, the employee may notify a health and safety officer. 2013, c. 16, s. 23.

RIGHT TO REFUSE

**Procedure**

**302** **(1)** Subject to subsection (2), an employee may refuse to perform an activity at a workplace if the employee has reasonable cause to believe that the performance of the activity constitutes a danger to the employee or another individual.

**(2)** An employee is not permitted to refuse to perform an activity if the refusal puts the life, health or safety of another individual directly in danger.

**(3)** An employee who refuses to perform an activity shall immediately report the circumstances of the matter to the employee's supervisor.

**(4)** The supervisor shall immediately take action to try to resolve the matter.

**(5)** Where the supervisor believes that a danger exists, the supervisor shall immediately take any action that is necessary to protect any individual from the danger and to inform the workplace committee or the coordinator, as the case may be, the operator and the employee's employer of the matter.

**(6)** Where the supervisor does not believe that a danger exists, the supervisor shall so notify the employee.

**(7)** Where the employee continues to refuse to perform the activity, the employee shall immediately notify the employee's employer and the workplace committee or the coordinator, as the case may be, and the employer shall in turn notify the operator and any provider of services that is providing services related to the placement of that employee.

**(8)** Immediately after being notified under subsection (7), the operator shall notify an occupational health and safety officer of the continued refusal of the employee to perform the activity and of any remedial action taken.

**(9)** The workplace committee or the coordinator, as the case may be, may make any recommendations that the committee or coordinator considers appropriate to the employee, the employee's employer, the operator and any provider of services that is providing services related to the placement of that employee.

**(10)** The occupational health and safety officer shall, where the employee continues to refuse to perform the activity, enquire into the matter, taking into account the recommendations, if any, made by the workplace committee or the coordinator.

**(11)** The occupational health and safety officer shall give to the employee, the employee's employer, the operator and any provider of services that is providing services related to the placement of that employee, and to the workplace committee or the coordinator, as the case may be, a written notification of the officer's decision on the matter.

**(12)** Where the occupational health and safety officer decides that the performance of the activity constitutes a danger to the employee or another individual, the officer shall make any order under subsection 346(1) or (2) that the officer considers appropriate, and the employee may continue to refuse to perform the activity until the order is complied with or until it is varied or revoked under this Part.

**(13)** Where the occupational health and safety officer decides that the performance of the activity does not constitute a danger to the employee or another individual, or that the refusal puts the life, health or safety of another individual directly in danger, the employee is not entitled under this Section to continue to refuse to perform the activity. 2013, c. 16, s. 23.

**Refusal to perform activity**

**303 (1)** An employee who refuses under Section 302 to perform an activity may accompany an occupational health and safety officer when the officer is enquiring into the matter under subsection 302(10), for the purpose of explaining the reasons for the employee's refusal.

**(2)** An employee who, under subsection (1), accompanies an occupational health and safety officer shall, during that time, be paid the same wages and granted the same benefits that the employee would have received if the employee had not exercised the employee's right to refuse. 2013, c. 16, s. 23.

**Reasonably equivalent work**

**304 (1)** Subject to any applicable collective agreement or other agreement, where an employee refuses under Section 302 to perform an activity, the employer may assign reasonably equivalent work to the employee until the employee, by virtue of subsection 302(12) or (13), is no longer permitted to refuse to perform the activity.

**(2)** Where the employee is assigned reasonably equivalent work, the employer, or the provider of services that is providing services related to the placement of the employee, as the case may be, shall pay the employee the same wages and grant the employee the same benefits that the employee would have received had the employee not refused to perform the activity.

**(3)** Where the employee is not assigned reasonably equivalent work, the employer, or the provider of services that is providing services related to the placement of the employee, as the case may be, shall, until the employee, by virtue of subsection 302(12) or (13), is no longer permitted to refuse to perform the activity, pay the employee the same wages and grant the employee the same benefits that the employee would have received had the employee not refused to perform the activity.

**(4)** Subject to any applicable collective agreement or other agreement, where the employee refuses an assignment of reasonably equivalent work, the employee is not entitled to receive any wages or benefits.

**(5)** For as long as the employee continues to exercise the employee's right to refuse to perform an activity, another employee shall not be assigned to perform the activity unless the employer has advised that other

employee of the refusal, the reasons for the refusal and the right of that other employee to refuse to perform the activity.

**(6)** Subject to any applicable collective agreement or other agreement, the employer, or the provider of services that is providing services related to the placement of the employee, as the case may be, may require repayment of any wages and benefits received by an employee under subsection (3) if an occupational health and safety officer determines in respect of an application made under Section 316, after all avenues of redress have been exhausted by the employee, that the employee received the wages and benefits knowing that no circumstances existed that would warrant the refusal. 2013, c. 16, s. 23.

**Work stoppage**

**305 (1)** Subject to any applicable collective agreement or other agreement, an employee at a workplace who is affected by a work stoppage arising from a refusal by another employee to perform an activity shall be paid the same wages and granted the same benefits that the employee would have received had no work stoppage occurred, until work resumes or until the employee returns to the employee's usual point of disembarkation on shore, whichever event occurs first.

**(2)** Subject to any applicable collective agreement or other agreement, an employer may assign reasonably equivalent work to an employee who is affected by a work stoppage at the same wages and benefits that the employee would have received if no work stoppage had occurred. 2013, c. 16, s. 23.

**Refusal of transport**

**306 (1)** An employee may refuse to be transported on a passenger craft if the employee has reasonable cause to believe that being transported on it constitutes a danger to the employee.

**(2)** An employee who refuses to be transported on a passenger craft shall use the contact information provided under clause 266(1)(b) to immediately report the circumstances of the matter.

**(3)** On being notified of a refusal under subsection (2), the operator shall immediately notify the Chief Safety Officer unless the Officer has provided other contact information for the purpose of this subsection, in which case the operator shall use that contact information to make the notification.

**(4)** For as long as the employee continues to exercise the employee's right to refuse to be transported on the passenger craft, or for any longer period specified by the Chief Safety Officer, the operator shall notify all other employees and other passengers to be transported on the passenger craft, before they are transported, of the refusal, the reasons for the refusal and the right of employees to refuse to be transported.

**(5)** The operator shall immediately take action to try to resolve the matter.

**(6)** Where the operator believes that the transportation constitutes a danger to the employee, it shall immediately take any remedial action that is necessary and inform the workplace committee established for the workplace to or

from which the employee was to be transported, and an occupational health and safety officer, of the matter.

**(7)** Where the operator does not believe that the transportation constitutes a danger to the employee, it shall so notify the employee.

**(8)** Where the employee continues to refuse to be transported, the operator shall immediately notify the workplace committee, the employee's employer and an occupational health and safety officer of the continued refusal of the employee to be transported and of any remedial action taken, and the employer shall in turn notify any provider of services that is providing services related to the placement of that employee.

**(9)** The workplace committee may make any recommendations to the employee and the operator that it considers appropriate.

**(10)** The occupational health and safety officer shall, where the employee continues to refuse to be transported, enquire into the matter, taking into account any recommendations made by the workplace committee.

**(11)** The occupational health and safety officer shall decide whether the transportation constitutes a danger to the employee, and shall give to the employee, the employee's employer, the operator and the workplace committee a written notification of the decision, and the employer shall in turn notify any provider of services that is providing services related to the placement of that employee.

**(12)** Where the occupational health and safety officer decides that the transportation constitutes a danger to the employee, the officer shall make any order under subsection 346(1) or (2) that the officer considers appropriate, and an employee may continue to refuse to be transported until the order is complied with or until it is varied or revoked under this Part.

**(13)** Where the occupational health and safety officer decides that the transportation does not constitute a danger to the employee, the employee is not entitled to continue to refuse to be transported. 2013, c. 16, s. 23.

**Reasonably equivalent work**

**307 (1)** Subject to any applicable collective agreement or other agreement, where an employee refuses under Section 306 to be transported, the employer may assign reasonably equivalent work to the employee until the employee, by virtue of subsection 306(12) or (13), is no longer permitted to refuse to be transported.

**(2)** Where an employee is assigned reasonably equivalent work, the employer, or the provider of services that is providing services related to the placement of the employee, as the case may be, shall pay the employee the same wages and grant the employee the same benefits that the employment would have received had the employee not refused to be transported.

**(3)** Where an employee has not been assigned reasonably equivalent work, the employer or the provider of services that is providing services related to the placement of the employee, as the case may be, shall, until the employee, by virtue of subsection 306(12) or (13), is no longer permitted to refuse to be trans-

ported, pay the employee the same wages and grant the employee the same benefits that the employee would have received had the employee not refused to be transported.

**(4)** Subject to any applicable collective agreement or other agreement, where an employee refuses an assignment of reasonably equivalent work, the employee is not entitled to receive any wages or benefits.

**(5)** Subject to any applicable collective agreement or other agreement, the employer, or the provider of services that is providing services related to the placement of the employee, as the case may be, may require repayment of any wages and benefits received by an employee under subsection (3) if an occupational health and safety officer determines in respect of an application made under Section 316, after all avenues of redress have been exhausted by the employee, that the employee received the wages and benefits knowing that no circumstances existed that would warrant the refusal. 2013, c. 16, s. 23.

PREGNANT OR NURSING EMPLOYEES

**Risk to health**

**308 (1)** Without prejudice to the rights conferred by Section 302 and subject to this Section, an employee who is pregnant or nursing may cease to perform the employee's job if the employee believes that, by reason of the pregnancy or nursing, continuing any of the functions connected with the employee's regular work may pose a risk to the employee's health or to that of the employee's fetus or child.

**(2)** On being informed of the cessation, the employer, with the written consent of the employee, shall notify the workplace committee established for the employee's workplace or the coordinator, as the case may be.

**(3)** The employee shall provide to the employee's employer, and any provider of services that is providing services related to the employee's placement, as soon as possible, a certificate of a medical practitioner of the employee's choice who is entitled to practise medicine under the laws of a province

(a) certifying that continuing any of the functions connected with the employee's regular work poses a risk to the employee's health or to that of the employee's fetus or child and indicating the expected duration of the risk and the activities or conditions to avoid in order to eliminate the risk; or

(b) certifying that continuing the functions connected with the employee's regular work does not pose a risk to the employee's health or to that of the employee's fetus or child.

**(4)** Without prejudice to any other right conferred by this Part, by a collective agreement, by another agreement or by any terms and conditions of employment, once the medical practitioner has established that there is a risk as described in subsection (1), the employee is no longer permitted to cease to perform the employee's job under that subsection.

**(5)** For the period during which the employee does not perform the employee's job under subsection (1), the employer may, in consultation with the

employee, reassign the employee to another job that would not pose a risk to the employee's health or to that of the employee's fetus or child.

**(6)** Whether or not the employee has been reassigned to another job, the employee is deemed to continue to hold the job that the employee held at the time the employee ceased to perform the employee's job and is to continue to receive the wages and benefits that are attached to that job for the period during which the employee does not perform the job. 2013, c. 16, s. 23.

**Modified work or reassignment request**

**309 (1)** An employee who is pregnant or nursing may, during the period from the beginning of the pregnancy to the end of the 24th week following the birth, request that the employer modify the functions connected with the employee's regular work or reassign the employee to another job if, by reason of the pregnancy or nursing, continuing any of those functions may pose a risk to the employee's health or to that of the employee's fetus or child.

**(2)** The employee's request must be accompanied by a certificate described in clause 308(3)(a). 2013, c. 16, s. 23.

**Employer to examine request**

**310 (1)** An employer to whom a request has been made under subsection 309(1) shall examine the request in consultation with the employee and, where feasible, shall modify the functions connected with the employee's regular work or shall reassign the employee, and shall notify any provider of services that is providing services related to the placement of that employee that the request has been made.

**(2)** An employee who has made a request under subsection 309(1) is entitled to continue in the employee's current job while the employer examines the employee's request, but, where the risk posed by continuing any of the functions connected with the employee's regular work so requires, the employee is entitled to and shall be granted a leave of absence with the same wages and benefits, payable by the employer, or any provider of services that is providing services related to the placement of that employee, as the case may be, that the employee would have received had the employee not been on leave of absence until the employer

(a) modifies the functions connected with the employee's regular work or reassigns the employee; or

(b) informs the employee in writing that it is not feasible to modify the functions connected with the employee's regular work or to reassign the employee.

**(3)** The onus is on the employer to show that a modification of the functions connected with the employee's regular work or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not feasible.

**(4)** Where the employer concludes that a modification of the functions connected with the employee's regular work or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not feasible, the employer shall inform the employee in writing.

**(5)** Where the functions connected with the employee's regular work are modified or the employee is reassigned, the employee is deemed to continue to hold the job that the employee held at the time of making the request under subsection 309(1), and shall continue to receive the wages and benefits that are attached to that job.

**(6)** An employee referred to in subsection (4) is entitled to and shall be granted a leave of absence for the duration of the risk as indicated in the medical certificate. 2013, c. 16, s. 23.

REPRISALS AND COMPLAINTS

**Reprisal action**

**311 (1)** In this Section and in Sections 312 and 315, "reprisal action" means an action that

(a) adversely affects an employee with respect to the employee's terms or conditions of employment or any opportunity for employment or promotion, including dismissal, lay-off, suspension, demotion, transfer of job or location, discontinuation or elimination of the job, change in hours of work, reduction in wages or benefits, coercion, intimidation or the imposition of any disciplinary sanction, reprimand or other penalty; and

(b) is taken, in whole or in part, because the employee has acted in accordance with the provisions of this Part or of the regulations made under this Part or with a decision or order made under any of those provisions or has taken steps to ensure that those provisions are complied with.

**(2)** No operator, employer, provider of services or union shall take, or threaten to take, reprisal action against an employee.

**(3)** Without limiting the generality of subsection (2), actions referred to in clause (1)(a) cannot be taken against an employee for

(a) seeking to establish a committee, participating in the establishment or work of a committee or acting as a member of a committee or as a coordinator;

(b) acting as an observer under Section 300;

(c) making a report under Section 301;

(d) refusing to perform an activity under Section 302, refusing to be transported under Section 306 or ceasing to perform a job under Section 308;

(e) requesting the employer under Section 309 to modify the functions connected with the employee's regular work or to reassign the employee;

(f) seeking access to information to which the employee is entitled under this Part;

(g) testifying in any proceeding or inquiry under this Part; or

(h) giving information in accordance with the provisions of this Part or of the regulations made under this Part or with a decision or order made under any of those provisions to a committee, a coordinator, a health and safety officer or any other person having duties or functions under this Part, or under Part IV as it relates to safety.

**(4)** Notwithstanding clause (3)(d), any action referred to in clause (1)(a) may be taken against an employee who has exercised rights under Section 302 or 306 after all avenues of redress have been exhausted by the employee, if the operator, employer, provider of services or union taking the action can demonstrate that the employee has wilfully abused those rights.

**(5)** The operator, employer, provider of services or union shall provide the employee with written reasons for any action taken under subsection (4) within 15 days after the day on which a request is received from the employee to do so. 2013, c. 16., s. 23.

**Complaint**

**312 (1)** An employee may, either personally or through a representative, make a complaint in writing to an occupational health and safety officer that

(a) an employer or provider of services has failed to pay wages or grant benefits to the employee that are required under subsection 271(2), 296(5), 297(7), 300(6), 303(2), 304(2) or (3), 305(1) or (2), 307(2) or (3), 308(6) or 310(2) or (5); or

(b) an operator, employer, provider of services or union has taken or threatened to take reprisal action against the employee contrary to subsection 311(2).

**(2)** The complaint must be made within 90 days after the day on which the grounds for the complaint became known or ought to have become known to the employee.

**(3)** On an enquiry into a complaint under clause (1)(b), the burden of proving that no reprisal action has been taken or threatened is on the operator, employer, provider of services or union against whom the complaint is made.

**(4)** An employee who is aggrieved by a subject-matter described in clause (1)(a) or (b) should, where the employee is bound by a collective agreement that provides for final and binding arbitration of grievances in respect of the subject-matter, present a grievance under the agreement.

**(5)** An employee who exercises the employee's right within the time permitted under the collective agreement is not permitted to make a complaint under subsection (1) in respect of the same subject-matter unless it is determined that the arbitrator does not have jurisdiction to hear the grievance, in which case, the employee may, within 90 days after the day on which a final determination is made that the arbitrator does not have jurisdiction, make an application under that subsection. 2013, c. 16, s. 23.

**OHS officer to enquire into complaint**

**313 (1)** Where a complaint is made to an occupational health and safety officer, the officer shall enquire into it and decide if it is justified.

**(2)** An occupational health and safety officer may carry out an enquiry on the officer's own initiative if the officer is of the opinion, based on information that the officer considers to be reliable, that grounds for a complaint under Section 312 exist. 2013, c. 16, s. 23.

**Complaint not justified**

**314** Where, after carrying out the enquiry, the occupational health and safety officer decides that a complaint is not justified or that no grounds for a complaint exist, the officer shall immediately give notice of the decision to the operator and the complainant, as well as to the employer, provider of services or union that is the subject of the complaint. 2013, c. 16, s. 23.

**Powers of OHS officer**

**315 (1)** Where the occupational health and safety officer decides that an employer or a provider of services that is providing services related to the placement of an employee has failed to pay wages or grant benefits to the employee that are required under this Part, the officer may order the employer or provider of services, as the case may be, subject to any terms and conditions that the officer considers appropriate,

(a) to pay those wages or grant those benefits; and

(b) to take any other measure necessary to remedy the matter.

**(2)** Where the occupational health and safety officer decides that an operator, employer, provider of services or union has taken reprisal action contrary to subsection 311(2), the officer may, subject to any terms and conditions that the officer considers appropriate, order

(a) the reinstatement of an employee on the same terms and conditions under which the employee was employed immediately before the reprisal action;

(b) the payment or the granting to an employee, by the employer or provider of services of any wages or benefits that the employee would have been entitled to but for the reprisal action;

(c) the removal of any reprimand or other references to the matter from the records of any operator, employer or provider of services;

(d) the reinstatement of an employee to a union if the employee has been expelled by the union; and

(e) the taking by the operator, employer, provider of services or union of any other measure necessary to remedy the matter.

**(3)** Where the occupational health and safety officer decides that an operator, employer, provider of services or union has threatened to take reprisal action contrary to subsection 311(2), the officer shall order it not to take that action.

**(4)** An order made under this Section must specify the provisions of this Part or of the regulations made under this Part that have not been complied with or the nature of any reprisal action taken or threatened to be taken contrary to subsection 311(2), as the case may be. 2013, c. 16, s. 23.

**Application for determination by employer or provider of services**

**316 (1)** An employer or a provider of services may apply in writing to an occupational health and safety officer for a determination as to whether

(a) an employee has received wages and benefits under subsection 304(3) knowing that no circumstances existed that would warrant the employee's refusal, under Section 302, to perform an activity; or

(b) an employee has received wages and benefits under subsection 307(3) knowing that no circumstances existed that would warrant the employee's refusal, under Section 306 to be transported.

**(2)** The application must be made within 30 days after all avenues of redress have been exhausted by the employee.

**(3)** The burden of proving that no circumstances existed that would warrant the refusal by the employee is on the employer or the provider of services. 2013, c. 16, s. 23.

**Application dismissed**

**317** Where an occupational health and safety officer dismisses an application made under subsection 316(1), the officer shall immediately give notice of the decision to the applicant, the Chief Safety Officer and the operator, as well as to the employee who is the subject of the application. 2013, c. 16, s. 23.

**Application allowed**

**318** Where an occupational health and safety officer determines that an employee has received wages and benefits under subsection 304(3) or subsection 307(3) knowing that no circumstances existed that would warrant the refusal by the employee under Section 302 to perform an activity, or the refusal by the employee under Section 306 to be transported, as the case may be, the officer shall immediately give notice of the decision to the applicant, the Chief Safety Officer and the operator, as well as to the employee who is the subject of the application. 2013, c. 16, s. 23.

ACTIVITIES OF BOARD

**Powers**

**319 (1)** The Board may, for the purpose of this Part,

(a) undertake research into the causes of and the means of preventing or reducing occupational injury and illness;

(b) cause studies to be made into occupational health and safety;

(c) publish the results of the research or studies;

(d) compile, prepare and disseminate information related to occupational health and safety obtained from the research and studies;

(e) implement programs to prevent or reduce occupational injury and illness; and

(f) implement, in accordance with the regulations, if any, programs for medical monitoring and examination related to occupational health and safety, request any employer to do so or appoint any medical practitioner qualified in occupational medicine to do so.

**(2)** For the purpose of clause (1)(f), medical monitoring or examination of an employee may be conducted only with the employee's written consent.

**(3)** The Board may carry out the activities described in clauses (1)(a), (e) and (f) in conjunction with any department or agency of the Government of the Province, the Government of Canada, the government of any province or a foreign government, or with any other organization that carries out similar activities. 2013, c. 16, s. 23.

**Publication**

**320 (1)** The Board may issue and publish, in any manner that it considers appropriate, guidelines and interpretation notes with respect to the application and administration of this Part.

**(2)** The guidelines and interpretation notes are not regulations for the purpose of the *Regulations Act*. 2013, c. 16, s. 23.

AUTHORIZATION

**Approval process**

**321 (1)** On receipt under subsection 139(4) of an application for an authorization, or to amend an authorization, the Chief Safety Officer shall

(a) consider the potential impact of the work or activity to be authorized on the health and safety of employees engaged in the work or activity; and

(b) make a written recommendation to the Board on the matters considered.

**(2)** In deciding whether to issue or amend an authorization, the Board shall take into account the recommendation of the Chief Safety Officer.

**(3)** In addition to any requirement or approval determined by the Board under Part IV to which an authorization is subject, the authorization is also subject to any requirements and approvals, not inconsistent with the provisions of this Act or the regulations, that the Board determines relate to occupational health and safety. 2013, c. 16, s. 23.

SUBSTITUTIONS

**At workplace**

**322 (1)** The Chief Safety Officer may, on application, permit the use at a workplace, for a specified time and subject to specified conditions, of specified equipment, methods, measures, standards or other things, in lieu of any required by regulations made under this Part, if the Officer is satisfied that protection of the health and safety of employees at the workplace would not be diminished and the granting of the permission is not otherwise prohibited by regulation.

**(2)** The regulations are not considered to be contravened if there is compliance with a permission under subsection (1).

**(3)** The application must

(a) be in a form acceptable to the Chief Safety Officer;

(b) include information with respect to the consequences to health and safety that might reasonably be anticipated if the permission is granted; and

(c) be accompanied by technical information sufficient to enable the Chief Safety Officer to make a decision on the application.

**(4)** On receipt of the application, the Chief Safety Officer shall make it available to the public in a manner that the Officer considers advisable, together with a notice that submissions may be made to the Officer for a period of 30 days, or any shorter period fixed by the Officer with the agreement of the applicable workplace committee, after the day on which the application has been made available.

**(5)** Where the application is made in respect of an existing workplace, the applicant shall give a copy of the application to the operator.

**(6)** An operator shall, immediately after it receives or makes an application relating to an existing workplace

(a) post a copy of it in printed form in a prominent place at the workplace; and

(b) provide a copy to any committee established for that workplace and to any union representing employees within the offshore area.

**(7)** The Chief Safety Officer shall, as soon as possible after the end of the period referred to in subsection (4), inform, in a manner that the Officer considers advisable, the applicant, the operator and the public of the decision made on the application.

**(8)** The Chief Safety Officer may, on the Officer's own initiative or on application by the applicant for the permission under subsection (1), reconsider, confirm, vary, revoke or suspend a decision made on the application at any time if information is made available that, had it been known when the decision was made, would reasonably be expected to have resulted in a different decision from the one made at that time, in which case, subsections (1) to (7) apply with the necessary modifications. 2013, c. 16, s. 23.

**For transport**

**323** **(1)** The Chief Safety Officer may, on application by an operator, permit the use on a passenger craft, or the use in respect of employees or other passengers being transported on a passenger craft, for a specified time and subject to specified conditions, of specified equipment, methods, measures, standards or other things, in lieu of any required by regulations made under this Part, if the granting of the permission is not otherwise prohibited by regulation made under this Part and if the Officer is satisfied that protection of the health and safety of the employees or other passengers being transported would not be diminished.

**(2)** The regulations are not considered to be contravened if there is compliance with a permission under subsection (1).

**(3)** The application must

(a) be in a form acceptable to the Chief Safety Officer;

(b) include information with respect to the consequences to health and safety that might reasonably be anticipated if the permission is granted;

(c) be accompanied by technical information sufficient to enable the Chief Safety Officer to make a decision on the application; and

(d) be accompanied by documentation issued by the Minister of Transport for Canada indicating that if the permission is granted, it would not contravene any Act or law that applies to the operation of a passenger craft.

**(4)** On receipt of the application, the Chief Safety Officer shall make it available to the public in a manner that the Officer considers advisable, together with a notice that submissions may be made to the Officer for a period of 30 days, or any shorter period fixed by the Officer with the agreement of each workplace committee established by the operator, after the day on which the application has been made available.

**(5)** An operator shall, immediately after it makes an application, post a copy of it in printed form in a prominent place at each of its workplaces, and provide a copy to any committee established for that workplace.

**(6)** The Chief Safety Officer shall, as soon as possible after the end of the period referred to in subsection (4), inform, in a manner that the Officer considers advisable, the operator and the public of the decision made on the application.

**(7)** The Chief Safety Officer may, on the Officer's own initiative or on application by the operator who requested the permission under subsection (1), reconsider, confirm, vary, revoke or suspend a decision made on the application at any time when information is made available that, had it been known when the decision was made, would reasonably be expected to have resulted in a different decision from the one made at that time, in which case, subsections (1) to (6) apply with the necessary modifications. 2013, c. 16, s. 23.

ADMINISTRATION AND ENFORCEMENT

**Occupational health and safety officer**

**324 (1)** The Board may recommend to the Minister an individual to be appointed as an occupational health and safety officer for the purpose of the administration and enforcement of this Part.

**(2)** Subject to subsection (3), the Minister shall, within 30 days after the day on which the Minister receives the Board's recommendation under subsection (1), designate the individual recommended by the Board as an occupational health and safety officer for the purpose of the administration and enforcement of this Part.

**(3)** The Minister shall not designate an individual if the Minister is not satisfied that the individual is qualified to exercise the powers and carry out the duties and functions of an occupational health and safety officer under this Part.

**(4)** The Minister shall, without delay after making the designation, notify the federal Minister in writing that the designation has been made and provide a copy to the Board.

**(5)** No individual may be designated under subsection (2) unless the individual has been recommended to the Minister by the Board.

**(6)** The designation of an individual under subsection (2) does not take effect until the individual is also designated as an occupational health and safety officer by the federal Minister under the federal Implementation Act.

**(7)** An individual designated under subsection (2) who is not an employee of the Board is deemed to be an officer for the purpose of Section 17.

**(8)** An individual designated under subsection (2) shall be provided with a certificate of designation and, on entering any place under the authority of this Part shall, where so requested, produce the certificate to the person in charge of the place. 2013, c. 16, s. 23.

**Special officer**

**325 (1)** Subject to subsection (2), the Minister may designate an individual as a special officer in relation to a matter connected to the risk described in clause (a) for the purpose of the administration and enforcement of this Part in relation to that matter if the Minister is satisfied that

(a) there are reasonable grounds to believe that action by a special officer is required to avoid a serious risk to the health and safety of employees in the offshore area within the near future; and

(b) the risk cannot be avoided through the exercise of powers conferred under subsection 44(4) or Section 372 or 373.

**(2)** The Minister may designate the individual only if the Minister is satisfied that the individual is qualified to exercise the powers and carry out the duties and functions of a special officer under this Part.

**(3)** The Minister shall, without delay after making a designation, notify the federal Minister in writing that the designation has been made and provide a copy to the Board.

**(4)** The designation of an individual under subsection (1) does not take effect until the individual is also designated as a special officer by the federal Minister under the federal Implementation Act.

**(5)** The individual shall be provided with a certificate of designation and, on entering any place under the authority of this Part shall, where so requested, produce the certificate to the person in charge of the place.

**(6)** No action lies against the Board for anything done or omitted to be done by an individual designated under subsection (1) while carrying out the individual's duties or functions, or by any person in the course of assisting such an individual. 2013, c. 16, s. 23.

**Powers of OHS officer**

**326 (1)** A health and safety officer may, for the purpose of verifying compliance with this Part, order an operator, employer, employee, supervisor, interest holder, owner, provider of services or supplier

(a) to do, in a place that is used for any work or activity for which an authorization has been issued, including a passenger craft or an aircraft or vessel that has been used or is intended to be used as a passenger craft, any of the following:

(i) inspect anything,

(ii) pose questions or conduct tests or monitoring, and

(iii) take photographs or measurements or make recordings or drawings;

(b) to accompany or assist the officer while the officer is in a place described in clause (a);

(c) to produce a document or another thing that is in the person's possession or control, or to prepare and produce a document based on data or documents that are in the person's possession or control, in the form and manner that the officer may specify;

(d) to provide, to the best of the person's knowledge, information relating to any matter to which this Part applies, or to prepare and produce a document based on that information, in the form and manner that the officer may specify;

(e) to ensure that all or part of a place described in clause (a), or anything located in the place, that is under the person's control, not be disturbed for a reasonable period pending the exercise of any powers under this Section; and

(f) to remove anything from a place described in clause (a) and to provide it to the officer, in the manner specified by the officer, for examination, testing or copying.

**(2)** A health and safety officer may, for the purpose of verifying compliance with this Part, order any person in charge of a place, other than a person in charge of a place referred to in clause (1)(a), in which the officer has reasonable grounds to believe that there is anything to which this Part applies

(a) to inspect anything in the place;

(b) to pose questions, or conduct tests or monitoring, in the place;

(c) to take photographs or measurements, or make recordings or drawings, in the place;

(d) to accompany or assist the officer while the officer is in the place;

(e) to produce a document or another thing that is in the person's possession or control, or to prepare and produce a document based on data or documents that are in the person's possession or control, in the form and manner that the officer may specify;

(f) to provide, to the best of the person's knowledge, information relating to any matter to which this Part applies, or to prepare and produce a document based on that information, in the form and manner that the officer may specify;

(g) to ensure that all or part of the place, or anything located in the place, that is under the person's control, not be disturbed for a reasonable period pending the exercise of any powers under this Section; and

(h) to remove anything from the place and to provide it to the officer, in the manner specified by the officer, for examination, testing or copying.

**(3)** A health and safety officer may, for the purpose of verifying compliance with this Part and subject to Section 328, enter a place that is used for any work or activity for which an authorization has been issued, including a passenger craft or an aircraft or vessel that has been used or is intended to be used as a passenger craft, or any other place in which the officer has reasonable grounds to believe that there is anything to which this Part applies, and may for that purpose

(a) inspect anything in the place;

(b) pose questions, or conduct tests or monitoring, in the place;

(c) take samples from the place, or cause them to be taken, for examination or testing, and dispose of those samples;

(d) remove anything from the place, or cause it to be removed, for examination, testing or copying;

(e) while at the place, take or cause to be taken photographs or measurements, make or cause to be made recordings or drawings or use systems in the place that capture images or cause them to be used;

(f) use any computer system in the place, or cause it to be used, to examine data contained in or available to it;

(g) prepare a document, or cause one to be prepared, based on data contained in or available to the computer system;

(h) use any copying equipment in the place, or cause it to be used, to make copies;

(i) be accompanied while in the place by any individual, or be assisted while in the place by any person, that the officer considers necessary; and

(j) meet in private with any individual in the place, with the agreement of that individual.

**(4)** For greater certainty, a health and safety officer who has entered a place under subsection (3) may order any individual in the place to do anything described in clauses (1)(a) to (f) or clauses (2)(a) to (h), as the case may be.

**(5)** Anything removed under clause (1)(f), (2)(h) or (3)(d) for examination, testing or copying must, where requested by the person from whom it was removed, be returned to that person after the examination, testing or copying is completed, unless it is required for the purpose of a prosecution under this Part. 2013, c. 16, s. 23.

**Duties of OHS officer**

**327 (1)** A health and safety officer shall provide to an operator written reports respecting anything inspected, tested or monitored at any of its workplaces by, or on the order of, the officer for the purpose of verifying compliance with this Part.

**(2)** A health and safety officer shall provide to each employer at a workplace written reports respecting anything inspected, tested or monitored at the workplace by, or on the order of, the officer for the purpose of verifying compliance with this Part that relate to the health and safety of the employer's employees.

**(3)** Where a report contains a trade secret, the health and safety officer may edit the report to protect the trade secret.

**(4)** Where a report contains information relating to the medical history of an identifiable individual or other prescribed information relating to an identifiable individual, the health and safety officer shall edit the report to protect that information before providing it to an operator or employer, unless the individual to whom the information relates consents in writing to the disclosure of the information to the operator or employer. 2013, c. 16, s. 23.

**Living quarters**

**328 (1)** In this Section, "living quarters" means sleeping quarters provided for the accommodation of employees on a marine installation or structure or a passenger craft, and any room for the exclusive use of the occupants of those quarters that contains a toilet or a urinal.

**(2)** Where the place referred to in subsection 326(3) is living quarters, a health and safety officer is not authorized to enter those quarters without the consent of the occupant except

(a) to execute a warrant issued under subsection (5);

(b) to verify that any lifesaving equipment that is prescribed is readily available and in good condition; or

(c) to verify that those quarters, where on a marine installation or structure, are in a structurally sound condition sufficient to ensure the health and safety of employees.

**(3)** The officer shall provide reasonable notice to the occupant before entering living quarters under clause (2)(b) or (c).

**(4)** Notwithstanding clauses (2)(b) and (c), any locker in the living quarters that is fitted with a locking device and that is assigned to the occupant shall not be opened by the officer without the occupant's consent except under the authority of a warrant issued under subsection (5).

**(5)** On *ex parte* application, a justice of the peace may issue a warrant authorizing a health and safety officer who is named in it to enter living quarters subject to any conditions specified in the warrant if the justice is satisfied by information on oath that

(a) the living quarters are a place referred to in subsection 326(3);

(b) entry to the living quarters is necessary to verify compliance with this Part; and

(c) entry was refused by the occupant or there are reasonable grounds to believe that entry will be refused or that consent to entry cannot be obtained from the occupant.

**(6)** The warrant may also authorize a locker described in subsection (3) to be opened, subject to any conditions specified in the warrant, if the justice of the peace is satisfied by information on oath that

(a) it is necessary to open the locker to verify compliance with this Part; and

(b) the occupant to whom the locker is assigned refused to allow it to be opened or there are reasonable grounds to believe that the occupant to whom it is assigned will refuse to allow it to be opened or that consent to opening it cannot be obtained from that occupant.

**(7)** The health and safety officer who executes a warrant issued under subsection (4) shall not use force unless the use of force has been specifically authorized in the warrant.

**(8)** A warrant may be issued under this Section by telephone or other means of telecommunication on information submitted by a health and safety officer by one of those means, and section 487.1 of the *Criminal Code* (Canada) applies for that purpose, with any modifications that the circumstances require. 2013, c. 16, s. 23.

**Duty to assist OHS officer**

**329 (1)** The operator for, employers, employees and supervisors at, owners of, suppliers or providers of services to, as well as the person in charge of, a place entered by a health and safety officer under subsection 326(3), and the interest holders having an interest, or a share of an interest, in any portion of the offshore area in which the place is located, shall give all assistance that is reasonably required to enable the officer to verify compliance with this Part and shall provide any documents, data or information that is reasonably required for that purpose.

**(2)** Where the place referred to in subsection 326(3) is a workplace, the operator shall provide to the health and safety officer, and to every individual accompanying that officer, free of charge,

(a) suitable transportation between the operator's usual point of embarkation on shore and the workplace, between the workplace and the operator's usual point of disembarkation on shore, and between workplaces; and

(b) suitable accommodation and food at the workplace. 2013, c. 16, s. 23.

**False statement**

**330** No person shall make a false or misleading statement or provide false or misleading information, in connection with any matter under this Part, to a health and safety officer who is carrying out duties or functions under this Part or to the Chief Safety Officer when the Officer is conducting a review under Section 352. 2013, c. 16, s. 23.

**Obstruction**

**331** No person shall obstruct or hinder a health and safety officer who is carrying out duties or functions under this Part or the Chief Safety Officer when the Officer is conducting a review under Section 352. 2013, c. 16, s. 23.

**OHS officer to be accompanied**

**332 (1)** A health and safety officer who is inspecting, testing or monitoring anything in a workplace under subsection 326(3) shall give to an employer representative at the workplace, and to a member of the workplace committee who represents employees, an opportunity to accompany the officer when the officer is carrying out those activities.

**(2)** Where no employee representative from the workplace committee is available, the officer may select one or more other employees to accompany the officer.

**(3)** The officer may carry out the activities without being accompanied by an employer or employee representative if either or both of them are unavailable and the officer considers that it is necessary to proceed immediately with those activities.

**(4)** Where the officer is not accompanied by an employee representative, the officer shall endeavour to consult with a number of employees when carrying out the activities.

**(5)** An individual who is accompanying or being consulted by an officer under this Section shall be paid the same wages and granted the same benefits that the individual would have received had the individual been working. 2013, c. 16, s. 23.

**Warrant and search**

**333 (1)** On *ex parte* application, a justice of the peace may issue a warrant if the justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place anything that will provide evidence or information relating to the commission of an offence under this Part.

**(2)** The warrant may authorize a health and safety officer, and any other individual named in the warrant, to at any time enter and search the place and to seize anything specified in the warrant, or do any of the following as specified in it, subject to any conditions that may be specified in it:

(a) conduct examinations, tests or monitoring;

(b) take samples for examination or testing, and dispose of those samples; or

(c) take photographs or measurements, make recordings or drawings, or use systems in the place that capture images.

**(3)** A health and safety officer may exercise the powers described in this Section without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be feasible to obtain one.

**(4)** Exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or the loss or destruction of evidence.

**(5)** An individual authorized under this Section to search a computer system in a place may

(a) use or cause to be used any computer system at the place to search any data contained in or available to the computer system;

(b) reproduce or cause to be reproduced any data in the form of a printout or other intelligible output;

(c) seize any printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment at the place to make copies of the data.

**(6)** Every person who is in charge of a place in respect of which a search is carried out under this Section shall, on presentation of the warrant, permit the individual carrying out the search to do anything described in subsection (5).

**(7)** An operator shall provide, free of charge, to an individual who is executing a warrant under this Section at any of its workplaces

(a) suitable return transportation between the workplace and any location from which transportation services to that workplace are usually provided, and between workplaces; and

(b) suitable accommodation and food at the workplace.

**(8)** A warrant may be issued under this Section by telephone or other means of telecommunication on information submitted by a health and safety officer by one of those means, and section 487.1 of the *Criminal Code* (Canada) applies for that purpose, with any modifications that the circumstances require. 2013, c. 16, s. 23.

**Care of item seized**

**334 (1)** A thing seized under this Part may be stored in the place where it was seized or may, at the discretion of a health and safety officer, be removed to any other place for storage.

**(2)** The owner of the thing seized or the person who is lawfully entitled to possess it shall pay the costs of storage or removal.

**(3)** Where the thing seized is perishable, a health and safety officer may destroy the thing, or otherwise dispose of it in any manner the officer considers appropriate.

**(4)** Any proceeds realized from its disposition must be paid to the Receiver General for Canada. 2013, c. 16, s. 23.

NON-DISTURBANCE OF SCENE

**Serious injury or death**

**335 (1)** In the case of an incident at a workplace, or involving a passenger craft, that results in serious injury or death, no person shall, unless authorized to do so by a health and safety officer, disturb anything related to the incident except to the extent necessary to

(a) attend to any individuals who are injured or killed;

(b) prevent further injuries; or

(c) prevent damage to or loss of property.

**(2)** Where an individual is killed or seriously injured by an incident involving a passenger craft, an individual who is investigating the incident under the *Aeronautics Act* (Canada), the *Canada Shipping Act, 2001* or the *Canadian Transportation Accident Investigation and Safety Board Act* is not required to obtain an authorization under subsection (1). 2013, c. 16, s. 23.

DISCLOSURE OF INFORMATION

**Relating to duties**

**336** No person shall prevent an employee from providing to a health and safety officer or to the Board, or to any person or committee having duties or functions under this Part, information that the officer, Board, person or committee may require to carry out the duties or functions. 2013, c. 16, s. 23.

**Relating to activities under order or warrant**

**337** Subject to Sections 340 to 342, no person shall, except for the purpose of this Part, for the purpose of a prosecution under this Part, for the purpose of Part IV as it relates to safety or for the purpose of the prosecution under Part IV that relates to safety, disclose the results of

(a) activities carried out by or on the order of a health and safety officer for the purpose of verifying compliance with this Part; or

(b) activities carried out under a warrant issued under this Part. 2013, c. 16, s. 23.

**Identity of informant**

**338** Subject to Section 341, no individual to whom information obtained under this Part is communicated in confidence shall disclose the identity of the individual who provided it except for the purpose of this Part, and no individual who obtains such information in confidence is competent or compellable to disclose the identity of the individual who provided it before any court or other tribunal except by order of the court or tribunal on any terms and conditions that the court or tribunal considers just. 2013, c. 16., s. 23.

**Trade secrets and privileged information**

**339 (1)** Subject to subsection (2) and subsection 341(1), trade secrets that become known to a health and safety officer who enters a place under subsection 326(3), or to an individual accompanying or a person assisting the officer, are privileged and may not be disclosed except for the purpose of this Part, or for the purpose of Part IV as it relates to safety.

**(2)** Information that, under the *Hazardous Materials Information Review Act* (Canada), a person is exempt from disclosing under clause 274(d) or (e) or under clause 13(a) or (b) of the *Hazardous Products Act* (Canada), and that is obtained by a health and safety officer who enters a place under subsection 326(3), or by an individual accompanying or a person assisting the officer, is privileged and, notwithstanding the *Freedom of Information and Protection of Privacy Act* or any other Act or law, shall not be disclosed to any other person except for the purpose of this Part, or for the purpose of Part IV as it relates to safety.

**(3)** Subject to subsection 341(2), information disclosed under subsection (1) or (2) may not be further disclosed by the recipient, except for the purpose for which it was disclosed to the recipient. 2013, c. 16., s. 23.

**OHS information**

**340 (1)** Notwithstanding Section 118, the Chief Safety Officer may disclose information, other than information relating to the medical history of an identifiable individual or other prescribed information relating to an identifiable individual, an individual's identity the disclosure of which is restricted under Section 338 or information the disclosure of which is restricted under Section 339, related to occupational health and safety that the Officer obtains in the Officer's capacity as Chief Safety Officer to officials of the Government of the Province, the Government of Canada, a government of a province or a foreign government, or of an agency of any of those governments, for the purpose of a federal or provincial law or activity or a foreign law, if the Officer is satisfied that disclosure is in the

interest of health and safety and the information is disclosed subject to any conditions agreed upon by the Officer and the government or agency.

**(2)** Officials of the Government of the Province or of an agency of the Government of the Province may for the purpose of this Part disclose information related to occupational health and safety, other than information relating to the medical history of an identifiable individual or other prescribed information relating to an identifiable individual, to the Chief Safety Officer, if the officials are satisfied that disclosure is in the interest of health and safety and it is disclosed subject to any conditions agreed upon by the Government or agency and the Officer.

**(3)** Information disclosed under subsection (1) or (2) may not be further disclosed by the recipient without the consent in writing of the person who disclosed it to the recipient, unless it is disclosed for the same purpose and subject to the conditions referred to in that subsection. 2013, c. 16, s. 23.

**Board records**

**341 (1)** The Minister and the federal Minister are entitled to access to any information that is recorded in any form, other than information relating to the medical history of an identifiable individual or information the disclosure of which is restricted under subsection 339(2), if the record is under the control of the Board and the information relates to this Part, and that information must, on the request of either Minister, be disclosed to that Minster without requiring the consent in writing of the person to whom the information relates.

**(2)** Information disclosed to either Minister under subsection (1) may not be further disclosed by that Minister without the consent in writing of the person to whom it relates except for the purpose of this Part or for the purpose of Part IV as it relates to safety. 2013, c. 16, s. 23.

**Public interest**

**342** Notwithstanding Section 118, the Board may, after consulting with the Chief Safety Officer, disclose information under its control that relates to this Part, other than information relating to the medical history of an identifiable individual or other prescribed information relating to an identifiable individual, an individual's identity the disclosure of which is restricted under Section 338 or information the disclosure of which is restricted under Section 339, if the Board is satisfied that the public interest in making the disclosure clearly outweighs any potential harm resulting from the disclosure. 2013, c. 16, s. 23.

PROCEEDINGS

**Testimony and evidence**

**343 (1)** No health and safety officer and no individual who has accompanied or person who has assisted the officer in carrying out the officer's duties or functions may be required to give testimony in civil or administrative proceedings, other than proceedings under this Part, relating to information obtained in the exercise of the officer's powers or in the carrying out of the officer's duties or functions or in accompanying or assisting the officer, except with the written permission of the Board.

**(2)** Where a person to whom subsection (1) applies is required to give testimony in civil or administrative proceedings for which the person has the written permission referred to in that subsection, Section 337 does not apply to restrict the disclosure of the results described in that Section.

**(3)** No person shall be required to produce or give evidence in any civil or administrative proceeding relating to any information disclosed to the person under subsection 340(1) or (2) or 341(1). 2013, c. 16, s. 23.

**No action lies**

**344** No action lies against

(a) a health and safety officer for anything done or omitted to be done by the officer in good faith while carrying out the officer's duties or functions under this Part; or

(b) an individual accompanying or a person assisting a health and safety officer for anything done or omitted to be done by the individual in good faith while carrying out the individual's duties or functions under this Part. 2013, c. 16, s. 23.

ORDERS AND DECISIONS

**Regarding person**

**345** A health and safety officer who is of the opinion that a provision of this Part or of the regulations made under this Part is being contravened or has recently been contravened by any person may order the person to

(a) terminate the contravention within the time that the officer specifies; and

(b) take measures specified by the officer, within the period that the officer specifies, to ensure that the contravention does not continue or reoccur. 2013, c. 16, s. 23.

**Regarding activity**

**346 (1)** Where a health and safety officer is of the opinion that the performance of an activity, including the use or operation of anything or the conditions under which an activity is performed, constitutes a danger to an employee or other individual at a workplace or a passenger on a passenger craft, the officer shall order any person to take measures, immediately or within the period that the officer specifies

(a) to correct the hazard or condition, or to alter the activity, that constitutes the danger; or

(b) to protect any individual from the danger.

**(2)** Where a health and safety officer is of the opinion that the measures cannot be taken immediately, the officer may order any person not to use a place, operate a thing or perform an activity to which an order under subsection (1) relates until that order is complied with.

**(3)** Nothing in subsection (2) prevents the doing of anything necessary to comply with the order under subsection (1).

**(4)** Where a health and safety officer makes an order under subsection (2), the officer shall post or affix or cause to be posted or affixed to or near the place or thing to which the order relates, or in the area in which the activity to which the order relates is performed, a notice in the form, and containing the information, that the officer may specify, and no person shall remove the notice unless the person is authorized by a health and safety officer to do so.

**(5)** Where a health and safety officer makes an order under subsection (2), the person to whom the order is directed shall cause the use or operation of the place or thing or the performance of the activity to be discontinued, and no individual shall use or operate the place or thing or perform the activity until the order under subsection (1) is complied with. 2013, c. 16, s. 23.

**Copy of order to be served**

**347 (1)** A health and safety officer shall give a copy of any order the officer makes under Section 345 or subsection 346(1) or (2) to the person to whom the order is directed and to the operator to whom the order relates.

**(2)** Where a special officer makes an order under Section 345 or subsection 346(1) or (2), the special officer shall give a copy of the order to the person to whom it is directed, the operator to whom the order relates and the Chief Safety Officer.

**(3)** Where an occupational health and safety officer makes an order under Section 345 or subsection 346(1) or (2) as a result of being notified under subsection 301(4), 302(8) or 306(8), or decides after being so notified not to make an order, the officer shall, as soon as possible, give a copy of the order or written notice of the decision to the employee who made the report under subsection 301(1) or who exercised the employee's rights under Section 302 or 306.

**(4)** Where an order is made orally under Section 345 or subsection 346(1) or (2), it must be confirmed in writing and a copy given, as soon as possible, to the persons who, under subsections (1) and (2), are required to be given a copy.

**(5)** A health and safety officer may make an order under Section 345 or subsection 346(1) or (2) even if the officer is not physically present in the place to which the order refers. 2013, c. 16, s. 23.

**Notice of compliance**

**348** The person to whom an order under Section 345 or subsection 346(1) or (2) is directed shall, within the period specified in the order, submit to the health and safety officer a notice of compliance describing the extent to which the person has complied with the order, unless the officer decides that the notice is not necessary because compliance with the order has been achieved. 2013, c. 16, s. 23.

**Priority of orders and decisions**

**349 (1)** An order made by a special officer prevails over an order made by an occupational health and safety officer, the Chief Safety Officer, an operational safety officer, a conservation officer or the Chief Conservation Officer, as defined in Section 130, to the extent of any inconsistency between the orders.

**(2)** An order or a decision made by an occupational health and safety officer prevails over an order or a decision made by an operational safety officer, a conservation officer or the Chief Conservation Officer, as defined in Section 130, to the extent of any inconsistency between the orders or decisions. 2013, c. 16, s. 23.

POSTING AND PROVIDING OF CERTAIN DOCUMENTS

**Procedure**

**350 (1)** Subject to subsections (2) to (4), every operator or employer, as the case may be, shall, as soon as practicable after filing or receiving any of the following documents, post a copy of it in a prominent location at the workplace to which it relates and provide a copy of it to the workplace committee or the coordinator, as the case may be:

(a) an order made under Section 345 or subsection 346(1) or (2);

(b) a notice of compliance referred to in Section 348 or subsection 353(11);

(c) an application for a review made under subsection 351(1) or a decision made under subsection 352(1); or

(d) a notice of an appeal made under subsection 353(1) or a decision or order made under subsection 353(9).

**(2)** Where any document required to be posted under subsection (1) contains a trade secret, the operator or employer, as the case may be, may, before posting it, edit it to protect that trade secret.

**(3)** Where the document required to be posted under subsection (1) is edited, the operator or employer shall obtain the written approval of a health and safety officer for the document as edited before posting it.

**(4)** Where any document required to be posted under subsection (1) contains information relating to the medical history of an identifiable individual or other prescribed information relating to an identifiable individual, the operator or employer, as the case may be, shall, unless the individual to whom the information relates consents in writing to the information being posted, before posting it, edit it to protect that information, and obtain the written approval of a health and safety officer for the document as edited.

**(5)** An obligation imposed on an operator or employer under subsection (1) is satisfied if

(a) the operator or employer, as the case may be, ensures that the document is posted for the time necessary, which is at least 30 days or any longer period that is prescribed, to enable employees at the workplace to inform themselves of the content; or

(b) the operator or employer, as the case may be, provides a copy of the document to each employee at the workplace. 2013, c. 16, s. 23.

REVIEW AND APPEALS

**Application for review by Chief Safety Officer**

**351 (1)** Subject to subsection (2), any person who is, or any union representing employees who are, directly affected by a decision of an occupational health and safety officer under subsection 302(13) or subsection 306(13) or by an order of an occupational health and safety officer under Section 345 or subsection 346(1) or (2), may apply for a review by the Chief Safety Officer of the decision or order.

**(2)** Where the Chief Safety Officer, acting as an occupational health and safety officer, makes a decision under subsection 302(12) or subsection 306(13) or an order under Section 345 or subsection 346(1) or (2), the Officer is not permitted to review those decisions or orders.

**(3)** An application for a review must be made in writing to the Chief Safety Officer within 45 days after the date of the decision or order that is the subject of the review being made in writing or, where the decision or order was made orally, of it being confirmed in writing.

**(4)** Unless otherwise ordered by the Chief Safety Officer, an application for review of a decision or an order does not operate as a stay of the decision or order. 2013, c. 16, s. 23.

**Review process**

**352 (1)** On receiving an application for a review, the Chief Safety Officer shall, in a summary way and without delay, enquire into the circumstances of the decision or order and may confirm, vary or revoke the decision or order.

**(2)** In making an enquiry, the Chief Safety Officer may consider new information, including information provided by the applicant.

**(3)** The Chief Safety Officer is not prevented from conducting a review by reason only that the Officer, in the course of carrying out the Officer's duties and functions under this Part, receives information regarding the matter under review or communicates with any person concerning that matter.

**(4)** The Chief Safety Officer shall provide the Officer's decision in writing, with reasons, to the applicant, to the operator affected by it and to any person who made representations in relation to the matter under review.

**(5)** A decision of the Chief Safety Officer made under this Section that is not appealed is final and binding and not subject to review. 2013, c. 16, s. 23.

**Appeal to Labour Board**

**353 (1)** Any person who is, or any union representing employees who are, directly affected by any of the following decisions or orders may appeal the decision or order to the Labour Board:

(a) a decision of an occupational health and safety officer under Section 314;

(b) an order of an occupational health and safety officer under subsections 315(1), (2) or (3);

(c) a determination of an occupational health and safety officer made in respect of an application under Section 316;

(d) an order of a special officer under Section 345 or subsection 346(1) or (2);

(e) an order of the Chief Safety Officer referred to in subsection 298(1) or (2) or 351(2); or

(f) a decision of the Chief Safety Officer under subsection 352(1).

**(2)** The costs incurred by the Labour Board in respect of appeals made under subsection (1), including the remuneration of its members, must be paid by the Board as defined in Section 2.

**(3)** An appeal is made by filing a notice of appeal under the *Occupational Health and Safety Act* within 45 days after the date of the decision or order that is the subject of the appeal.

**(4)** Subject to subsection (5) or unless otherwise ordered by the Labour Board, an appeal of a decision or order does not operate as a stay of the decision or order.

**(5)** Any order under subsection 315(1), (2) or (3) is stayed until disposition of the appeal.

**(6)** The Chief Safety Officer may, subject to any conditions imposed by the Labour Board, make representations to the Labour Board in respect of the decision or order being appealed.

**(7)** The rules of practice and procedure that apply to appeals made under the *Occupational Health and Safety Act* apply to appeals made under subsection (1), except that when an employer is required to receive a copy of an order or decision, the operator and Chief Safety Officer shall receive a copy of it as well.

**(8)** The Labour Board and each of its members has the powers, privileges and immunities granted under the *Labour Board Act*.

**(9)** The Labour Board may revoke, or make an order confirming or varying, the decision or order being appealed, and may make any order that a health and safety officer has the power or duty to make under Section 345 or subsection 346(1) or (2).

**(10)** Where the Labour Board makes an order that a health and safety officer has the power or duty to make under subsection 346(2) in respect of a place, thing or activity, the person to whom the order is directed shall cause the use or operation of the place or thing or the performance of the activity to be discontinued, and no individual shall use or operate the place or thing or perform the activity until the measures ordered by that board have been taken.

**(11)** Where required to do so by the Chief Safety Officer, the person or union to whom an order under subsection (9) is directed shall, within the period specified by the Officer, submit to the Officer a notice of compliance describing the extent to which the person or union has complied with the order. 2013, c. 16, s. 23.

**Time with pay**

**354** Time spent by an employee attending proceedings under Section 353 as a party or as a witness as a result of a summons is considered to be work time for which the employee shall be paid the same wages and granted the same benefits that the employee would have received had the employee worked for that time. 2013, c. 16, s. 23.

ENFORCEMENT OF MONETARY ORDERS AND DECISIONS

**Order of Supreme Court**

**355 (1)** An order of an occupational health and safety officer made under any of subsections 315(1) to (3) that has not been appealed or an order of the Labour Board under subsection 353(9) requiring payment of wages or benefit entitlements to an employee may, for the purpose of its enforcement, be made an order of the Supreme Court of Nova Scotia and must be enforced in the same manner as any order of that Court.

**(2)** To make the order an order of the Supreme Court of Nova Scotia, the rules of practice and procedure established under the *Occupational Health and Safety Act* for making any order an order of that Court may be followed.

**(3)** After an order has been made an order of the Supreme Court of Nova Scotia, any subsequent order rescinding or replacing the first order has the effect of cancelling the order of the Court, and that subsequent order may be made an order of that Court in the same manner. 2013, c. 16, s. 23.

**Enforcement**

**356 (1)** The Chief Safety Officer may request the Director of Labour Standards designated under the *Labour Standards Code* to enforce an order referred to in Section 355.

**(2)** For the purpose of enforcement under subsection (1), an order shall be made an order of the Labour Board and may be enforced in the same manner as an order of the Labour Board.

**(3)** Section 75 of the *Occupational Health and Safety Act* applies to the enforcement of an order, with any modifications that the circumstances require, including the substitution of the Chief Safety Officer for the Director in subsections 75(3), (5) and (6) of that Act. 2013, c. 16, s. 23.

OFFENCES AND PENALTIES

**Offence**

**357** **(1)** Every person is guilty of an offence who

(a) contravenes any provision of this Part or of the regulations made under this Part;

(b) makes any false entry or statement in any report, record or other document required by this Part or the regulations made under this Part or by any order made under this Part;

(c) destroys, damages or falsifies any report, record or other document required by this Part or the regulations made under this Part or by any order made under this Part;

(d) fails to comply with an order of a health and safety officer;

(e) fails to comply with a requirement of the Chief Safety Officer under Section 268 or 273;

(f) fails to comply with a decision of the Chief Safety Officer under Section 352; or

(g) fails to comply with an order of the Labour Board under subsection 353(9).

**(2)** Every person who is guilty of an offence under subsection (1) is liable

(a) on summary conviction, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding $1,000,000 or to imprisonment for a term not exceeding five years, or to both.

**(3)** Notwithstanding clause (1)(a), a person who contravenes clause 265(l) or (m), 271(1)(k), 287(b) or 288(1)(b) is not guilty of an offence unless compliance with that clause is necessary to protect occupational health and safety.

**(4)** No individual is excused from recording in accordance with Section 265 or 271 instances of non-compliance and any corrective action taken on the grounds that any information given by the individual may tend to incriminate the individual or subject the individual to any proceeding or penalty, but the information, or any evidence derived from it, may not be used or received to incriminate that individual in any criminal proceeding initiated against the individual, other than a prosecution under section 132, 136 or 137 of the *Criminal Code* (Canada).

**(5)** No person shall be found guilty of an offence under subsection (1) if the person establishes that the person exercised due diligence to prevent the commission of the offence. 2013, c. 16, s. 23.

**Party to offence**

**358 (1)** Where a corporation commits an offence under this Part, any of the following individuals who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted:

(a) an officer, director or agent of the corporation; and

(b) any other individual exercising managerial or supervisory functions in the corporation.

**(2)** In a prosecution for an offence under this Part, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence. 2013, c. 16, s. 23.

**No imprisonment for default**

**359** Where an individual is convicted of an offence under this Part, on proceedings by way of summary conviction, no imprisonment may be imposed in default of payment of any fine imposed as punishment. 2013, c. 16, s. 23.

**Sentencing options**

**360 (1)** Where a person is convicted of an offence under this Part, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any other punishment that may be imposed under this Part, make an order that has any or all of the following effects:

(a) prohibiting the offender from committing an act or engaging in an activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the offender to take any measures that the court considers appropriate to avoid any harm to health or safety that may result from the act or omission that constituted the offence, or to remedy any harm to health or safety resulting from it;

(c) directing the offender, at the offender's own expense, to publish, in any manner that the court directs, the facts relating to the offence;

(d) directing the offender to submit to the Chief Safety Officer, on application by that Officer within three years after the conviction, any information with respect to the offender's activities that the court considers appropriate in the circumstances;

(e) directing the offender to pay to the Board an amount of money that the court considers appropriate for the purpose of conducting research, education and training in occupational health and safety matters;

(f) directing the offender to perform community service, subject to any reasonable conditions that may be imposed by the court;

(g) directing the offender to post a bond or pay an amount of money into court that the court considers appropriate to ensure that

the offender complies with any prohibition, direction, requirement or condition that is specified in the order; and

(h) requiring the offender to comply with any conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing another offence under this Part.

**(2)** An order made under subsection (1) comes into force on the day on which the order is made or on any other day that the court may determine, but shall not continue in force for more than three years after that day.

**(3)** Where an offender does not comply with an order under clause (1)(c) requiring the publication of facts relating to the offence, the Chief Safety Officer may publish the facts and recover the costs of publication from the offender. 2013, c. 16, s. 23.

**Variation of order**

**361 (1)** Subject to subsection (2), where a court has made an order under subsection 360(1), the court may, on application by the offender or the Chief Safety Officer, require the offender to appear before it and, after hearing the offender and the Chief Safety Officer, vary the order in one or both of the following ways that the court considers appropriate because of a change in the circumstances of the offender since the order was made:

(a) by making changes to any prohibition, direction, requirement or conditions that are specified in the order or by extending the time during which the order is to remain in force for any period, not exceeding one year, that the court considers appropriate; or

(b) by decreasing the time during which the order is to remain in force or by relieving the offender, either absolutely or partially or for any period that the court considers appropriate, of compliance with any condition that is specified in the order.

**(2)** Before making an order under subsection (1), the court may direct that notice be given to any persons that the court considers to be interested and may hear any of those persons. 2013, c. 16, s. 23.

**No further application without leave**

**362** Where an application made under subsection 361(1) in relation to an offender has been heard by a court, no other application may be made under that Section in relation to the offender except with leave of the court. 2013, c. 16, s. 23.

**Judgment**

**363** Where a person is convicted of an offence under this Part and a fine that is imposed is not paid when required or where a court orders an offender to pay an amount under subsection 360(1) or 361(1), the prosecutor may, by filing the conviction or order, as the case may be, enter as a judgment the amount of the fine or the amount ordered to be paid, and costs, if any, in the Supreme Court of Nova Scotia, and the judgment is enforceable against the person in the same manner as if it

were a judgment rendered against the person in that Court in civil proceedings. 2013, c. 16, s. 23.

**Order to comply**

**364** Where a person is guilty of an offence under this Part, a court may, in addition to any other penalty it may impose, order that person to comply with the provisions of this Part or the regulation or order for the contravention of which that person has been convicted. 2013, c. 16, s. 23.

**Separate offences**

**365** Where an offence under this Part is committed on more than one day or is continued for more than one day, it constitutes a separate offence for each day on which it is committed or continued. 2013, c. 16, s. 23.

**Summary proceeding**

**366** Proceedings by way of summary conviction for an offence under this Part may be instituted at any time within but not later than three years after the day on which the subject-matter of the proceedings arose, unless the prosecutor and the defendant otherwise agree. 2013, c. 16, s. 23.

**Signed copy deemed proof**

**367** In any prosecution for an offence under this Part, a copy of any order or other document purporting to have been made under this Part, and purporting to have been signed, in the case of an order or other document purporting to have been made by the Labour Board, by the chair, a vice-chair or a member of the Labour Board and, in any other case, by the individual authorized under this Part to make that order or document, is, in the absence of any evidence to the contrary, proof of the matters set out in it. 2013, c. 16, s. 23.

**Jurisdiction**

**368** Any complaint or information relating to an offence under this Part may be heard, tried or determined by a justice of the peace or judge if the accused is resident or carrying on business within the territorial jurisdiction of that justice or judge although the matter of the complaint or information did not arise in that territorial jurisdiction. 2013, c. 16, s. 23.

**Board may commence action to enjoin**

**369 (1)** Even though a prosecution has been instituted for an offence under this Part, the Board may commence and maintain an action to enjoin the committing of any contravention of any provision of this Part or of the regulations made under this Part.

**(2)** No civil remedy for any act or omission is suspended or affected by reason that the act or omission is an offence under this Part. 2013, c. 16, s. 23.

**Several offences**

**370** In any proceedings for an offence under this Part

(a) an information may include more than one offence committed by the same person;

(b) all those offences may be tried concurrently; and

(c) one conviction for any or all offences so included may be made. 2013, c. 16, s. 23.

ADVISORY COUNCIL

**Established**

**371** **(1)** An advisory council is established, composed of

(a) four representatives of employees and four representatives of industry;

(b) two representatives of the Government of the Province and two representatives of the Government of Canada; and

(c) the Chief Safety Officer or the Officer's representative.

**(2)** Two of the employee representatives and two of the industry representatives shall be appointed by the Minister and the Minister of Natural Resources and Renewables and the other four shall be appointed jointly by the federal Minister and the Minister of Labour for Canada.

**(3)** Before making any appointment referred to in subsection (2), the Minister and the Minister of Natural Resources and Renewables, or the federal Minister and the Minister of Labour for Canada, as the case may be, shall consult with non-management employees, or the unions representing them, on the appointment of an employee representative and with industry associations on the appointment of an industry representative.

**(4)** The representatives of the Government of the Province shall be appointed jointly by the Minister and the Minister of Natural Resources and Renewables and the representatives of the Government of Canada shall be appointed jointly by the federal Minister and the Minister of Labour for Canada.

**(5)** The mandate of the advisory council is to advise the Board, the Minister, the Minister of Natural Resources and Renewables, the federal Minister and the Minister of Labour for Canada on

(a) the administration and enforcement of this Part; and

(b) any other matter related to occupational health and safety that is referred to it by any of them.

**(6)** At the discretion of the Minister, the Minister of Natural Resources and Renewables, the federal Minister and the Minster of Labour for Canada, the members of the advisory council may be paid

(a) the remuneration that may be jointly fixed by those Ministers; and

(b) any reasonable travel and living expenses that are incurred by the members while carrying out their duties or functions away from their ordinary place of residence.

**(7)** The Board shall pay the remuneration and expenses referred to in subsection (6).

**(8)** Members are to be appointed for a term of not more than five years and may be re-appointed.

**(9)** The advisory council is to have two chairpersons selected from among its members, one of whom shall be selected by the employee representatives and the other of whom shall be selected by the industry representatives. 2013, c. 16, s. 23.

**Auditor**

**372 (1)** The Minister or the federal Minister, or both, may appoint any individual as auditor to measure and report on the effectiveness of the Board in carrying out its duties and functions under this Part.

**(2)** A report of the audit must be made, as soon as practicable, to the Minister, the federal Minister and the Board.

**(3)** The auditor is entitled to free access at all convenient times to information that relates to the fulfillment of the auditor's responsibilities and is also entitled to require and receive from the Board and from any persons or committees having duties or functions under this Part any information, including reports, and explanations that the auditor considers necessary for that purpose.

**(4)** The auditor may examine any individual on oath on any matter pertaining to the effectiveness of the Board in carrying out its duties and functions under this Part and, for the purpose of an examination, may exercise all the powers of a commissioner appointed under the *Public Inquiries Act*.

**(5)** Information, including reports, and explanations disclosed to the auditor under subsection (2) shall not be further disclosed by the auditor without the consent in writing of the person to whom it relates.

**(6)** The Board shall consider the report of the audit and, within 60 days after the day on which the Board receives the report, it shall send to the auditor its written response to the report, and send a copy of that response to the Minister and the federal Minister.

**(7)** Where the Minister and the federal Minister jointly appoint the auditor, they may also jointly agree, with the consent in writing of the Minister of Natural Resources and Renewables, to require the cost of the audit to be borne by the Board, but where only one of those Ministers appoints the auditor, that Minister shall pay the cost of the audit. 2013, c. 16, s. 23.

**Inquiry into occupational health and safety matters**

**373 (1)** The Minister, the federal Minister, the Minister jointly with the federal Minister or the Board may appoint one or more individuals to enquire

into and report on occupational health and safety matters that are related to employment to which this Part applies.

**(2)** An individual who is appointed by the Minister, by the Minister jointly with the federal Minister or by the Board has all the powers of a person appointed as a commissioner under the *Public Inquiries Act*.

**(3)** Every witness who attends and gives evidence at any inquiry under this Section is entitled to be paid reasonable travel and living expenses incurred by the witness in doing so and the witness fees prescribed in the tariff of fees in use in the Supreme Court of Nova Scotia.

**(4)** Once the Board receives a copy of the report, it shall consider the report and shall, within 60 days after the day on which it is received, send to the Minister and the federal Minister its written response to the report.

**(5)** Where one or more individuals are appointed by the Minister, the federal Minister or the Minister jointly with the federal Minister under subsection (1) in respect of a matter, the Minister or Ministers making the appointment may, where that Minister or those Ministers determine that an inquiry is being conducted under Section 181 in respect of the same matter, direct that the Board terminate that inquiry and provide to that individual or those individuals any records or evidence collected in respect of the matter.

**(6)** The Board shall comply with a direction made under subsection (5).

**(7)** Where the Minister and the federal Minister jointly appoint the individual or individuals under subsection (1), they may also jointly agree, with the consent in writing of the Minister of Natural Resources and Renewables, to require the cost of the inquiry to be borne by the Board, but where only one of those Ministers appoints an individual or individuals under subsection (1), that Minister shall pay the cost of the inquiry. 2013, c. 16, s. 23.

DOCUMENTS IN ELECTRONIC OR OTHER FORM

**Interpretation**

**374** In this Section and Sections 375 and 376,

"electronic document" means any form of representation of information or of concepts fixed in any medium in or by electronic, optical or other similar means and that can be read or perceived by an individual or by any means;

"information system" means a system used to generate, send, receive, store or otherwise process an electronic document. 2013, c. 16, s. 23.

**Exception**

**375** No provision of this Part or of the regulations made under this Part requires an electronic document to be created or provided. 2013, c. 16, s. 23.

**Satisfaction of document form requirement**

**376** **(1)** A requirement under this Part that a notice, document or other information be created in writing is satisfied by the creation of an electronic document if

(a) the information in the electronic document is accessible so as to be usable for subsequent reference; and

(b) the regulations pertaining to this subsection, if any, have been complied with.

**(2)** A requirement under this Part that a notice, document or other information be provided under this Part, whether or not it is required to be provided in writing, is satisfied by the provision of an electronic document if

(a) the addressee has designated an information system for the receipt of the electronic document;

(b) the electronic document is provided to the designated information system, unless otherwise prescribed;

(c) the information in the electronic document is accessible by the addressee and capable of being retained by the addressee, so as to be usable for subsequent reference; and

(d) the regulations pertaining to this subsection, if any, have been complied with.

**(3)** Where a consent is required to be given in writing under this Part, the requirement is satisfied by the provision of an electronic document that signifies that consent has been given if

(a) the addressee has designated an information system for the receipt of the electronic document;

(b) the electronic document is provided to the designated information system, unless otherwise prescribed;

(c) the information in the electronic document that signifies that consent has been given is accessible by the addressee and capable of being retained by the addressee, so as to be usable for subsequent reference; and

(d) the regulations pertaining to this subsection, if any, have been complied with.

**(4)** Notwithstanding subsection (2), the reasons referred to in subsection 311(5) and the decision referred to in subsection 352(4) must be provided in writing. 2013, c. 16, s. 23.

REGULATIONS

**Governor in Council regulations**

**377** **(1)** Subject to Section 6 and on the recommendation of the Minister, the Governor in Council may make regulations generally for carrying out the purpose and provisions of this Part, including regulations

(a) establishing requirements in respect of anything described in subsection 267(2) or 272(2);

(b) respecting the manner in which an operator is required to investigate under subsection 269(2) any occupational disease or any accident, incident or other hazardous occurrence;

(c) respecting the establishment, by an operator, of procedures for safe entry to or exit from a marine installation or structure and of standards for occupancy of a marine installation or structure;

(d) respecting the establishment of codes of practice, and specifying who is responsible for ensuring that those codes of practice are complied with;

(e) respecting the safety of work or activities that are carried out in a confined space, at heights, directly over water, under water, or of any work or activity that involves the use of explosives;

(f) respecting ergonomic standards and procedures for a workplace;

(g) respecting the establishment of standards for the design, installation and maintenance of the following things:

(i) guard, guard-rails, barricades, fences and other equipment of a similar nature,

(ii) boilers and pressure vessels,

(iii) escalators, elevators and other devices of a similar nature,

(iv) all equipment for the generation, distribution or use of electricity,

(v) gas-burning or oil-burning equipment or other heat-generating equipment, and

(vi) heating, ventilation and air-conditioning systems;

(h) respecting the establishment of standards for the design and maintenance of equipment, machines, devices, materials and other things that may be used by employees in carrying out their job functions;

(i) respecting the circumstances and manner in which any thing referred to in clause (g) or (h) shall or shall not be used, and any qualifications that an individual is required to have in order to use it;

(j) specifying who is responsible for ensuring that the standards referred to in clauses (g) and (h) are complied with and that the things referred to in those clauses are used in the specified circumstances and manner and by individuals who have the required qualifications;

(k) respecting the establishment of standards relating to levels or limits for ventilation, lighting, temperature, humidity, sound and vibration and exposure to chemical agents, biological agents and radiation and specifying who is responsible for ensuring that those standards are complied with;

(l) respecting the qualifications of persons authorized to carry out prescribed training;

(m) respecting the establishment of fire safety and emergency measures, and specifying who is responsible for ensuring that those measures are complied with;

(n) respecting the provision, by an operator, an employer, or both, of sanitary and personal facilities, potable water, sustenance and first-aid and heath services;

(o) respecting the prevention of, and protection against, violence at the workplace;

(p) respecting the manner and form in which records are to be maintained and information communicated;

(q) respecting the manner in which programs for medical monitoring and examination referred to in clause 319(1)(f) are to be implemented, including restricting the types of interventions that may be used;

(r) respecting the procedures governing the granting of a permission under Section 322 or 323, including any requirements for consultation or notice;

(s) specifying the equipment, methods, measures or standards or other things required by regulations made under this Section in respect of which the granting of a permission under Section 322 or 323 is prohibited;

(t) respecting the operation of an advisory council established under Section 371;

(u) respecting any matter necessary for the purpose of the application of Section 376, including

(i) the time and circumstances when, and the place where, an electronic document is to be considered to have been provided or received, and

(ii) the circumstances in which a secure electronic signature, as defined in subsection 31(1) of the *Personal Information Protection and Electronic Documents Act* (Canada), is required to be linked to an electronic document; and

(v) prescribing anything that by this Part is to be prescribed.

**(2)** The regulations may incorporate any material by reference, regardless of its source, either as it exists on a particular date or as amended from time to time.

**(3)** For greater certainty, a document that is incorporated by reference into a regulation is not required to be transmitted for registration or published in the *Royal Gazette* by reason only that it is incorporated by reference.

**(4)** Regulations made under subsection (1) may be made applicable to all persons or one or more classes of persons.

**(5)** Regulations made under subsection (1) in respect of employees and other passengers on a passenger craft, or the passenger craft, shall, in addition to the requirement set out in that subsection, be made on the recommendation of the Minister of Transport for Canada. 2013, c. 16, s. 23.

## SCHEDULE I

### LIMITS OF THE OFFSHORE AREA

(Except where otherwise indicated, all latitudes and longitudes referred to in this Schedule are determined according to N.A.D. 27)

The inner limit of the offshore area is the low water mark of Nova Scotia, except that

(a) in the vicinity of Chignecto Bay, the inner limit is a straight line from the most southwesterly point on the most northwesterly point on the low water mark at Cape Chignecto (N.S.) to a point at latitude 45º 24' 10" and longitude 65º 03' 31", being on a line between that point at Cape Chignecto (N.S.) and Martin Head (N.B.);

(b) in the vicinity of Minas Channel, the inner limit is a straight line from the most southwesterly point on the low water mark at Cape Chignecto (N.S.) to the most northwesterly point on the low water mark at Long Point (N.S.);

(c) in the vicinity of St. Mary's Bay, the inner limit is a straight line from the most southerly point on the low water mark at Long Island (N.S.) to the low water mark at the nearest point on the mainland, being approximately two kilometres southwesterly of Meteghan (N.S.);

(d) in the vicinity of Chedabucto Bay, the inner limit is a straight line from the most easterly point on the low water mark at Glasgow Head (N.S.) to the most southwesterly point on the low water mark at Red Point (N.S.);

(e) in the vicinity of St. George's Bay, the inner limit is a straight line from the most easterly point on the low water mark at Cape George Point (N.S.) to the most westerly point on the low water mark at McKays Point (N.S.); and

(f) in any bay where a straight closing line of 10 kilometres or less may be drawn between points on the low water mark of the bay so that the area of the bay landward of the closing line is greater than that of a semi-circle whose diameter is the closing line, the inner limit is the closing line, and for the purpose of this paragraph,

(i) "bay" includes harbour, port, cove, sound, channel, basin or other inlet,

(ii) the closing line shall be drawn in such manner as to enclose a maximum area of the bay, and

(iii) the area of the bay shall be calculated as including any islands or parts of islands lying landward of the closing line and as excluding any area above the low water mark along the coast of the bay.

The outer limit of the offshore area is as follows:

Commencing at the most northerly point of the boundary between the Provinces of Nova Scotia and New Brunswick in the mouth of Tidnish River, the limit runs

northerly in a straight line to a point at latitude 46º 01' 10" and longitude 64º 02' 34", being approximately on the middle thread of Baie Verte;

thence easterly in a straight line to a point at latitude 46º 02' 18" and longitude 63º 49' 09", being approximately the midpoint between Coldspring Head (N.S.) and Cape Tormentine (N.B.);

thence northeasterly in a straight line to a point at latitude 46º 04' 30" and longitude 63º 39' 34", being approximately the midpoint between Coldspring Head (N.S.) and MacIvors Point (P.E.I.);

thence southeasterly in a straight line to a point at latitude 45º 59' 45" and longitude 63º 19' 41", being approximately the midpoint between Cape Cliff (N.S.) and Rice Point (P.E.I.);

thence southeasterly in a straight line to a point at latitude 45º 55' 38" and longitude 63º 05' 06", being approximately the midpoint between Cape John (N.S.) and Prim Point (P.E.I.);

thence southeasterly in a straight line to a point at latitude 45º 51' 30" and longitude 62º 43' 30", being approximately the midpoint between Caribou Island (N.S.) and Wood Islands (P.E.I.);

thence northeasterly in a straight line to a point at latitude 45º 53' 51" and longitude 62º 33' 31", being approximately the midpoint between Pictou Island (N.S.) and the most southerly point of Cape Bear peninsula (P.E.I.);

thence northeasterly in a straight line to a point at latitude 45º 56' 43" and longitude 62º 13' 06", being approximately the midpoint between Livingstone Cove (N.S.) and Murray Head (P.E.I.);

thence northeasterly in a straight line to a point at latitude 46º 19' 09" and longitude 61º 41' 56", being approximately the midpoint between Sight Point (N.S.) and East Point (P.E.I.);

thence northeasterly in a straight line to a point at latitude 46º 50' 24" and longitude 61º 24' 01", being in the direction of the midpoint between White Capes (N.S.) and Ile d'Entree (Que.), but terminating at an east-west line through the midpoint between Cable Head (P.E.I.) and Cap du Sud (Que.);

thence northeasterly in a straight line to a point at latitude 47º 00' 35" and longitude 61º 21' 05", being approximately the midpoint between White Capes (N.S.) and the south-east corner of the Ile du Havre Aubert (Que.);

thence northeasterly in a straight line to a point at latitude 47º 19' 46" and longitude 60º 59' 34", being approximately the midpoint between Cape St. Lawrence (N.S.) and Pointe de l'Est (Que.);

thence northeasterly in a straight line to a point at latitude 47º 25' 24" and longitude 60º 45' 49", being approximately the midpoint between St. Paul Island (N.S.) and Pointe de l'Est (Que.);

thence northeasterly in a straight line to a point, delimited in the award of the arbitration tribunal in conclusion of the second phase of arbitration between the provinces of Nova Scotia and Newfoundland and Labrador on March 26, 2002, at latitude 47° 45' 41.8" and longitude 60° 24' 12.5" (NAD 83);

thence, as delimited in the award of March 26, 2002, southeasterly along a geodesic line to a point at latitude 47° 25' 31.7" and longitude 59° 43' 37.1" (NAD 83);

thence, as delimited in the award of March 26, 2002, southeasterly along a geodesic line to a point at latitude 46° 54' 48.9" and longitude 59° 00' 34.9" (NAD 83);

thence, as delimited in the award of March 26, 2002, southeasterly along a geodesic line to a point at latitude 46° 22' 51.7" and longitude 58° 01' 20.0" (NAD 83);

thence, as delimited in the award of March 26, 2002, southeasterly along the following geodesic lines, but only as far as the point of intersection between one of those lines and the outer edge of the continental margin as determined by international law:

along a geodesic line from the previous point to a point at latitude 46° 17' 25.1" and longitude 57° 53' 52.7" (NAD 83),

thence along a geodesic line to a point at latitude 46° 07' 57.7" and longitude 57° 44' 05.1" (NAD 83),

thence along a geodesic line to a point at latitude 45° 41' 31.4" and longitude 57° 31' 33.5" (NAD 83),

thence along a geodesic line to a point at latitude 44° 55' 51.9" and longitude 57° 10' 34.0" (NAD 83),

thence along a geodesic line to a point at latitude 43° 14' 13.9" and longitude 56° 23' 55.7" (NAD 83),

thence along a geodesic line to a point at latitude 42° 56' 48.5" and longitude 56° 16' 52.1" (NAD 83),

thence along a geodesic line to a point at latitude 42° 03' 46.3" and longitude 55° 54' 58.1" (NAD 83),

thence along a geodesic line to a point at latitude 41° 45' 00.8" and longitude 55° 47' 31.6" (NAD 83),

thence along a geodesic line to a point at latitude 41° 42' 24.7" and longitude 55° 46' 23.8" (NAD 83),

thence along a geodesic line to a point at latitude 41° 06' 19.2" and longitude 55° 36' 10.9" (NAD 83),

thence along a geodesic line to a point at latitude 40° 58' 21.7" and longitude 55° 34' 23.3" (NAD 83),

thence along a geodesic line on an azimuth of 166° 19' 50";

thence in a general westerly direction along the outer edge of the continental margin to its intersection with the southeasterly production of the geodetic line from point C to point D of the Single Maritime Boundary between Canada and the United States of America, said Boundary constituted by the Judgment of the Chamber of the International Court of Justice at The Hague on October 12, 1984;

thence northwesterly along the production of said geodetic line to point D of said Single Maritime Boundary and being at latitude 40º 27' 05" and longitude 65º 41' 59" as shown in said Judgment;

thence northwesterly along the geodetic line from point D to point C being a portion of said Single Maritime Boundary, point C being at latitude 42º 31' 08" and longitude 67º 28' 05" as shown in said Judgment;

thence northwesterly along the geodetic line from point C to point B being a portion of said Single Maritime Boundary, point B being at latitude 42º 53' 14" and longitude 67º 44' 35" as shown in said Judgment;

thence northerly along the geodetic line running from point B to point A to the point where the Boundary intersects a straight line drawn on an azimuth of 225º 00' 00" from a point at latitude 44º 25' 03" and longitude 66º 38' 47", being approximately the midpoint between Whipple Point on Brier Island (N.S.) and Southwest Head on Grand Manan Island (N.B.);

thence northeasterly in a straight line to that point at latitude 44º 25' 03" and longitude 66º 38' 47";

thence northeasterly in a straight line to a point at latitude 44º 26' 09" and longitude 66º 32' 32", being approximately the midpoint between Brier Island (N.S.) and White Head Island (N.B.);

thence northeasterly in a straight line to a point at latitude 44º 50' 16" and longitude 66º 11' 39", being approximately the midpoint between Gullivers Head (N.S.) and Point Lepreau (N.B.);

thence northeasterly in a straight line to a point at latitude 45º 00' 14" and longitude 65º 43' 36", being approximately the midpoint between the west promontory of Parkers Cove (N.S.) and Cape Spencer (N.B.);

thence northeasterly in a straight line to a point at latitude 45º 22' 19" and longitude 65º 05' 31", being approximately the midpoint between Isle Haute (N.S.) and Martin Head (N.B.);

thence northeasterly in a straight line to a point at latitude 45º 24' 10" and longitude 65º 03' 31", being a point on the inner limit.

1987, c. 3, Sch. I; N.S. Reg. 11/2004, ss. 2, 3.

## SCHEDULE II

### LIMITS OF THE BAY OF FUNDY

(All latitudes and longitudes referred to in this Schedule are determined according to N.A.D. 27 datum.)

Commencing at a point on the low water mark on the northwest side of Brier Island (N.S.), being the intersection of the low water mark and the parallel of latitude 44º 15' 00", the limits run

west along the parallel of latitude 44º 15' 00" to a point being the intersection of that parallel of latitude and a straight line drawn on a azimuth of 225º 00' 00" from a point at latitude 44º 25' 03" and longitude 66º 38' 47";

thence along the outer and inner limits of the offshore area, as described in Schedule I, in the Bay of Fundy to the point of commencement.

1987, c. 3, Sch. II.

## SCHEDULE III

### LIMITS OF SABLE ISLAND

(All latitudes and longitudes referred to in this Schedule are determined according to N.A.D. 27 datum.)

Commencing at a point at latitude 44º 01' 00" and longitude 60º 35' 00", the limits run

northeasterly in a straight line to a point at latitude 44º 03' 00" and longitude 60º 25' 00";

thence southeasterly in a straight line to a point at latitude 43º 58' 00" and longitude 60º 00' 00";

thence easterly along the parallel of latitude 43º 58' 00" to a point at longitude 59º 50' 00";

thence northeasterly in a straight line to a point at latitude 44º 09' 00" and longitude 59º 29' 00";

thence southwesterly in a straight line to a point at latitude 43º 56' 00" and longitude 59º 42' 00";

thence southwesterly in a straight line to a point at latitude 43º 53' 00" and longitude 60º 04' 00";

thence northwesterly in a straight line to a point at latitude 43º 57' 00" and longitude 60º 25' 00";

thence northwesterly in a straight line to the point of commencement.

1987, c. 3, Sch. III.

## SCHEDULE IV

### AREA REFERRED TO IN SECTION 136

(All latitudes and longitudes referred to in this Schedule are determined according to the N.A.D. 27 datum. All parallels of latitude referred to in this Schedule are to be determined in such manner that they are parallel with boundaries of grid areas as provided in the Canada Oil and Gas Land Regulations in force on May 13, 1988.)

COMMENCING at the intersection of latitude 42º 30' 00" N and the geodetic line from point C to point D of the Single Maritime Boundary between Canada and the United States of America, at approximate longitude 67º 27' 05" W, said Boundary constituted by the judgment of the Chamber of the International Court of Justice at The Hague on October 12, 1984, said point C being at latitude 42º 31' 08" N and longitude 67º 28' 05" W and said point D being at latitude 40º 27' 05" N and longitude 65º 41' 59" W as shown in said judgment;

THENCE easterly along latitude 42º 30' 00" N to longitude 66º 30' 00" W;

THENCE south along longitude 66º 30' 00" W to latitude 42º 25' 00" N;

THENCE easterly along latitude 42º 25' 00" N to longitude 65º 45' 00" W;

THENCE south along longitude 65º 45' 00" W to latitude 42º 20' 00" N;

THENCE easterly along latitude 42º 20' 00" N to longitude 65º 37' 30" W;

THENCE south along longitude 65º 37' 30" W to latitude 42º 10' 00" N;

THENCE easterly along latitude 42º 10' 00" N to longitude 65º 30' 00" W;

THENCE south along longitude 65º 30' 00" W to latitude 42º 05' 00" N;

THENCE easterly along latitude 42º 05' 00" N to longitude 65º 22' 30" W;

THENCE south along longitude 65º 22' 30" W to latitude 41º 50' 00" N;

THENCE westerly along latitude 41º 50' 00" N to longitude 65º 30' 00" W;

THENCE south along longitude 65º 30' 00" W to latitude 41º 40' 00" N;

THENCE westerly along latitude 41º 40' 00" N to longitude 65º 37' 30" W;

THENCE south along longitude 65º 37' 30" W to latitude 41º 35' 00" N;

THENCE westerly along latitude 41º 35' 00" N to longitude 65º 45' 00" W;

THENCE south along longitude 65º 45' 00" W to latitude 41º 25' 00" N;

THENCE westerly along latitude 41º 25' 00" N to longitude 65º 52' 30" W;

THENCE south along longitude 65º 52' 30" W to latitude 41º 15' 00" N;

THENCE westerly along latitude 41º 15' 00" N to longitude 66º 07' 30" W;

THENCE south along longitude 66º 07' 30" W to latitude 41º 05' 00" N;

THENCE westerly along latitude 41º 05' 00" N to its intersection with said geodetic line from point C to point D, at approximate longitude 66º 13' 33" W;

THENCE northwesterly along said geodetic line to the point of commencement.

1988, c. 56, Sch. IV; 2014, c. 43, s. 31.

## SCHEDULE V

(Subsection 162(1), subsection 174(1) and subsection 175(3))

PROVISIONS

| Item | Column 1<br>Act | Column 2<br>Provision |
|---|---|---|
| 1. | Beaches Act | 8(1)(f) |
| 2. | Crown Lands Act | 38(1)(c) |
| 3. | Environment Act | 73 and 74 |
| 4. | Wilderness Areas Protection Act | 17(2)(j) |

2014, c. 43, s. 32.

## SCHEDULE VI

(Subsection 162(1), subsection 174(1) and subsection 175(3))

PART 1 - PROVISIONS OF ACTS

| Item | Column 1<br>Act | Column 2<br>Provision |
|---|---|---|
| 1. | Endangered Species Act | 13(1)(a), (c) and 20(4) |
| 2. | Special Places Protection Act | 19 |
| 3. | Wilderness Areas Protection Act | 17(2)(h) and (i) |
| 4. | Wildlife Act | 70(1) and 71 |

PART 2 - PROVISIONS OF REGULATIONS

| Item | Column 1<br>Regulation | Column 2<br>Provision |
|---|---|---|
| 1. | Antigonish Wildlife Management Area Designation and Regulations | 2(a) |
| 2. | Beaches Regulations | 7(c) and (f) |
| 3. | Chignecto Game Sanctuary Regulations | 3(1) |
| 4. | Eastern Shore Islands Wildlife Management Area Designation and Regulations | 2(a) and 9 |
| 5. | Grassy Island Wildlife Management Area Regulations | 4(1) |
| 6. | Louisburg National Park Game Sanctuary Designation and Regulations | 1 and 2 |

| | | |
|---|---|---|
| 7. | Martinique Beach Game Sanctuary Designation and Regulations | 1 and 2 |
| 8. | Minas Basin Wildlife Management Area Designation and Regulations | 3(a) |
| 9. | Pearl Island Wildlife Management Area Designation and Regulations | 2(a) and 9 |
| 10. | Scatarie Island Wildlife Management Area Designation and Regulations | 2(a) and 6 |
| 11. | Spectacle Island Game Sanctuary Regulations | 3(1)(a) and (b) |
| 12. | The Bird Islands Wildlife Management Area Regulations | 4(1) |
| 13. | The Brothers Islands Wildlife Management Area Regulations | 4(1) |
| 14. | Upper Clements Game Sanctuary Designation and Regulations | 2(5), 3(d) and 11 |

2014, c. 43, s. 32.

CHAPTER C-4

# An Act to Express Appreciation for Members of the Canadian Coast Guard Auxiliary

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Canadian Coast Guard Auxiliary Appreciation Act*. 2019, c. 2, s. 1.

## Interpretation

**2** In this Act,

"active volunteer Canadian Coast Guard Auxiliary" means a volunteer member of the Canadian Coast Guard Auxiliary — Maritimes who

(a) is an active volunteer member of the Canadian Coast Guard Auxiliary — Maritimes and has been an active member for at least 12 months prior to applying for exemption from payment of a vehicle registration fee under subsection 3(1);

(b) has participated in at least 20% of all activities, including search and rescue calls and training, conducted by the person's unit of the Canadian Coast Guard Auxiliary — Maritimes while the person was an active volunteer member as required by clause (a); and

(c) has written confirmation of active member status required by clause (a) in the form determined by the Department and signed by the President or a zone director of the Canadian Coast Guard Auxiliary — Maritimes or another person authorized by the President;

"Department" means the department of the public service responsible for the *Motor Vehicle Act*;

"specialty number plate" means any non-standard number plate, but does not include a standard number plate bearing the international symbol of access issued to a person with a mobility impairment. 2019, c. 2, s. 2.

## Exemption from motor vehicle registration fee

**3 (1)** An active volunteer Canadian Coast Guard Auxiliary — Maritimes may apply to the Department for exemption from the registration fee of a vehicle in the manner determined by the Department.

**(2)** Where the Department is satisfied based on an application made pursuant to subsection (1) that the applicant is an active volunteer Canadian Coast Guard Auxiliary — Maritimes, the Department may not charge a registration fee under the *Motor Vehicle Act* for one passenger or commercial vehicle of a registered weight of 5,000 kilograms or less for which a number plate is issued in the name of the applicant.

**(3)** The exemption under subsection (1) applies only to the ordinary registration fee for the passenger or commercial vehicle and, for greater certainty, does not apply to a registration fee charged for a personalized or specialty number plate or a payment to a fund in connection with the issuance of a specialty number plate. 2019, c. 2, s. 3.

**Re-registration when exemption ceases**

**4** When a person ceases to be an active volunteer Canadian Coast Guard Auxiliary — Maritimes, the exemption from the registration fee under this Act ceases and the vehicle must be re-registered and any required registration fee paid prior to the vehicle being operated. 2019, c. 2, s. 4.

CHAPTER C-5

# An Act to Protect Students in the Canadian Forces Reserves

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Canadian Forces Reservists Protection Act*. 2006, c. 13, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to protect students in the Canadian Forces Reserves. 2006, c. 13, s. 2.

**Interpretation**

**3** In this Act,

"Reserves" means that component of the Canadian Forces referred to in the *National Defence Act* (Canada) as the reserve force;

"service" means a period of active duty or training in the Reserves;

"student" means a public or private school, community college or university student. 2006, c. 13, s. 3.

**Right of student to return to studies**

**4** **(1)** Every student has a right to return to that student's program of studies at the beginning of the next semester, or sooner if practicable, if the student

(a) provides the student's school, community college or university, as the case may be, with reasonable notice of the student's intention to

(i) take a leave of absence for a period of service, and

(ii) return to the school, community college or university upon completion of the service; and

(b) returns to or applies to return to the school, community college or university within a reasonable time upon completion of the student's service.

**(2)** Every school, community college or university shall allow a student to return to the student's studies after service without any financial penalty.

**(3)** For greater certainty, a student is not required to pay any tuition or fees in addition to those that the student would have been required to pay if the student had not taken the leave of absence. 2006, c. 13, s. 4.

**Minister of Advanced Education may investigate**

**5** The Minister of Advanced Education may investigate any violations of this Act and attempt to resolve them. 2006, c. 13, s. 5.

**Offence and penalty**

**6** Every person who violates any provision of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding $2,000. 2006, c. 13, s. 6.

**Regulations**

**7** **(1)** The Governor in Council may make regulations

(a) prescribing the time within which a student must return to a school, community college or university or apply to return following service;

(b) limiting periods or classes of training as service for the purpose of this Act;

(c) defining any word or expression used but not defined in this Act;

(d) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2006, c. 13, s. 7.

CHAPTER C-6

# An Act to Implement the Canadian Free Trade Agreement

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Canadian Free Trade Agreement Implementation Act*. 2018, c. 23, s. 1.

## Purpose of Act

**2** The purpose of this Act is to implement the Canadian Free Trade Agreement between the Government of Canada and the governments of all the provinces of Canada and thereby reduce and eliminate barriers to the free move-

ment of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. 2018, c. 23, s. 2.

**Interpretation**

**3** **(1)** In this Act,

"Agreement" means the Canadian Free Trade Agreement between the Government of Canada and the governments of all the provinces of Canada effective on July 1, 2017, as amended from time to time;

"Canadian jurisdiction" means a jurisdiction the government of which is a party to the Agreement;

"certification", in relation to a worker, means a certificate, licence, registration or other form of official recognition issued to the worker by the regulatory authority of a Canadian jurisdiction that attests that the worker is qualified and authorized to

(a) practise a particular occupation in the Canadian jurisdiction; or

(b) use in the Canadian jurisdiction a particular occupational title, designation or abbreviated title or designation;

"Court" means the Supreme Court of Nova Scotia;

"Minister" means the Minister of Trade;

"regulatory authority" means a person or body designated by the regulations;

"worker" means an individual, whether employed, self-employed or unemployed, who performs or seeks to perform work for pay or profit.

**(2)** Subject to subsection (1) and the regulations, words and expressions in this Act have the same meaning as in the Agreement. 2018, c. 23, s. 3.

**Act and regulations prevail**

**4** Where there is a conflict between this Act or the regulations and any other enactment, this Act and the regulations prevail. 2018, c. 23, s. 4.

**Application of Act to Crown**

**5** This Act binds the Crown in right of the Province. 2018, c. 23, s. 5.

**No action lies**

**6** **(1)** Subject to subsection (2), no cause of action and no legal proceeding lies or may be brought or continued against the Government or another person to enforce or determine a right or obligation that is claimed or arises solely under or by virtue of the Agreement.

**(2)** Subsection (1) does not apply to a proceeding that is provided for under Chapter Ten of the Agreement. 2018, c. 23, s. 6.

IMPLEMENTATION OF AGREEMENT

**Minister responsible for Act and Agreement**

**7** The Minister is responsible for this Act and the Agreement, including the implementation of the Agreement. 2018, c. 23, s. 7.

**Representative on Committee on Internal Trade**

**8** The Minister, or such other member of the Executive Council as the Governor in Council determines, is the representative of the Province on the Committee on Internal Trade established pursuant to the Agreement. 2018, c. 23, s. 8.

**Appointments to dispute panel rosters and committees**

**9 (1)** The Governor in Council may appoint any person to a dispute resolution panel roster established under the Agreement.

**(2)** The Minister may appoint a person to be a representative of the Province on any committee, board or other body established for the purpose of the Agreement. 2018, c. 23, s. 9; 2022, c. 4, s. 2.

**Effect of order**

**10 (1)** A certified copy of an order made by a presiding body that requires the Province to pay tariff costs, additional costs or a monetary penalty may be filed with the Court in accordance with the *Civil Procedure Rules* and, upon being filed, has the same force and effect regarding payment as a proceeding against the Crown and as a certificate issued pursuant to Section 19 of the *Proceedings against the Crown Act*.

**(2)** A certified copy of an order made by a presiding body under the Agreement that requires a person other than the Crown in right of the Province to pay tariff costs, additional costs or a monetary penalty may be filed with the Court in accordance with the *Civil Procedure Rules* and, once filed, is enforceable in the same manner as a judgment of the Court. 2018, c. 23, s. 10.

LABOUR MOBILITY

**Duty to comply with Agreement**

**11** A regulatory authority shall ensure that any measure it adopts or maintains respecting the certification of workers in an occupation complies with the obligations of Chapter Seven of the Agreement. 2018, c. 23, s. 11.

**Inconsistent measure prohibited**

**12 (1)** A regulatory authority may not adopt or maintain, with respect to an application for certification in relation to an occupation, a measure that is inconsistent with Chapter Seven of the Agreement, unless that measure is approved by the Minister of Labour, Skills and Immigration in consultation with such other members of the Executive Council as the Minister of Labour, Skills and Immigration considers relevant.

**(2)** A regulatory authority may not adopt, maintain or change an occupational standard except in accordance with Article 706 of Chapter Seven of the Agreement. 2018, c. 23, s. 12.

**Power to waive or adapt requirements**

**13 (1)** A regulatory authority may, with the prior consent of the Minister of Labour, Skills and Immigration, waive or adapt any requirements for certification that have been established for an occupation, notwithstanding any other enactment in order to comply with Section 11 or 12 or an order made pursuant to Section 15.

**(2)** The Minister of Labour, Skills and Immigration may include such terms and conditions in a consent under subsection (1) as the Minister of Labour, Skills and Immigration considers necessary or advisable. 2018, c. 23, s. 13.

**Red Seal qualification recognized**

**14** Notwithstanding any enactment, a person from another province of Canada who holds an Interprovincial Standards (Red Seal) Program qualification is, and must be recognized as, qualified, certified or licensed to work in the Province in the trade or occupation to which the qualification relates by the officer, body or authority that regulates the trade or occupation in the Province. 2018, c. 23, s. 14.

**Orders respecting labour mobility**

**15 (1)** Subject to this Section, the Minister of Labour, Skills and Immigration may issue orders for the purpose of ensuring compliance with Sections 11 to 14.

**(2)** Sections 17 to 22 apply to orders issued under this Section, with necessary changes.

**(3)** Before issuing an order, the Minister of Labour, Skills and Immigration shall give written notice to the regulatory authority affected by it and allow the regulatory authority at least 30 days, or such other period as may be prescribed by the regulations, to make a written submission explaining the reason for the alleged non-compliance.

**(4)** An order must

(a) describe the way in which the regulatory authority has failed to comply;

(b) set out any action the regulatory authority must take to remedy the failure; and

(c) specify the period of time within which the order must be complied with. 2018, c. 23, s. 15.

**Power to alter orders by regulation**

**16** Where an order issued pursuant to Section 15 requires a regulatory authority to make, amend or repeal a measure that is within the authority of the regulatory authority to make, amend or repeal and the regulatory authority fails to do so within the period specified in the order, the Governor in Council may make, amend or repeal the measure by regulation. 2018, c. 23, s. 16.

ORDERS

**Orders to comply**

**17 (1)** The Minister may issue an order requiring a person, at the person's own expense, to

(a) comply with, take or refrain from taking any measure or action required to comply with this Act or the regulations;

(b) cease any measure or action inconsistent with this Act or the regulations;

(c) pay an administrative penalty in accordance with the regulations to promote compliance with this Act, the regulations and any other orders made under this Act; and

(d) maintain records or submit such reports or other information on any matter relevant to this Act, the regulations or the Agreement in such form as may be prescribed by the regulations.

**(2)** The Minister may issue an order pursuant to subsection (1) regardless of whether a person has contravened this Act or the regulations or has been charged or convicted in respect of a contravention of this Act or the regulations. 2018, c. 23, s. 17.

**Service of order**

**18** An order issued under Section 17 must be served in accordance with the *Civil Procedure Rules* respecting personal service, except as otherwise provided by the regulations. 2018, c. 23, s. 18.

**Duty to comply with order**

**19 (1)** When an order is served on the person to whom it is directed, that person shall comply with the order forthwith, or, where a period for compliance is specified in the order, within the period specified.

**(2)** Where the person to whom an order is directed does not comply with the order, the Minister may take whatever action the Minister considers necessary to enforce the terms of the order. 2018, c. 23, s. 19.

**Amendment of order**

**20 (1)** The Minister may add, vary or revoke an order or part thereof.

**(2)** A change to an order under this Section must be served in accordance with Section 18. 2018, c. 23, s. 20.

**Recovery of costs**

**21 (1)** Any reasonable costs, expenses or charges incurred by the Minister when investigating or responding to a matter to which an order issued under Section 17 relates or a failure to comply with such an order are recoverable by order of the Minister against the person to whom the order under Section 17 was directed.

**(2)** An order issued under subsection (1) may be filed with the Court in accordance with the *Civil Procedure Rules* and, upon being filed, is enforceable in the same manner as a judgment of the Court.

**(3)** An amendment or revocation of an order filed with the Court under subsection (2) may be filed with the Court and, upon being filed,

(a) in the case of an amendment, the order as amended is enforceable in the same manner as a judgment of the Court; or

(b) in the case of a revocation, the order ceases to be enforceable. 2018, c. 23, s. 21.

**Order not a regulation**

**22** An order issued under this Act is not a regulation within the meaning of the *Regulations Act*. 2018, c. 23, s. 22.

REGULATIONS

**Regulations**

**23** **(1)** The Governor in Council, on the recommendation of the Minister, may make regulations

(a) governing the form of reports and other documents to be provided to the Minister;

(b) respecting the service of orders;

(c) respecting duties and obligations of persons arising from or in relation to the Agreement;

(d) respecting the establishment and administration of a system of administrative penalties, including

(i) prescribing who may impose administrative penalties,

(ii) prescribing when an administrative penalty may be imposed or must be paid,

(iii) respecting the payment of administrative penalties,

(iv) respecting the status of an administrative penalty as a debt owed to the Crown in right of the Province,

(v) prescribing the content of a notice of administrative penalty,

(vi) prescribing the amount of administrative penalties,

(vii) prescribing how an administrative penalty may be filed, amended or revoked,

(viii) respecting the extension of the time frame for filing a notice of appeal of an order or decision made under this Act or the regulations in relation to an administrative penalty,

(ix) respecting the appeal of an administrative penalty, and

(x) respecting the use to be made of any funds collected through the imposition of administrative penalties, including where such funds are to be deposited or held;

(e) defining or further defining any word or expression used in this Act or the Agreement;

(f) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

**(2)** The Governor in Council, on the recommendation of the Minister of Labour, Skills and Immigration, may make regulations

(a) prescribing a person or body as a regulatory authority;

(b) prescribing fees in relation to anything done or required to be done under this Act or the regulations and the manner of payment of such fees;

(c) requiring a regulatory authority to provide information, including information prior to a change to occupational standards;

(d) requiring a regulatory authority to publish information related to certification and occupational standards and respecting the manner of publication and content of such information;

(e) governing the form of reports and other documents to be provided to the Minister of Labour, Skills and Immigration;

(f) making, amending or repealing a measure of a regulatory authority under Section 16.

**(3)** The exercise by the Governor in Council of the authority contained in subsection (1) or (2) is a regulation within the meaning of the *Regulations Act*. 2018, c. 23, s. 23.

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CHAPTER C-7

# An Act Respecting the Practice of Information Processing

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Canadian Information Processing Society of Nova Scotia Act*. 2002, c. 3, s. 1.

**Interpretation**

**2** In this Act,

"Board" means the Board of Directors of the Society;

"bylaws" means bylaws made by the Society pursuant to this Act;

"Society" means the Canadian Information Processing Society of Nova Scotia, incorporated by this Act. 2002, c. 3, s. 2.

**Canadian Information Processing Society of Nova Scotia**

**3** A body corporate is established, to be known in English as the Canadian Information Processing Society of Nova Scotia and to be known in French as l'Association canadienne de l'informatique de Nouvelle-Écosse. 2002, c. 3, s. 3.

**Objects**

**4** The objects of the Society are to

(a) enhance the professional standing of its members by actively promoting the designations reserved by this Act through a program of education and support within the Province and by emphasizing the benefits of the

designations to members and employers alike, and provide such program in co-operation with the Canadian Information Processing Society-National and its local sections; and

(b) promote ethical practice in the field of information technology in order to protect and serve the public interest. 2002, c. 3, s. 4.

**Membership**

**5** The Society shall grant membership to those applicants who qualify for membership under the bylaws of the Society. 2002, c. 3, s. 5.

**Register of members**

**6 (1)** The Society shall establish and maintain a register containing the names of all members in good standing of the Society and their class of membership.

**(2)** Only those members whose names appear on the register are entitled to the privileges of membership in the Society.

**(3)** The register must be open at all reasonable times to inspection by the public by appointment at the office of the Society. 2002, c. 3, s. 6.

**Discipline and behaviour standard**

**7** The Society shall

(a) provide for a system of discipline to deal with professional misconduct or incompetence of its members; and

(b) establish and maintain a standard of ethical behaviour for its members in the practice of the profession of information processing. 2002, c. 3, s. 7.

**Powers**

**8 (1)** The Society may exercise such powers as are necessary or conducive to achieving its objects and carrying out its obligations and, without restricting the generality of the foregoing, may

(a) acquire and take by purchase, donation, devise, bequest or otherwise real and personal property and hold, enjoy, sell, exchange, lease, let, improve and develop the same and erect and maintain buildings and structures;

(b) use its funds and property for the attainment of its objects;

(c) borrow, raise and secure the repayment of money in such manner as it thinks fit;

(d) issue debentures or mortgage its property to secure the payment of money borrowed by it or the performance of an obligation;

(e) subject to the bylaws, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable instruments;

(f) subscribe to or become a member of any other association, whether incorporated or not, that has objects that are wholly or partly similar to its own objects;

(g) make bylaws not inconsistent with this Act or any provision of law for the conduct and management of its activities and affairs and, without restricting the generality of the foregoing, make bylaws

(i) respecting qualifications for membership,

(ii) establishing classes of membership of which one class is certified membership, with power to confer and impose on each class of members such duties, rights and privileges as may be set out in the bylaws and with further power to prescribe the academic and experience requirements for and conditions and qualifications required for admission into any class of membership,

(iii) regulating and governing the conduct of members in the practice of their profession by prescribing a code of ethics, rules of professional conduct and standards of practice, establishing and maintaining a discipline committee, providing for the suspension, expulsion or other penalties for contravention of the code, rules or standards and providing for appeals and procedures relating to appeals from decisions of the discipline committee,

(iv) respecting the seal of the Society,

(v) respecting the persons by whom, and the manner in which, documents, including contracts and conveyances, may be executed for and on behalf of the Society,

(vi) respecting resignation from membership in the Society,

(vii) prescribing membership fees, with power to prescribe the manner in which membership fees are set,

(viii) establishing the fees for applications for membership,

(ix) respecting readmission to membership,

(x) establishing a Board of Directors of the Society with power to determine the composition of the Board, the manner in which the members of the Board are appointed or elected by the members of the Society and their terms of office,

(xi) prescribing the duties and powers of the Board, with power to vest in the Board any corporate power of the Society and to prescribe the terms, conditions or limitations, if any, under which such power is vested in or may be exercised by the Board,

(xii) respecting the filling of casual vacancies on the Board,

(xiii) respecting the removal of members of the Board,

(xiv) establishing offices of the Society, assigning a name to each office, establishing the manner in which officers are appointed or elected and their terms of office and imposing and conferring powers and duties on each officer,

(xv) establishing standing committees and conferring and imposing powers and duties on such committees,

(xvi) establishing procedure at meetings of the members of the Society and the Board, with power to establish the notice required to convene meetings, the procedure for convening meetings, the order of business at meetings and what constitutes a quorum at a meeting, with further power to provide for voting by proxy.

**(2)** Any surplus derived from carrying on the affairs and business of the Society must be applied solely in promoting and carrying out its objects and shall not be divided among its members. 2002, c. 3, s. 8.

**Board and annual meeting**

**9 (1)** A general meeting of the members of the Society must be held annually for the purpose of electing the Board and for such other business as may be brought before the meeting.

**(2)** The affairs of the Society are managed by its Board.

**(3)** The composition of the Board and the manner of its election, quorum for directors' meetings, notification of the electors of the time and place of holding elections, nomination of candidates, presiding officers at elections, taking and counting of votes, casting votes in the case of an equality of votes, tenure of office of members of the Board and other necessary details are as set out in the bylaws of the Society.

**(4)** In the event of death, resignation or incapacity of any member of the Board, the remaining members shall fill the vacancy for the balance of the term in the manner provided by the bylaws of the Society. 2002, c. 3, s. 9.

**Officers**

**10** The officers of the Society, the manner of their selection and their duties must be set out in the bylaws of the Society. 2002, c. 3, s. 10.

**Right to use designation and prohibition**

**11 (1)** Every certified member of the Society may use the designation "Information Systems Professional of Canada", "I.S.P", "Informaticien professionel agréé du Canada" or "I.P.A.".

**(2)** No person shall use a designation set out in subsection (1) or any combination or form of words or initials to suggest that the person is entitled to use that designation as a member of the Society unless that person is, according to

the bylaws of the Society, included in the class of members of the Society that are entitled to use that designation.

**(3)** Nothing in this Act affects the right of a person who is not a member of the Society to practise or be employed as an information technology professional as long as that person does not use the designation referred to in subsection (1). 2002, c. 3, s. 11.

**Offence**

**12** **(1)** Any person who

(a) contravenes subsection 11(2);

(b) not being a member of the Society, implies, suggests or holds out that the person is a member of the Society; or

(c) otherwise fails to comply with this Act or the bylaws,

is guilty of an offence.

**(2)** Where a person does or attempts to do anything contrary to this Act or the bylaws, the Board may apply to a judge of the Supreme Court of Nova Scotia for an injunction or other order and the judge may make any order that the justice of the case requires.

**(3)** No action lies against the Society, the Board, a member of the Board, a custodian or any committee, officer, appointee or employee of the Society or the Board for anything done or omitted to be done in good faith pursuant to this Act, or the bylaws, regulations, policies or standards adopted pursuant to this Act. 2002, c. 3, s. 12.

**Certificate as proof**

**13** In a prosecution of an offence under this Act, a certificate purporting to be the certificate of the President or a Vice-president of the Society that a person is or is not a member of that class of members that is, according to the bylaws, entitled to use a designation referred to in Section 11, is prima facie proof that that person is or is not a member of that class. 2002, c. 3, s. 13.

**Appeal to Board**

**14** **(1)** A person who has been refused membership or certification or a person who has been subject to a disciplinary sanction under the bylaws of the Society may, within 30 days of the date of the decision, appeal to the Board from the refusal to grant membership or certification or from the sanction.

**(2)** Notice of an appeal pursuant to subsection (1) must be served on the secretary of the Society.

**(3)** The Board may

(a) affirm or rescind the decision being appealed;

(b) substitute its opinion for that of any committee of the Society;

(c) refer the matter back to a committee for rehearing in whole or in part; or

(d) direct a committee to take such action as the Board considers appropriate.

**(4)** A decision of the Board is final and binding and no further appeal lies from that decision. 2002, c. 3, s. 14.

**Records and evidence**

**15 (1)** Upon the request of a person desiring to appeal to the Board and upon payment of a reasonable fee, the secretary shall give the person a certified copy of the record of the proceeding that resulted in the refusal to grant membership or certification or the imposition of a sanction, including the documents submitted and the decision appealed from.

**(2)** A copy of the register, certified by the secretary of the Society as a true copy, must be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of a person's membership and class of membership in the Society.

**(3)** A certified document purporting to be signed by the secretary of the Society is proof, in the absence of evidence to the contrary, that such person is the secretary, without proof of the person's signature or proof of the person being in fact the secretary.

**(4)** The absence of the name of any person from a copy of the register certified by the secretary of the Society as a true copy is proof, in the absence of evidence to the contrary, that the person is not registered as a member of the Society. 2002, c. 3, s. 15.

**Former Society**

**16 (1)** In this Section, "former Society" means the Canadian Information Processing Society of Nova Scotia incorporated pursuant to the *Societies Act*.

**(2)** A bylaw of the former Society in effect immediately before October 10, 2002, that is not inconsistent with this Act continues as a bylaw of the Society until it is amended or repealed pursuant to this Act.

**(3)** Each person who immediately before October 10, 2002, was an officer or director of the former Society is an officer or director of the Society, as the case may be, until that person ceases to be an officer or director of the Society.

**(4)** All property of every nature and kind whatsoever owned by, belonging to or held in trust for or on behalf of the former Society, is the property of the Society.

**(5)** The obligations of the former Society are the obligations of the Society.

**(6)** A reference in any enactment or in any deed, lease, will, trust indenture or other document to the former Society is to be construed, with respect to any subsequent transaction, matter or thing, to be a reference to the Society. 2002, c. 3, s. 16.

CHAPTER C-8

# An Act Respecting Cancer Reporting

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Cancer Reporting Act*. R.S., c. 195, s. 1.

**Interpretation**

**2** In this Act, "Minister" means the Minister of Health and Wellness. R.S., c. 195, s. 2; 1992, c. 14, s. 53; 1992, c. 19, s. 1; 1994-95, c. 7, s. 24; 2000, c. 29, s. 13; 2001, c. 5, s. 2; 2004, c. 4, s. 113.

**Report**

**3** **(1)** Every medical practitioner who attends or treats a person who has cancer or who makes a diagnosis of cancer, the superintendent of every hospital or institution in which patients are being diagnosed or treated and any other person or agency required by the Minister in writing shall, within 10 days after a diagnosis of cancer in any form has been established, report the case on a form prescribed by the Minister to the Executive Director of the Cancer Treatment and Research Foundation of Nova Scotia or such other person as may be designated by the Minister.

**(2)** Every report made under this Part is confidential and no person engaged in the administration of this Part shall disclose any such report or any part of its contents to any person except in the performance of that person's duties. R.S., c. 195, s. 101.

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CHAPTER C-9

# An Act to Establish Cancer Survivors Day

**Table of Contents**

(The table of contents is not part of the statute)



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WHEREAS Cancer Survivors Day is a celebration of life that is held in many countries;

AND WHEREAS Cancer Survivors Day is an inspiration for those recently diagnosed with cancer;

AND WHEREAS Cancer Survivors Day honours survivors and demonstrates that a full life can be a reality after a cancer diagnosis:

**Short title**

**1** This Act may be cited as the *Cancer Survivors Day Act*. 2018, c. 24, s. 1.

**Cancer Survivors Day**

**2** Throughout the Province, in each and every year, the first Sunday in June shall be kept and observed under the name of Cancer Survivors Day. 2018, c. 24, s. 2.

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CHAPTER C-10

# An Act to Provide for the Regulation and Sale of Cannabis

**Table of Contents**

(The table of contents is not part of the statute)

**Short title**

**1** This Act may be cited as the *Cannabis Control Act*. 2018, c. 3, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to

(a) regulate and control the purchase, possession, sale and distribution of cannabis;

(b) establish prohibitions relating to the purchase, possession, sale, distribution, consumption, cultivation, propagation and harvesting of cannabis to

(i) protect public health and safety,

(ii) protect youth and restrict their access to cannabis, and

(iii) ensure that recreational-use cannabis is only sold in accordance with this Act; and

(c) deter unlawful activities in relation to cannabis through appropriate enforcement and sanctions. 2018, c. 3, s. 2.

**Interpretation**

**3** In this Act,

"authorized cannabis seller" means

(a) the Corporation; or

(b) a person authorized by or under the regulations to sell cannabis;

"cannabis" means cannabis as defined in the federal Act;

"cannabis accessory" means cannabis accessory as defined in the federal Act;

"Corporation" means the Nova Scotia Liquor Corporation;

"distribute" includes administer, give, transfer, transport, send, deliver, provide or otherwise make available in any manner, whether directly or indirectly, and offer to distribute or have in possession for distribution;

"federal Act" means the *Cannabis Act* (Canada);

"Government store" means a Government store as defined in the *Liquor Control Act*;

"medical-use cannabis" means cannabis used for medical purposes

(a) within the meaning of the former *Access to Cannabis for Medical Purposes Regulations* (Canada); or

(b) in accordance with a court order;

"package" means a package as defined in the federal Act;

"police officer" means a member of an agency as defined in the *Police Act*;

"premises" means lands and structures or either of them, including trailers and portable structures designed or used for residence, business or shelter, and includes any part thereof;

"sell" includes offer for sale, expose for sale and have in possession for sale;

"vehicle" means any conveyance that may be used for transportation over land or water;

"young person" means an individual under the age of 19 years. 2018, c. 3, s. 3.

**Act binds Crown**

**4** This Act binds the Crown. 2018, c. 3, s. 4.

**Application of Act**

**5** **(1)** Subject to subsection (2), this Act does not apply to

(a) an activity in connection with medical-use cannabis;

(b) an activity in connection with industrial hemp cultivated and produced pursuant to the *Industrial Hemp Regulations* (Canada) or another federal enactment;

(c) an activity performed in connection with the enforcement or administration of an enactment of the Province or of Canada;

(d) an activity conducted pursuant to a licence, permit, authorization, order or exemption under the federal Act or the regulations made under that Act;

(e) an activity prescribed by the regulations; or

(f) a person performing an activity referred to in any of clauses (a) to (e).

**(2)** Section 22 applies in respect of the consumption of medical-use cannabis. 2018, c. 3, s. 5.

PART I

AUTHORIZED CANNABIS SELLERS

**Minister responsible for Part I**

**6** The Minister responsible for the Corporation is responsible for the supervision and management of this Part. 2018, c. 3, s. 6.

**Powers of authorized cannabis seller**

**7** Subject to this Act, an authorized cannabis seller may purchase, possess, sell and distribute cannabis. 2018, c. 3, s. 7.

**Objects of Corporation**

**8** The objects of the Corporation with respect to cannabis are to

(a) promote social objectives respecting the responsible consumption of cannabis; and

(b) control and carry out the purchase, possession, distribution and sale of cannabis in accordance with this Part. 2018, c. 3, s. 8.

**Powers of Corporation**

**9** **(1)** The Corporation may

(a) purchase, possess, distribute and sell

(i) cannabis that has been produced by a person authorized under the federal Act to produce cannabis for commercial purposes, and

(ii) cannabis accessories;

(b) provide for the maintenance or operation of warehouses for cannabis and regulate the keeping in and delivery to or from any such warehouses;

(c) regulate the operation of stores, including Government stores, in which the Corporation sells cannabis;

(d) determine the varieties, forms and types of cannabis that it is to sell and the prices therefor; and

(e) do anything the Corporation considers necessary or advisable to effectively carry out its objects with respect to cannabis.

**(2)** Subject to this Act, the Corporation may, in pursuit of its objects under this Act, exercise any power, other than a power in relation to liquor, that it possesses under the *Liquor Control Act*, including its powers under Sections 5 and 6 of that Act. 2018, c. 3, s. 9.

**Restriction on Corporation**

**10** Subject to the regulations, the Corporation may only sell or distribute cannabis to the public from

(a) one or more retail stores operated by the Corporation, including Government stores; and

(b) an Internet site operated by the Corporation or its agent. 2018, c. 3, s. 10.

**Storage, transportation and delivery**

**11** Notwithstanding Section 23, an authorized cannabis seller or a common carrier or other person authorized by an authorized cannabis seller may, in accordance with the regulations, store, transport or deliver cannabis. 2018, c. 3, s. 11.

**Prohibitions re supply of cannabis**

**12** Except for the Corporation, no authorized cannabis seller shall

(a) purchase cannabis from any person except the Corporation;

(b) have on the premises of the store any cannabis that was not supplied by the Corporation or authorized by the Corporation to be supplied to the authorized cannabis seller; or

(c) sell any cannabis that was not supplied by the Corporation or authorized by the Corporation to be supplied to the authorized cannabis seller. 2018, c. 3, s. 12.

**Requirements of authorized cannabis sellers**

**13** **(1)** An authorized cannabis seller shall not

(a) sell cannabis unless the cannabis has been produced by a person who is authorized under the federal Act to produce cannabis for commercial purposes; or

(b) sell cannabis to any young person.

**(2)** An authorized cannabis seller shall in accordance with the regulations,

(a) keep appropriate records respecting its activities in relation to cannabis that it possesses for commercial purposes; and

(b) take adequate measures to reduce the risk of cannabis it possesses for commercial purposes being diverted to an illicit market or activity.

**(3)** An authorized cannabis seller shall comply with this Act, the regulations, the federal Act and every other enactment of the Province and of Canada respecting the distribution and sale of recreational-use cannabis.

**(4)** An authorized cannabis seller other than the Corporation shall comply with any terms and conditions to which the authorized cannabis seller is subject by or under the regulations. 2018, c. 3, s. 13.

**Regulations**

**14** **(1)** The Governor in Council may make regulations

(a) respecting authorized cannabis sellers, including

(i) the authorization of persons to sell cannabis,

(ii) terms and conditions applicable to the sale of cannabis by an authorized cannabis seller, and

(iii) the maintenance and operation of a store operated by an authorized cannabis seller;

(b) respecting the purchase, possession, sale, distribution and delivery of cannabis by an authorized cannabis seller;

(c) respecting the storage, transportation and delivery of cannabis by an authorized cannabis seller or person authorized by an authorized cannabis seller;

(d) respecting the keeping of appropriate records by an authorized cannabis seller respecting its activities in relation to cannabis that it possesses for commercial purposes;

(e) respecting the taking of adequate measures by an authorized cannabis seller to reduce the risk of cannabis it possesses for commercial purposes being diverted to an illicit market or activity;

(f) prohibiting the sale of particular types of cannabis product;

(g) respecting the promotion, packaging, labelling and display of cannabis to be sold by an authorized cannabis seller;

(h) respecting agreements with agents of the Corporation;

(i) defining any word or expression used in this Part but not defined in this Act;

(j) further defining, for the purpose of this Part, any word or expression defined in this Act;

(k) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Part.

**(2)** A regulation made under subsection (1) may be of general application or may apply to such individual or individuals, such class or classes of persons, such class or classes of places or such class or classes of matters or things as the Governor in Council determines and there may be different regulations with respect to different individuals, different classes of persons, different classes of places and different classes of matters or things.

**(3)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2018, c. 3, s. 14.

## PART II

## ACTIVITIES IN RELATION TO CANNABIS AND ENFORCEMENT

**Minister responsible for Part II**

**15** The Minister of Justice, or such other member of the Executive Council to whom the administration of this Part is assigned under the *Public Service Act*, is responsible for the supervision and management of this Part. 2018, c. 3, s. 15.

## PROHIBITIONS

**Prohibitions applicable to young persons**

**16 (1)** No young person shall possess, distribute, consume, purchase or attempt to purchase cannabis.

**(2)** No young person shall cultivate, propagate or harvest cannabis or offer to cultivate, propagate or harvest cannabis.

**(3)** No young person shall purchase or attempt to purchase a cannabis accessory.

**(4)** This Section does not apply to a young person who, for the purpose of enforcing or ensuring compliance with this Act, the federal Act or the regulations made under either of those Acts, is acting under the direction of a person whose duty it is to enforce, or ensure compliance with, any of those enactments. 2018, c. 3, s. 16.

**Sale or distribution to young persons**

**17 (1)** No person shall knowingly sell or distribute cannabis to a young person.

**(2)** No person shall

(a) where cannabis is provided to the purchaser at the time of sale, sell cannabis to; or

(b) where cannabis is not provided to the purchaser at the time of sale, deliver purchased cannabis to,

an individual who appears to be under the age of 25 years unless the person selling or delivering the cannabis has been provided a valid government-issued identification document, bearing a photograph of the individual and showing the individual's age, and is satisfied that the individual is not a young person.

**(3)** It is not a defence to a charge under subsection (2) that the defendant believed the individual to not be a young person unless the individual produced an identification document described by that subsection and there was no apparent reason to doubt the authenticity of the identification document or that it was issued to the individual.

**(4)** No person shall present as evidence of the individual's age any identification document other than an identification document that was lawfully issued to the individual. 2018, c. 3, s. 17.

**Sale or distribution of cannabis accessories to young persons**

**18 (1)** No person shall knowingly sell or distribute a cannabis accessory to an individual who is a young person.

**(2)** It is not a defence to a charge under subsection (1) that the defendant believed the individual to not be a young person unless the defendant took reasonable steps to ascertain the individual's age. 2018, c. 3, s. 18.

**Involving young persons in offence**

**19 (1)** No person shall involve an individual who is a young person in the commission of an offence under this Act.

**(2)** It is not a defence to a charge under subsection (1) that the defendant believed the individual to not be a young person unless the defendant took reasonable steps to ascertain the individual's age. 2018, c. 3, s. 19.

**Unauthorized sale or purchase**

**20 (1)** No person, other than an authorized cannabis seller, shall

(a) sell cannabis; or

(b) operate a store that sells cannabis.

**(2)** No person shall purchase cannabis except from an authorized cannabis seller. 2018, c. 3, s. 20.

**Sale or purchase to intoxicated individual**

**21** No person shall knowingly sell or distribute cannabis to an individual who is or appears to be intoxicated. 2018, c. 3, s. 21.

**Consumption in vehicle prohibited**

**22** Except in the circumstances prescribed by the regulations, no person shall consume cannabis, including medical-use cannabis, in a vehicle. 2018, c. 3, s. 22.

**Transportation**

**23 (1)** No person shall transport cannabis in a vehicle unless the cannabis is

(a) contained in closed packaging or packaging that is fastened closed; and

(b) either

(i) out of reach of or not readily accessible to any person in the vehicle, or

(ii) being transported in a manner prescribed by the regulations.

**(2)** Subject to subsection (1) and the regulations, a person may transport cannabis from a place where cannabis is lawfully located to another place where cannabis may be lawfully located. 2018, c. 3, s. 23.

COMPLIANCE AND ENFORCEMENT

**Powers of police**

**24 (1)** For the purpose of ensuring compliance with this Act and the regulations, a police officer who has reasonable grounds to believe that this Act or the regulations are being contravened may, at any time,

(a) enter and inspect any place or vehicle in respect of which this Act applies, except a private dwelling, and make any examination or inquiry or conduct any test that the police officer considers necessary or advisable;

(b) make inquiries of any person who is or was in a place or vehicle in respect of which this Act applies;

(c) require the production of any documents at a place or vehicle in respect of which this Act applies and inspect, examine, copy or remove the documents;

(d) require the production of a valid government-issued identification document, bearing a photograph of the person offering it, of any person who is or was in a place or vehicle in respect of which this Act applies;

(e) exercise any other powers and perform any other duties that are prescribed by the regulations; and

(f) exercise any powers and perform any duties that are incidental to the powers set out in clauses (a) to (e).

**(2)** A police officer who removes documents under clause (1)(c) shall give a receipt for the documents and return them as soon as possible after the making of copies or extracts.

**(3)** In exercising the powers conferred under subsection (1), a police officer may be accompanied and assisted by any person who, in the opinion of the police officer, has special knowledge or expertise. 2018, c. 3, s. 24; 2021, c. 26, s. 1.

**Seizure**

**25 (1)** In the course of exercising the powers conferred under Section 24, a police officer may seize any thing, including cannabis, if the police officer has reasonable grounds to believe that

(a) the thing will afford evidence of an offence under this Act; or

(b) the thing was used or is being used in connection with the commission of an offence under this Act and, unless the thing is seized, it is likely that it would continue to be used or would be used again in the commission of an offence under this Act.

**(2)** Where an offence appears to have been committed under this Act and a police officer has reasonable grounds to believe, in view of the offence apparently committed and the presence of cannabis, that a further offence is likely to be committed, the police officer may seize the cannabis and any packages in which it is kept. 2018, c. 3, s. 25.

**Forfeiture**

**26 (1)** Where a person is convicted of an offence under this Act, the court that convicts the person shall order that any thing seized under Section 25 in connection with the offence be forfeited to the Crown in right of the Province, unless the court considers that forfeiture would be unjust in the circumstances.

**(2)** Any cannabis forfeited to the Crown in right of the Province under subsection (1) or any other enactment must, in accordance with any directions issued by the Minister responsible for this Part, be destroyed. 2018, c. 3, s. 26.

**Refusal to give name and address**

**27** Where a police officer finds a person apparently in contravention of this Act or the regulations and the person refuses to give the person's name and address or the police officer has reasonable grounds to believe that the name or address given is false, the police officer may arrest the person without a warrant. 2018, c. 3, s. 27.

**Vacation of premises**

**28 (1)** Where a police officer has reasonable grounds to believe that this Act, or a provision of the regulations in respect of which this Section applies, is

being contravened on any premises, the police officer may require that one or more persons vacate the premises.

**(2)** No person shall

(a) remain on the premises after being required to vacate the premises under subsection (1); or

(b) re-enter the premises on the same day the person is required to vacate, unless a police officer authorizes the person to re-enter.

**(3)** Subsection (1) does not apply in respect of persons who reside in the premises. 2018, c. 3, s. 28.

**Obstruction of police**

**29** No person shall obstruct, interfere with or fail to co-operate with a police officer in the execution of the police officer's duties under this Act. 2018, c. 3, s. 29.

**Prosecutions**

**30 (1)** In a prosecution under this Act, an indication on a container, package, label or sign that the contents of the container or package or the thing to which the label or sign relates is cannabis is proof, in the absence of evidence to the contrary, that the contents or thing is cannabis.

**(2)** In a prosecution under this Act or any other Act of the Legislature, a certificate or report prepared by an analyst under subsection 131(2) of the federal Act is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements set out in the certificate or report, without proof of the signature or official character of the individual purporting to have signed it.

**(3)** The party against whom a certificate or report is produced under subsection (2) may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination. 2018, c. 3, s. 30.

## OFFENCES, PENALTIES AND REGULATIONS

**Offences**

**31 (1)** A person who contravenes this Part or the regulations made under this Part is guilty of an offence and liable on summary conviction to the penalty set out in Section 32.

**(2)** Where a corporation contravenes this Part or the regulations made under this Part, a director, officer or agent of the corporation who authorized, permitted or acquiesced in the contravention is also guilty of an offence and liable on summary conviction to the penalty set out in Section 32, whether or not the corporation has been prosecuted or convicted.

**(3)** Where an offence under this Part is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued. 2018, c. 3, s. 31.

**Penalties**

**32** **(1)** A person who is convicted of contravening Section 16 or subsection 17(4) is liable to a fine of not more than $150.

**(2)** A person who is convicted of contravening subsection 17(1) or (2) or 19(1) or clause 20(1)(a) is liable to a fine of not more than $10,000.

**(3)** A person who is convicted of contravening Section 18, 22 or 23 is liable to a fine of not more than $2,000.

**(4)** A person who is convicted of contravening clause 20(1)(b) is liable to a fine of not less than $10,000 and not more than $25,000.

**(5)** A person who is convicted of contravening subsection 20(2) is liable to a fine of not more than $250.

**(6)** A person who is convicted of contravening Section 21 is liable to a fine of not more than $1,000. 2018, c. 3, s. 32.

**Regulations**

**33** **(1)** The Governor in Council may make regulations

(a) prescribing any place as being a private dwelling;

(b) subject to subsection 5(2), prescribing activities to which this Act does not apply;

(c) respecting the cultivation of cannabis and securing of such cannabis while it is being cultivated;

(d) prescribing circumstances in which a person is not prohibited under Section 22 from consuming cannabis in a vehicle;

(e) respecting the transportation of cannabis;

(f) prescribing powers and duties of police officers for the purpose of clause 24(1)(e);

(g) prescribing provisions of the regulations in respect of which Section 28 applies if a police officer has reasonable grounds to believe that one or more of the prescribed provisions is being contravened;

(h) respecting the prohibition of the consumption of cannabis, other than by smoking within the meaning of the *Smoke-free Places Act*, in places other than a private dwelling and prescribing any such places;

(i) defining any word or expression used in this Part but not defined in this Act;

(j) further defining, for the purpose of this Part, any word or expression defined in this Act;

(k) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Part.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2018, c. 3, s. 33.

CHAPTER C-11

# An Act Respecting the Taxation of Cannabis

**Table of Contents**

(The table of contents is not part of the statute)



**Short title**

**1** This Act may be cited as the *Cannabis Tax Act*. 2018, c. 4, Sch., s. 1.

**Interpretation**

**2** In this Act,

"cannabis taxation agreement" means an agreement implementing a coordinated framework for the taxation of cannabis among the Government of Canada and the governments of participating provinces of Canada, together with any amendments made pursuant to this Act;

"Minister" means the Minister of Finance and Treasury Board. 2018, c. 4, Sch., s. 2.

**Supervision of Act**

**3** The Minister has the general supervision and management of this Act. 2018, c. 4, Sch., s. 3.

**Powers of Minister**

**4** **(1)** The Minister may, on behalf of the Crown in right of the Province, enter into a cannabis taxation agreement.

**(2)** The Minister may make payments from the General Revenue Fund in accordance with a cannabis taxation agreement.

**(3)** The Minister, on behalf of the Crown in right of the Province, may from time to time enter into an agreement with the Minister of Finance for Canada on behalf of the Government of Canada to amend a cannabis taxation agreement. 2018, c. 4, Sch., s. 4.

**Regulations**

**5** **(1)** The Governor in Council may make regulations

(a) defining any word or expression used but not defined in this Act;

(b) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2018, c. 4, Sch., s. 5.

CHAPTER C-12

# An Act Respecting a Causeway at the Strait of Canso

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Canso Causeway Act*. R.S., c. 56, s. 1.

**Agreement ratified**

**2** The Agreement dated September 26, 1953, between the Crown in right of Canada, therein and in this Act called "Canada", the Crown in right of the Province, therein and in this Act called the "Province", and Canadian National Railway Company providing for the construction and maintenance of a causeway across the Strait of Canso and related works, a duplicate original of which has been filed in the office of the Minister of Public Works, is ratified and confirmed. R.S., c. 56, s. 2.

**Authority of Governor in Council**

**3** The Governor in Council is empowered to

(a) do every act and to exercise every power necessary or advisable for the exercise or enjoyment of any right, privilege or power conferred upon or reserved to the Province by; and

(b) make every expenditure or payment that is necessary or proper for the implementation of any obligation or undertaking assumed or given by the Province under,

the Agreement, or any alteration, renewal or extension of the Agreement or any agreement in substitution for it, and to authorize a member of the Executive Council to perform any such act or exercise any such power or make any such payment or expenditure. R.S., c. 56, s. 3.

**Additional authority of Governor in Council**

**4** Without limiting the generality of any other provision of this Act, the Governor in Council may from time to time raise by way of loan on the credit of the Province and pay over any sums required to be paid by the Province to Canada under the terms of the Agreement or may pay the same out of the General Revenue Fund or out of any other fund or account of the Province. R.S., c. 56, s. 4.

**Additional agreements**

**5** The Governor in Council may from time to time enter into and carry out such additional agreements respecting the said Causeway and related works by way of variation of or in substitution for the Agreement referred to in Section 2 as are considered advisable and may designate a member of the Executive Council to execute any such additional agreement on behalf of the Province. R.S., c. 56, s. 5.

**Causeway deemed public highway**

**6** The Causeway is deemed to be a public highway for the purpose of the *Motor Vehicle Act*, the *Public Highways Act* and all other enactments relating to highways and their use, except such provisions of those Acts and enactments as are inconsistent with this Act or the Agreement or as the Governor in Council declares do not apply to the Causeway. R.S., c. 56, s. 6.

CHAPTER C-13

# An Act Respecting the Cape Breton Barristers' Society

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Cape Breton Barristers' Society Act*. R.S., c. 58, s. 1.

**Cape Breton Barristers' Society**

**2** C. M. Rosenblum, Q.C., S. J. Khattar, Q.C., F. L. Elman, Q.C., G. S. Khattar, Q.C., T. J. K. Gillis, Q.C. and J. B. Boudreau, Barrister-at-law, all of Sydney, in the County of Cape Breton, Clarence MacLennan, Barrister-at-law, of North Sydney, in the County of Cape Breton, and such other barristers and solicitors as they may associate with them and their successors are constituted a body corporate under the name The Cape Breton Barristers' Society, hereinafter called the "Society". R.S., c. 58, s. 2.

**Officers and Executive Council**

**3 (1)** The officers of the Society are a President, a Vice-president and a Secretary-treasurer.

**(2)** The executive council of the Society consists of the officers named in subsection (1) and four other members of the Society elected annually by the Society. R.S., c. 58, s. 3.

**Membership**

**4 (1)** All barristers and solicitors of the Supreme Court of Nova Scotia, residing and practising in the County of Cape Breton shall, and barristers and solicitors residing elsewhere may, be members of the Society.

**(2)** A member of the Society is subject to this Act and the bylaws of the Society.

**(3)** Every member shall pay such annual fees as the Society from time to time prescribes by bylaw. R.S., c. 58, s. 4.

**Bylaws**

**5** The Society may make bylaws, not inconsistent with this Act or any other enactment, to carry out the provisions of this Act and, without restricting the generality of the foregoing, may make bylaws

(a) regulating the conduct of the Society and the members of the Society;

(b) respecting the amount and payment of fees and dues by the members of the Society to the Society;

(c) defining the powers and duties of the officers and the executive council of the Society;

(d) respecting the use and management of the law library of the Society;

(e) respecting the management and expenditure of money and assets of the Society;

(f) respecting the method of calling meetings of the Society and the executive council, the conduct of business at those meetings and the order and proceedings at those meetings;

(g) defining the manner and procedure for making, repealing, amending or re-enacting by laws of the Society. R.S., c. 58, s. 5.

**Law library**

**6 (1)** The Society may provide for and maintain a law library at Sydney for the use of its members, and for the use of such other persons as the Society may determine.

**(2)** All books, papers, fixtures and furniture forming part of or appertaining to the library are the property of the Society and may at any time be sold or otherwise disposed of as the Society may determine. R.S., c. 58, s. 6.

**Fees**

**7 (1)** Notwithstanding the *Legal Profession Act*, a person who causes to be issued out of the Supreme Court at Sydney

(a) an originating notice (action) in a proceeding in which there is claimed an amount of $80 or more;

(b) any other originating notice, other than a concurrent originating notice or renewal of an originating notice; or

(c) a petition,

shall pay to the Society towards the support of the library of the Society the sum of three dollars.

**(2)** In any other proceeding brought in the Supreme Court or any other court of record in the County of Cape Breton, the plaintiff or the plaintiff's solicitor shall pay to the Society the sum of one dollar.

**(3)** Sums payable under this Section must be paid by stamps.

**(4)** The Society shall provide adhesive stamps with a motto or engraving thereon as may be desired for the payment of such fees, and the stamps must be kept for sale by the Secretary of the Society and by the prothonotary and clerk of any other courts of record in the County of Cape Breton.

**(5)** In every cause the price of the stamp is an item in taxable costs.

**(6)** Notwithstanding the *Legal Profession Act*, where a payment is made by stamp in accordance with this Section, no payment by stamp is required by the *Legal Profession Act*. R.S., c. 58, s. 7.

**Payment of annual fees**

**8** All annual fees and dues payable under the provisions of this Act become due and payable in advance on January 1st in each year and the same may be recovered by the Society by action in any court of competent jurisdiction as in the case of ordinary debts. R.S., c. 58, s. 8.

**Right of action removed**

**9 (1)** Notwithstanding the *Legal Profession Act*, no barrister or solicitor residing and practising in the County of Cape Breton or any member of the Society is capable of maintaining any action for the recovery of any charge, fee, costs or disbursements for or in respect of any matter or thing done by the person as a barrister or solicitor nor is the barrister or solicitor, or any person represented by the barrister or solicitor, in any cause or matter capable of taxing or having allowed to the barrister or solicitor, or to any such person, by any taxing authority solicitor's costs or disbursements in any action, cause, matter or proceeding or of entering judgment for any such charge, fee, costs or disbursements in any court of law, unless and until such solicitor's annual fees and dues to the Society are fully paid and not in arrears.

**(2)** The Secretary of the Society may from time to time furnish the prothonotary of the Supreme Court with a list of barristers and solicitors in arrears for such fees and dues. R.S., c. 58, s. 9.

**Certificate**

**10 (1)** Notwithstanding the *Legal Profession Act*, no barrister or solicitor residing and practising in the County of Cape Breton or any member of the Society may practise as such in the County of Cape Breton without holding an annual certificate to practise, which is in force.

**(2)** The form of the certificate is determined by the executive council and the certificate must be issued by and be under the hand of the Secretary and the seal of the Society and must state that the holder thereof is entitled to practise as a barrister and solicitor under the provisions of this Act.

**(3)** The fee for a certificate is the amount of the annual fees and dues prescribed by the bylaws of the Society.

**(4)** Every certificate expires on December 31st in each year.

**(5)** Upon admission to the Nova Scotia Barristers' Society, a barrister must be granted a certificate effective until the second December 31st following the date of the barrister's admission to the Nova Scotia Barristers' Society, without payment of any fee. R.S., c. 58, s. 10.

**Transfer of property**

**11 (1)** Any rights, title and interest in property of any nature or kind vested in the Cape Breton Barristers' Society, incorporated by Chapter 62 of the Acts of 1943, is vested in the Society, provided, however, that no officer or member of the Society is personally liable for any debt or obligation contracted or incurred by the Cape Breton Barristers' Society.

**(2)** All the obligations and liabilities of the Cape Breton Barristers' Society, incorporated by said Chapter 62, existing immediately before June 1, 1983, are the obligations and liabilities of the Society. R.S., c. 58, s. 11.

**Borrowing**

**12 (1)** The Society may, by resolution passed either at the annual meeting or at any special meeting called for that purpose, borrow money for the general purposes of the Society.

**(2)** The Society may make and give promissory notes, bills of exchange and other negotiable instruments in respect of any amount borrowed by it, may issue bonds, debentures or other securities on the credit of the Society at such prices and at such rates of interest as the executive council considers best and may mortgage, hypothecate or pledge the property of the Society to secure sums so borrowed. R.S., c. 58, s. 12.

**Meetings**

**13 (1)** The annual meeting of the Society for the appointment of officers and transaction of general business shall be held on a date to be fixed in each year by the executive council.

**(2)** Special meetings may be called by the executive council at any time on reasonable notice. R.S., c. 58, s. 13.

**Quorum**

**14 (1)** Eight members is a quorum of the Society.

**(2)** Three members of the executive council is a quorum of the executive council. R.S., c. 58, s. 14.

CHAPTER C-14

# An Act Respecting Industrial Assistance in Cape Breton

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Cape Breton Industrial Assistance Act*. R.S., c. 60, s. 1.

**Interpretation**

**2** In this Act,

"Government of Canada" includes a corporation, body or agency established by the Government of Canada for the development of industry in the Island of Cape Breton;

"Minister" means the Minister of Economic Development. R.S., c. 60, s. 2.

**Agreement**

**3** The Minister may enter into an agreement with the Government of Canada for the encouragement of industrial development or the establishment of industries in the Island of Cape Breton. R.S., c. 60, s. 3.

**Provincial contribution**

**4** The Minister, pursuant to an agreement, may pay as the Province's contribution for the encouragement of industrial development or the establishment of industries in the Island of Cape Breton a sum not exceeding $10,000,000. R.S., c. 60, s. 4.

**Source of Provincial funds**

**5** The Governor in Council, for the purpose of paying the Province's contribution pursuant to any agreement, may raise from time to time by way of loan on the credit of the Province a sum or sums not exceeding $10,000,000 chargeable to Capital Account or, if it is considered expedient to do so, the Governor in Council

may pay the Province's contribution out of the Special Reserve Account of the Province or out of the revenues of the Province for any year or years. R.S., c. 60, s. 5.

CHAPTER C-15

# An Act to Provide for the Protection of Cemeteries and Monuments

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Cemeteries and Monuments Protection Act*. 1998, c. 9, s. 1; 2011, c. 13, s. 2.

## Interpretation

**2** In this Act,

"abandoned cemetery" means a cemetery that is declared to be an abandoned cemetery pursuant to this Act;

"cemetery" means land that is set apart or used as a place for the burial of human remains and, for greater certainty, includes all tombstones, grave markers and other monuments located thereon and any buildings or structures located thereon for the permanent placement of human remains;

"Minister" means the Minister of Communities, Culture, Tourism and Heritage;

"monument" means land or a public structure set aside to commemorate an event, an individual or a group. 1998, c. 9, s. 2; 2011, c. 13, s. 3.

## Supervision and management of Act

**3** The Minister has the general supervision and management of this Act. 1998, c. 9, s. 3.

## Declaration

**4** **(1)** Where the Minister is satisfied that

(a) a cemetery is no longer being used for the burial or permanent placement of human remains;

(b) the owner of the cemetery is unknown, cannot be found or is unable to maintain the cemetery; and

(c) the cemetery is not subject to active management,

the Minister may, by order, declare the cemetery to be an abandoned cemetery and permit persons to enter the cemetery and carry out such work as the Minister thinks necessary to restore, preserve and protect the cemetery.

**(2)** An order made pursuant to subsection (1) is ineffective unless and until the order is deposited in the manner prescribed by the regulations in the registry of deeds for the registration district in which the cemetery is located.

**(3)** Where real property has been registered pursuant to the *Land Registration Act*, an order made pursuant to subsection (1) is ineffective unless and until the order is recorded in the register for the parcel established pursuant to that Act in which the real property is located in the manner prescribed by the *Land Registration Act* for the registration district in which the cemetery is located.

**(4)** No action lies against a person by reason only of acting in accordance with an order made pursuant to this Section. 1998, c. 9, s. 4; 2001, c. 6, s. 99; 2011, c. 13, s. 4.

**Right to pass**

**5** Any person may go on foot upon and across any uncultivated lands or Crown lands for the purpose of visiting a cemetery or monument during daylight hours for purposes usually associated with cemetery or monument visits, as the case may be. 1998, c. 9, s. 5; 2011, c. 13, s. 5.

**Power to grant right-of-way**

**6 (1)** Notwithstanding the *Private Ways Act*, any person may present a petition to the Governor in Council pursuant to that Act for an order in council declaring that the person is entitled to acquire under Part I of that Act a right to pass and repass over lands for the purpose of gaining access to an abandoned cemetery from a public street or road and egress from the abandoned cemetery to a public street or road, and the *Private Ways Act* applies to the petition as if the petition were a petition referred to in subsection 2(1) of that Act, except that clause 2(2)(a) of that Act does not apply to the petition.

**(2)** An order in council pursuant to subsection (1) is ineffective unless and until it is registered in accordance with Section 13 of the *Private Ways Act*. 1998, c. 9, s. 6.

**Limitation on use of cemetery**

**7 (1)** No person may use a cemetery for any purpose other than for the burial or permanent placement of human remains or memorialization.

**(2)** Subsection (1) does not apply to a person who, for valuable consideration, acquires an interest in property without notice that the property is set apart or used as a place for the burial or permanent placement of human remains,

unless at the time of the acquisition, an order relating to the property, made pursuant to Section 4, is on deposit in a registry of deeds in accordance with Section 4.

**(3)** Where real property is registered pursuant to the *Land Registration Act,* subsection (1) does not apply to a person who, for valuable consideration, acquires an interest in property without notice that the property is set apart or used as a place for the burial or permanent placement of human remains, unless at the time of the acquisition, an order relating to the property, made pursuant to Section 4, is recorded in accordance with Section 4 in the register for the parcel established pursuant to that Act. 1998, c. 9, s. 7; 2001, c. 6, s. 99.

**Consequences of discovery of human remains**

**8** **(1)** Where there is no evidence on the surface of land that the land is a cemetery, but a person discovers, under the surface, human remains, that person shall

(a) immediately report the discovery to the Minister; and

(b) except to the extent permitted by the Minister, not carry out any activity that would result in disturbing the remains.

**(2)** Every person who violates subsection (1) is guilty of an offence against this Act. 1998, c. 9, s. 8.

**Offence**

**9** Every person who desecrates, damages or destroys a cemetery or monument is guilty of an offence against this Act. 1998, c. 9, s. 9; 2011, c. 13, s. 6.

**Preservation of existing powers of court**

**10** Nothing in this Act is to be construed as limiting or modifying the power or authority of a court to order the disinterment and removal of remains from a cemetery and interment of those remains in a suitable location. 1998, c. 9, s. 10.

**Penalty**

**11** Every person who is guilty of an offence against this Act is liable, on summary conviction, to a fine not exceeding $20,000 or, on default of payment, imprisonment for a period not exceeding two years less a day. 1998, c. 9, s. 11; 2011, c. 13, s. 7.

**Regulations**

**12** **(1)** The Governor in Council may make regulations

(a) prescribing the manner in which an order made pursuant to this Act must be deposited and preserved in a registry of deeds;

(b) defining any word or expression used but not defined in this Act;

(c) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1998, c. 9, s. 12.

CHAPTER C-16

# An Act Respecting Cemetery and Funeral Services

**Table of Contents**

(The table of contents is not part of the statute)

**Short title**

**1** This Act may be cited as the *Cemetery and Funeral Services Act*. R.S., c. 62, s. 1.

**Interpretation**

**2** In this Act,

"burial" means the burial of human remains, and includes the permanent placement of human remains in a building or structure;

"care fund" means an irrevocable trust fund required to be established by an operator in accordance with this Act for the specified care and maintenance of graves in a cemetery;

"cemetery" means any land that is set apart or used as a place for burial, and includes a building or structure for the permanent placement of human remains;

"cemetery goods or services" means

(a) the goods supplied or to be supplied at and by the cemetery or crematorium in conjunction with the burial or cremation of human remains, including grave liners, vaults, urns, memorials and other supplies incidental to the identification or embellishment of a lot; or

(b) the services performed or to be performed by the cemetery or crematorium relative to the installation or provision of any of the goods referred to in clause (a), including cremation, opening and closing of lots, and installation of memorials,

but does not include the sale of lots or any interest therein;

"funeral home" means a facility or establishment, by whatever name called, offering or providing funeral merchandise or services to the public;

"funeral home licence" means a licence to operate a funeral home issued pursuant to the *Embalmers and Funeral Directors Act*;

"funeral merchandise or services" means

(a) the services offered or performed by a funeral director or embalmer incidental to the arrangements, care and preparation of human remains for burial, cremation or other disposition; or

(b) the merchandise, articles or supplies used, offered for sale or sold directly to the public by the funeral director, in conjunction with the related services,

but does not include the sale of lots or any interest therein;

"grave" includes a place within a building or structure for the permanent placement of human remains;

"human remains" includes cremated human remains;

"insurance-funded plan" means a pre-arranged funeral plan or pre-need cemetery plan that provides that the price payable for the merchandise, goods or services provided for under the plan is to be funded directly or indirectly out of the proceeds of an insurance policy;

"licence" means a licence issued pursuant to this Act;

"lot" means a lot of land containing or that may contain one or more graves, and includes a space within a building or structure that contains or may contain one or more places for the permanent placement of human remains;

"memorial" means a memorial, marker, monument, headstone, footstone, tombstone, plaque, tablet or plate marking a grave, and includes an inscription of lettering or ornamentation, or both, on or on the front of a space within a building or structure for the permanent placement of human remains;

"Minister" means the Minister of Service Nova Scotia;

"operator" means a person owning, controlling or managing a cemetery or crematorium, and includes an individual, an association of individuals, a partnership or a corporation, including an association incorporated pursuant to the *Co-operative Associations Act*, or an employee or agent thereof;

"pre-arranged funeral plan" means an agreement under which, in consideration of

(a) payment in advance by lump sum or instalments; or

(b) the price payable being funded out of the proceeds of an insurance policy to be paid directly or indirectly to a person who holds a funeral home licence,

a person who holds a funeral home licence contracts to provide funeral merchandise or services when required for one or more individuals alive at the time the agreement is entered into;

"pre-need cemetery plan" means an agreement under which, in consideration of

(a) payment in advance by lump sum or instalments; or

(b) the price payable being funded out of the proceeds of an insurance policy to be paid directly or indirectly to an operator of a cemetery or crematorium,

an operator of a cemetery or crematorium contracts to provide cemetery goods or services when required for one or more individuals alive at the time the agreement is entered into;

"purchase agreement" means an agreement for the purchase of a pre-arranged funeral plan, a pre-need cemetery plan or a cemetery lot for use at a future date or the right to use such a lot;

"purchaser" includes the heirs, successors and assigns and the personal representative of the purchaser and the agent of any of them;

"Registrar" means the Registrar of Cemetery and Funeral Services;

"trust-funded plan" means a pre-arranged funeral plan or pre-need cemetery plan under which payment is made in advance by lump sum or instalments;

"trustee" means a person who is a trustee in respect of a trust fund or a trust agreement under this Act. R.S., c. 62, s. 2; 2014, c. 10, s. 1; 2018, c. 30, s. 1.

**Application of Act**

**3** **(1)** Notwithstanding any special or general Act, this Act applies to a cemetery company incorporated by or pursuant to a special or general Act, but does not include a cemetery exempted from this Act by the regulations upon the application of any person or community.

**(2)** Notwithstanding subsection (1), this Act, except Sections 32 and 33, does not apply to

(a) a regional municipality, incorporated town or municipality of a county or district or agency thereof in respect of its cemeteries and those cemeteries; or

(b) a church in respect of its burial ground and the burial ground,

unless otherwise provided by the regulations. R.S., c. 62, s. 3.

**Supervision of Act**

**4** The Minister has the general supervision and management of this Act. R.S., c. 62, s. 4.

**Registrar**

**5** **(1)** The Minister shall appoint a Registrar of Cemetery and Funeral Services who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

**(2)** The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar's stead.

**(3)** The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar's duties.

**(4)** A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

**(5)** A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 1.

**Personnel**

**6** **(l)** The inspectors, auditors and other persons required for the administration of this Act and the regulations must be appointed in accordance with the *Civil Service Act*.

**(2)** Notwithstanding subsection (l), the Minister may engage upon such terms and conditions as the Minister considers fit the services of such persons as the Minister considers necessary for the efficient carrying out of the intent and purpose of this Act and the regulations. R.S., c. 62, s. 6.

**Restrictions on solicitations**

**7** **(1)** No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person

(a) a pre-arranged funeral plan;

(b) a pre-need cemetery plan; or

(c) a cemetery lot or the right to use a lot in a cemetery,

unless the person soliciting is licensed as a seller or as a salesperson of a licensed seller pursuant to this Act and the regulations.

**(2)** No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person

(a) any funeral merchandise or services under a pre-arranged funeral plan; or

(b) any cemetery goods or services under a pre-need cemetery plan,

unless the pre-arranged funeral plan or pre-need cemetery plan essentially conforms to a plan that has first been submitted to the Registrar.

**(3)** Every person who as a seller

(a) has entered into a pre-arranged funeral plan; and

(b) continues to be required to hold funds with respect to the plan in trust pursuant to this Act or the regulations,

must continue to hold a licence issued by the Registrar pursuant to Section 8 regardless of whether the person continues to be required to be licensed pursuant to clause (1)(a).

**(4)** Every person who as a seller

(a) has entered into a pre-need cemetery plan; and

(b) continues to be required to hold funds with respect to the plan in trust pursuant to this Act or the regulations,

must continue to hold a licence issued by the Registrar pursuant to Section 8 regardless of whether the person continues to be required to hold a licence pursuant to clause (1)(b). R.S., c. 62, s. 7; 2014, c. 10, s. 2.

**Issue of licences**

**8** **(1)** The Registrar shall issue a licence to sell

(a) pre-arranged funeral plans;

(b) pre-need cemetery plans;

(c) cemetery lots or the right to use a lot in a cemetery,

to a person who meets the requirements for licensing set out by this Act or the regulations and who pays the annual fee.

**(2)** In order to be issued a licence to sell pre-arranged funeral plans pursuant to subsection (1), an applicant must hold a funeral home licence.

**(3)** The Registrar may require an applicant for a licence to provide a bond in the form and amount authorized by the regulations.

**(4)** A licence is subject to the terms and conditions prescribed by the regulations and any restrictions imposed by the Registrar pursuant to subsection (5).

**(5)** The Registrar may issue a licence subject to such restrictions as the Registrar may impose. R.S., c. 62, s. 8; 2014, c. 10, s. 3; 2018, c. 30, s. 2.

**Display of licence**

**9** **(1)** Every person who holds a licence to sell pre-arranged funeral plans shall display the licence in public view at all times at the funeral home operated by the person.

**(2)** Every person who holds a licence to sell pre-need cemetery plans shall display the licence in public view at all times at the person's business premises. 2014, c. 10, s. 4.

**Insurance Act**

**10** Every person who is selling insurance for insurance-funded plans shall comply with the *Insurance Act*. 2014, c. 10, s. 4.

**Suspension or cancellation of licence**

**11** The Registrar may suspend or cancel a licence where the Registrar is satisfied that the licensee has

(a) violated any provision of this Act or the regulations or failed to comply with any of the terms, conditions or restrictions to which the licensee's licence is subject;

(b) made a material misstatement in the application for the licensee's licence or in any of the information or material submitted by the licensee to the Registrar;

(c) failed to comply with an undertaking provided by the licensee pursuant to Section 12;

(d) been guilty of misrepresentation, fraud or dishonesty; or

(e) demonstrated the licensee's incompetency or untrustworthiness to sell pre-arranged funeral plans, pre-need cemetery plans or cemetery lots or the right to use a lot. R.S., c. 62, s. 9; 2014, c. 10, s. 5.

**Undertakings**

**12** Where the Registrar has reason to believe that a person has contravened this Act or the regulations, the Registrar may accept from the person a written undertaking in the form and containing the terms or conditions the Registrar determines are appropriate in the circumstances, including, without limiting the generality of the foregoing, one or more of the following:

(a) an undertaking to comply with this Act and the regulations;

(b) an undertaking to refrain from engaging in an act or practice;

(c) an undertaking with respect to the form, content and maintenance of trust accounts, records, purchase agreements or other documents. 2014, c. 10, s. 6.

**Publication of information**

**13** **(1)** The Registrar may publish

(a) a list of licensees, including their names and business addresses;

(b) any terms, conditions or restrictions to which a particular licence is subject;

(c) information relating to the status of a particular licence, including whether the licence has been cancelled or suspended;

(d) any undertakings to which a particular funeral home licence is subject;

(e) any hearings scheduled by the Registrar;

(f) any decision, or summary of a decision, made by the Registrar;

(g) any convictions, fines or other penalties imposed by the courts under this Act; and

(h) any other information prescribed by the regulations.

**(2)** The Registrar may publish the information referred to in subsection (1) in whatever form and manner the Registrar considers appropriate. 2014, c. 10, s. 6; 2018, c. 30, s. 3.

**Requirements of purchase agreement**

**14** **(1)** The purchase of

(a) a pre-arranged funeral plan;

(b) a pre-need cemetery plan; or

(c) a cemetery lot for use at a future date or the right to use such a lot,

must be by agreement in writing, signed by both parties and a copy must be given to the purchaser at the time of signing or within 10 days therefrom or mailed to the purchaser within 10 days therefrom.

**(2)** The form and content of purchase agreements used by a seller of pre-arranged funeral plans or pre-need cemetery plans must

(a) be approved by the Registrar; and

(b) comply with the requirements, if any, set out by the regulations.

**(3)** No seller shall accept money for the future delivery of funeral merchandise or services for an individual who is alive at the time the money is accepted unless the seller and the purchaser have entered into a written purchase agreement for a pre-arranged funeral plan.

**(4)** No seller shall accept money for the future delivery of cemetery goods or services for an individual who is alive at the time the money is accepted unless the seller and the purchaser have entered into a written purchase agreement for a pre-need cemetery plan. R.S., c. 62, s. 10; 2014, c. 10, s. 7.

**Included documents**

**15** The seller of an insurance-funded plan shall attach to the purchase agreement

(a) the insurance policy or the enrolment or other documents that confirm the purchase of the insurance; and

(b) the document designating the holder of the funeral home licence or the operator of the cemetery or crematorium as the beneficiary of the insurance or assigning the proceeds of the insurance to the holder of the funeral home licence or the operator of the cemetery or crematorium. 2014, c. 10, s. 8.

**Cancellation of purchase agreement**

**16 (1)** Any purchase agreement may be cancelled without penalty by the purchaser by notice in writing sent by registered mail or delivered in person to the seller of the plan or lot within 10 days from the date of agreement or within 10 days of receipt of the agreement as determined by subsection (2).

**(2)** Where the copy of the purchase agreement is not given to the purchaser at the time of signing but mailed to the purchaser, the 10-day period for cancellation by the purchaser without penalty begins when the purchaser receives the purchaser's copy of the agreement and is presumed to be on the third day after the seller has mailed the copy.

**(3)** The purchase agreement must contain, at the top of page one of each copy of the agreement in type not less than 10 point in size, the following words:

> You may, without penalty or obligation, cancel this transac-tion by notice in writing sent by registered mail to (*name and address of seller to be inserted here*) or by delivering it there yourself within 10 days after you have received the agreement.

**(4)** Where a copy of the purchase agreement is not

(a) given to the purchaser at the time of signing; or

(b) mailed to the purchaser within 10 days of the signing,

the purchase agreement is voidable at the option of the purchaser at any time.

**(5)** Where a notice of cancellation is given pursuant to subsection (1) or the purchase agreement is voided pursuant to subsection (4), all money paid under the purchase agreement for a trust-funded plan must be returned to the purchaser within 30 days after written demand for the same has been given by the purchaser to the seller. R.S., c. 62, s. 11; 2014, c. 10, s. 9.

**Payment by personal representative**

**17** **(1)** Every trust-funded plan must contain a provision that, where a purchaser who is not in default under the plan dies before making all the payments, the purchaser's personal representative may pay to the seller any unpaid balances.

**(2)** Every trust-funded plan must provide for cancellation if the personal representative does not pay the unpaid balance as referred to in subsection (1), and upon the cancellation subsection 18(2) applies to the trust-funded plan. R.S., c. 62, s. 12; 2014, c. 10, s. 10.

**Cancellation of plan**

**18** **(1)** Every pre-arranged funeral plan or pre-need cemetery plan must provide for cancellation

(a) by the purchaser at any time prior to the purchaser's death; or

(b) by the purchaser's personal representative after the purchaser's death but only when, because of great distance or of some extraordinary circumstance, it is not reasonably feasible to provide or use the goods, merchandise or services contracted for by the purchaser under the purchase agreement.

**(2)** When a trust-funded plan is cancelled, terminated or discontinued pursuant to subsection (1), the seller may retain the income that has accrued on the principal pertaining to the plan that has been cancelled, terminated or discontinued and the principal, less any amount expended in accordance with the plan, must be paid and any funeral merchandise, cemetery goods or other things acquired by the seller on behalf of the purchaser must be delivered to the purchaser or the purchaser's personal representative within 30 days after written demand for the same has been given to the seller.

**(3)** Nothing in subsection (2) authorizes a seller to expend money for cemetery goods or services, prior to the death of the purchaser, pursuant to a pre-arranged funeral plan or the pre-need cemetery plan unless it specifically authorizes the expenditure.

**(4)** Every purchase agreement for an insurance-funded plan must include a statement that cancellation of the pre-arranged funeral plan or the pre-need cemetery plan does not cancel the insurance contract, but that cancellation of the insurance contract does cancel the pre-arranged funeral plan or the pre-need cemetery plan. R.S., c. 62, s. 13; 2014, c. 10, s. 11.

**Missed payment**

**19** **(1)** Where a purchaser fails to make a payment under a trust-funded plan within 30 days after the payment is due, the seller may demand payment and give written notice that the plan may be cancelled if payment is not received within 30 days from the date the demand and notice were sent to the purchaser.

**(2)** Where payment is not received within the 30-day period referred to in subsection (1), the seller may cancel the plan by giving written notice of cancellation to the purchaser and refunding to the purchaser all money paid under

the plan, minus all income earned and minus the percentage retained by the seller on account of administrative expenses pursuant to subsections 24(2) and (3).

**(3)** The notices required by subsections (1) and (2) must comply with the requirements, if any, set out by the regulations.

**(4)** The plan is not cancelled and the seller shall honour the prices and the funeral merchandise or services, or the cemetery goods or services, contracted for under the purchase agreement if

(a) the purchaser pays any unpaid balances that are due within the 30 days from the date of the demand and notice sent pursuant to subsection (1); or

(b) the seller does not provide the written notices as required by subsections (1) and (2) and refund the money as provided for in subsection (2). 2014, c. 10, s. 12.

**Assignment**

**20 (1)** A pre-arranged funeral plan may be assigned to another licensed seller of pre-arranged funeral plans in accordance with the regulations by

(a) the seller who entered into the plan, with the written consent of the purchaser;

(b) the purchaser on the purchaser's own behalf or on behalf of any other person for whom the plan was purchased;

(c) the person for whom the plan was purchased; or

(d) the personal representative of the deceased person for whom the plan was purchased.

**(2)** Where an assignment of a pre-arranged funeral plan is made to another licensed seller, the seller who entered into the plan shall transfer all money held in trust to the other licensed seller, and the other licensed seller shall continue to hold the money in trust in accordance with this Act and the regulations.

**(3)** Neither the seller of a pre-arranged funeral plan who assigns it nor the seller to whom it is assigned shall charge the purchaser

(a) any penalty or other fee relating to the assignment; or

(b) any percentage on account of administrative expenses, if a percentage has been retained by any person pursuant to subsections 24(2) and (3). 2014, c. 10, s. 12.

**Notice of intended sale or cessation of operations**

**21 (1)** The seller of a pre-arranged funeral plan shall give written notice to the purchaser at least 30 days in advance of an intended cessation of operations of a funeral home from which the funeral merchandise or services contracted for under the plan were to be provided.

**(2)** A licensee shall give written notice to the purchaser within 30 days after a sale or change in location of a funeral home from which the funeral merchandise or services contracted for under the plan were to be provided.

**(3)** The notices required by subsections (1) and (2) must comply with the requirements, if any, set out by the regulations.

**(4)** The seller of pre-arranged funeral plans shall file with the Registrar, at least 30 days in advance of an intended sale or cessation of operations of a funeral home operated by the seller,

(a) an interim report that meets the requirements, if any, in the regulations, respecting the pre-arranged funeral plans and trust accounts held by the seller;

(b) a report that sets out how the pre-arranged funeral plans and trust accounts will be dealt with as part of the intended sale or cessation of operations; and

(c) in the case of an intended sale, the name of the proposed purchaser.

**(5)** The Registrar may require the seller to provide additional information and particulars with respect to any report filed with the Registrar pursuant to subsection (4). 2014, c. 10, s. 12.

**Where seller ceases to carry on business**

**22** Where a pre-arranged funeral plan that is a trust-funded plan is cancelled because the funeral home from which the funeral merchandise or services contracted for under the plan were to be provided is ceasing to carry on business, the seller of the plan

(a) shall not retain the income that has accrued on the principal;

(b) shall refund to the purchaser the principal and all income earned, minus any amount expended in accordance with the plan and minus the percentage retained by the seller on account of administrative expenses pursuant to subsections 24(2) and (3); and

(c) shall deliver to the purchaser any funeral merchandise or other things acquired by the seller on behalf of the purchaser. 2014, c. 10, s. 12.

**Resolution of disputes by Registrar**

**23 (1)** Any dispute or disagreement between a purchaser and a seller regarding a pre-arranged funeral plan or a pre-need cemetery plan that cannot be resolved to their mutual satisfaction may be resolved by the Registrar by order.

**(2)** The Registrar, with the approval of the Minister, may order the payment of money to the person entitled to receive it from a pre-arranged funeral plan or a pre-need cemetery plan.

**(3)** Where a seller has been requested in writing, by a person having authority to make the demand to be reimbursed under Section 16, 17 or 18 and fails to do so within 30 days of receipt of the demand, the purchaser may apply to the Registrar for an order directing the release of the funds. R.S., c. 62, s. 14.

**Funds in trust**

**24** **(1)** Subject to subsection (2), all money received by a seller under a pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon, must be held in trust in accordance with the regulations until

(a) the funeral merchandise or services or the cemetery goods or services mentioned in the plan have been purchased or provided in accordance with the plan; or

(b) the money held in trust, or any unused balance thereof, has been refunded to the purchaser or the purchaser's personal representative,

and is not subject to seizure or detention under any legal process.

**(2)** The seller of a trust-funded plan may, where the plan so provides, retain not more than the percentage, as determined by the regulations, of money payable under the plan on account of administrative expenses.

**(3)** The seller of a trust-funded plan may retain the percentage on account of administrative expenses referred to in subsection (2) only at one of the following times:

(a) where payment is by lump sum, when the seller deposits the lump sum payment in trust;

(b) where payment is by instalments, when the seller deposits the first instalment payment in trust;

(c) where the pre-arranged funeral plan or pre-need cemetery plan is cancelled, when cancelled.

**(4)** Notwithstanding subsections (3) and 20(3), where a trust-funded plan was entered into before September 1, 2016, and the seller who entered into the plan is able to prove to the Registrar's satisfaction that no administrative fee or percentage on account of administrative expenses referred to in subsection (2) has been taken, the Registrar may approve the seller to retain the percentage on account of administrative expenses at the time the plan is transferred to another licensed seller of pre-arranged funeral plans in accordance with Section 20.

**(5)** The seller of an insurance-funded plan must not charge any fee or amount on account of administrative expenses. R.S., c. 62, s. 15; 2014, c. 10, s. 13; 2017, c. 9, s. 1.

**Change to insurance-funded plan**

**25** The seller of a pre-arranged funeral plan or a pre-need cemetery plan must not cancel a trust-funded plan and replace it with an insurance-funded plan unless the seller

(a) obtains prior written consent from the purchaser to cancel the trust-funded plan and replace it with an insurance-funded plan;

(b) contracts in the insurance-funded plan to provide the same funeral merchandise or services or the same cemetery goods or services, at the same prices, as were contracted for in the trust-funded plan; and

(c) does not charge the purchaser any additional fee or amount for the insurance-funded plan. 2014, c. 10, s. 14.

**Unclaimed trust money**

**26** **(1)** Money held in trust by a seller for a pre-arranged funeral plan or a pre-need cemetery plan becomes unclaimed trust money if the seller

(a) has been unable to determine whether the person for whom the plan was purchased is deceased and has reasonable grounds to believe that the person for whom the plan was purchased would be 120 years old or older; or

(b) has reasonable grounds to believe that another person has provided the funeral merchandise or services or the cemetery goods or services,

and the funeral merchandise or services or the cemetery goods or services that are mentioned in the plan have not been provided and the seller has been unable to locate the purchaser or a personal representative of the purchaser.

**(2)** Once money held in trust by a seller becomes unclaimed trust money pursuant to this Section, the seller shall transfer the money and income to the Minister within 15 days.

**(3)** Money paid to the Minister pursuant to subsection (2) must be held in trust by the Minister for two years.

**(4)** All interest earned on money paid to the Minister pursuant to subsection (2) accrues to the Crown in right of the Province.

**(5)** Every person who makes an application to claim money paid pursuant to subsection (2) shall

(a) make the application in a form approved by the Registrar; and

(b) provide the Registrar with any information requested by the Registrar.

**(6)** Within 120 days after an application and any information required by the Registrar is received pursuant to subsection (5), the Registrar shall consider the application and may either

(a) allow the claim, if the Registrar is satisfied that the applicant has a valid entitlement to the money; or

(b) deny the claim, if the Registrar is not satisfied that the applicant has a valid entitlement to the money.

**(7)** Where the Registrar does not receive an application for money paid pursuant to subsection (2) by a person who the Registrar is satisfied is validly entitled to it within two years from the time that the money is paid to the Minister,

(a) the money defaults to the Crown in right of the Province and must be paid into the General Revenue Fund; and

(b) all claims to the money by any person entitled to it are extinguished. 2014, c. 10, s. 14.

**Money paid under existing plan**

**27** Money standing to the credit of a purchaser under a pre-arranged funeral plan or a pre-need cemetery plan entered into prior to October 1, 1983, must be held in trust in accordance with Section 24 and the regulations. R.S., c. 62, s. 16.

**Statement of cost of lot**

**28 (1)** Where a pre-arranged funeral plan or a pre-need cemetery plan is combined with the sale of a lot or the right to use a lot, the cost of the lot must be clearly set forth in any documents pertaining thereto.

**(2)** Sections 24 and 27 do not apply to the money paid for the lot and the agreement must clearly set out that Sections 24 and 27 do not apply.

**(3)** Section 34 applies to the money paid for the lot. R.S., c. 62, s. 17.

**Prohibition of solicitation in certain places**

**29** No person shall solicit a person in any hospital, home for special care, nursing home or senior citizens home to

(a) enter into a pre-arranged funeral plan or a pre-need cemetery plan with the person soliciting or with any other person who would provide the cemetery goods or services or the funeral merchandise or services under any such plan; or

(b) purchase a lot in a cemetery or the right to use a lot in a cemetery. R.S., c. 62, s. 18.

**Solicitation by telephone and harassment**

**30 (1)** Solicitation of sales by telephone may not be made between the hours of 9:00 p.m. and 9:00 a.m.

**(2)** No solicitation may be conducted in a manner that may harass or appear to harass an individual.

**(3)** An individual who has declined to enter into a purchase agreement and who is solicited again within one year by the same person who originally solicited that individual is prima facie deemed to be harassed. R.S., c. 62, s. 19.

**Cemetery plan**

**31 (1)** No person may sell a lot in a cemetery or any right to use a lot in a cemetery unless a plan of the cemetery in accordance with the regulations has been filed with the Registrar and the lot being sold is shown on the plan.

**(2)** The Registrar may not accept for filing a plan that is not in accordance with the regulations.

**(3)** Every plan filed with the Registrar may be inspected by any person during the regular office hours of the Registrar.

**(4)** Part IX of the *Municipal Government Act* and Part IX of the *Halifax Regional Municipality Charter* do not apply to the subdivision of a cemetery into lots.

**(5)** The *Registry of Deeds Act* and the *Land Registration Act* do not apply to an instrument to the extent that it affects a lot in a cemetery sold for burial or the right to use a lot in a cemetery for burial or in respect of which a purchase agreement for burial has been executed. R.S., c. 62, s. 21; 2018, c. 30, s. 4.

**Rights of purchaser of cemetery lot**

**32** **(1)** The sale of a lot in a cemetery or of the right to use a lot in a cemetery

(a) subject to subsection (2), vests in the purchaser the right of reasonable access to the lot;

(b) vests in the purchaser the right to use the lot for burial;

(c) vests in the purchaser the right to erect a memorial on the lot subject to any specifications provided for by the purchase agreement; and

(d) subject to subsections (2) and (3), vests in the public a right to reasonable access for visitation to any grave in the lot that has been used for burial.

**(2)** The operator may vary the access to a lot in a cemetery at any time so long as reasonable access is maintained.

**(3)** Where all of the lots in a building, structure or enclosure in a cemetery are owned by one family, there is no public right of access to the building, structure or enclosure. R.S., c. 62, s. 22.

**Exemption from taxation and sale of lot**

**33** **(1)** A lot in a cemetery or a right to use a lot in a cemetery that has been conveyed to a purchaser or is subject to a purchase agreement is exempt from taxation of any kind and is not liable to be seized or sold on execution for taxes or otherwise unless the purchaser holds it for resale.

**(2)** The sale of a cemetery, on execution or otherwise, does not affect a right acquired by a purchaser pursuant to Section 32. R.S., c. 62, s. 23.

**Care fund**

**34** **(1)** In this Section, “operator” means the operator of a cemetery.

**(2)** Except as provided in subsection (3), every operator shall maintain in force at all times an irrevocable trust fund, separate and distinct from all other funds, to be known as the care fund of the particular cemetery to be used for the care and maintenance of graves in the cemetery.

**(3)** From all money received on the sale of a lot, the operator shall deduct and set aside in the care fund, a portion of the money in the manner and in the amount prescribed by the regulations.

**(4)** The care fund must be held and administered by a trustee approved by the Registrar in accordance with an irrevocable trust agreement approved by the Registrar.

**(5)** The Registrar shall keep a copy of every trust agreement approved by the Registrar.

**(6)** Every trust agreement submitted to the Registrar and approved by the Registrar may be inspected by any person during the regular office hours of the Registrar.

**(7)** A trustee shall not pay out of a care fund any money except in accordance with the trust agreement.

**(8)** The care fund and any money held for deposit to the care fund is not subject to seizure or detention under any legal process.

**(9)** An operator may deposit to the care fund money from sources other than from the sale of lots and in such case the money forms part of the care fund. R.S., c. 62, s. 24.

**Maintenance of cemetery**

**35** An operator shall maintain a cemetery or crematorium in good order at all times. R.S., c. 62, s. 25.

**Requirements for cremation**

**36** The operator of a crematorium shall not cremate human remains unless the remains are enclosed in a container that

(a) is of sufficient strength to hold and conveniently transfer the remains;

(b) prevents the remains from posing a health hazard; and

(c) meets the requirements, if any, set out by the regulations. 2014, c. 10, s. 16.

**Inspections**

**37** The Registrar or an inspector appointed pursuant to this Act may enter and inspect a cemetery, crematorium or a funeral home at any time. R.S., c. 62, s. 26.

**Access to records**

**38** The Registrar or an auditor appointed or engaged pursuant to this Act shall have access at any time to the records of

(a) a seller of a pre-arranged funeral plan;

(b) a seller of a pre-need cemetery plan;

(c) a seller of a lot in a cemetery or of a right to use a lot in a cemetery;

(d) an operator; and

(e) a trustee in respect of a trust fund or a trust agreement under this Act. R.S., c. 62, s. 27.

**Act of default**

**39** Where any person of a class referred to in clauses 38(a) to (d)

(a) carries out any act of bankruptcy or makes a general assignment for the benefit of that person's creditors or other acknowledgement of insolvency or makes any application pursuant to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation;

(b) fails to fulfill any contractual, fiduciary or statutory duties to

(i) a purchaser or the person for whom a pre-arranged funeral plan or pre-need cemetery plan was purchased, or

(ii) the personal representative of a purchaser or the person for whom the plan was purchased, after the death of the purchaser or that person; or

(c) is unwilling or unable to comply with this Act or the regulations,

or where any circumstances prescribed by the regulations exist, an act of default is deemed to have occurred for the purpose of Sections 40 to 42. 2004, c. 1, s. 1.

**Powers of Registrar upon act of default**

**40 (1)** Where an act of default has occurred, the Registrar may take any steps the Registrar considers necessary or advisable to remedy the default or mitigate the default and, without limiting the generality of the foregoing, may

(a) take control over and administer, assign or dispose of any trust fund relating to a pre-arranged funeral plan or pre-need cemetery plan or a care fund;

(b) refund to the purchaser or the purchaser's personal representative the principal paid under any pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon to the extent funds are available to do so;

(c) order an operator to perform any function relating to the operation of a cemetery;

(d) allocate or specify the use of any income earned on a care fund.

**(2)** An order made under clause (1)(c) may be appealed to the Supreme Court of Nova Scotia within 30 days. 2004, c. 1, s. 1.

**Administrator**

**41 (1)** Where an act of default by an operator has occurred, the Minister may appoint an administrator to perform the duties and functions of the operator with respect to a cemetery until

(a) another operator becomes responsible for the operation of the cemetery;

(b) an operational arrangement for the ongoing care and maintenance of the cemetery is established; or

(c) three years have passed since the appointment of the administrator,

whichever occurs first.

**(2)** An administrator appointed under subsection (1)

(a) has control and management of the cemetery and any assets or property of the operator used in the operation of the cemetery;

(b) may act in the stead of the operator upon such terms and conditions as are prescribed by the Minister; and

(c) has access to and may expend any money that an operator would be entitled to spend pursuant to this Act.

**(3)** An administrator appointed under subsection (1) shall attempt to

(a) find another operator for the cemetery; or

(b) make an operational arrangement for the ongoing care and maintenance of the cemetery.

**(4)** Where three years have passed from the date of appointment of an administrator under subsection (1) and the administrator has not been able to find another operator for the cemetery or make an operational arrangement for the ongoing care and maintenance of the cemetery, the operation of the cemetery must

(a) carried on in accordance with the regulations; or

(b) terminated in accordance with the regulations. 2004, c. 1, s. 1.

**Expropriation and conveyance**

**42** Where an act of default by an operator has occurred and the Minister considers it necessary to vest the cemetery in another operator, the Minister may designate the cemetery as land required for a public purpose within the meaning of the *Expropriation Act* and the land may be expropriated in accordance with that Act and conveyed to the other operator. 2004, c. 1, s. 1.

**No action or liability**

**43** Notwithstanding anything contained in this Act,

(a) no action for damages may be commenced or maintained and no cause of action lies against the Minister, an administrator appointed by the Minister or an employee or agent acting under the direction of the Minister or an administrator, if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith; and

(b) nothing in this Act makes an administrator, the Minister or the Crown in right of the Province liable for any debt or obligation of the operator of a cemetery. 2004, c. 1, s. 1.

**Costs**

**44** Any costs incurred by an administrator that exceed the revenue generated by the operation of a cemetery are a debt due and owing to the Crown in right of the Province by the operator of the cemetery. 2004, c. 1, s. 1.

**Regulations**

**45** **(1)** The Governor in Council may make regulations

(a) respecting the application of this Act;

(b) prescribing functions and duties of the Registrar and inspectors, auditors and other persons appointed or engaged pursuant to this Act;

(c) regulating, limiting or prohibiting the solicitation of pre-arranged funeral plans, pre-need cemetery plans and the sale of cemetery lots or the right to use a cemetery lot;

(d) requiring a salesperson of a licensed seller to be licensed, and respecting the licensing of such salespersons;

(e) prescribing, or authorizing the Registrar to prescribe, an amount, or a formula for calculating the amount, of the bond referred to in subsection 8(3);

(f) prescribing, or authorizing the Registrar to prescribe, the form of the bond referred to in subsection 8(3);

(g) providing for the forfeiture of bonds and for the distribution of the proceeds of bonds;

(h) respecting advertising in relation to funeral merchandise or services or cemetery goods or services, including prohibiting practices with respect to advertising;

(i) for the purpose of subsection 13(1), prescribing information that the may be published by the Registrar;

(j) respecting the requirements for purchase agreements and the terms and conditions of purchase agreements, or any class of purchase agreements;

(k) requiring reports or other information respecting insurance-funded plans or insurance policies to be filed with the Registrar by sellers of insurance-funded plans;

(l) requiring records to be kept by sellers of insurance-funded plans respecting insurance-funded plans or insurance policies;

(m) respecting the bonding of persons referred to in Section 38;

(n) prescribing the requirements for trust agreements required by this Act;

(o) governing the manner in which trust funds must be kept and accounted for;

(p) governing the payment of money into trust funds or trust accounts, including the time within which and the circumstances under which payments are to be made;

(q) prescribing records or other information with respect to trust funds or trust accounts that must be provided to purchasers of trust-funded plans;

(r) for the purpose of subsection 19(3), respecting the requirements for the notices to a purchaser required pursuant to subsections 19(1) and (2), including the manner in which the seller must provide the notices to the purchaser and the form and content of the notices;

(s) respecting the assignment of pre-arranged funeral plans pursuant to Section 20, including respecting the transfer of the money held in trust;

(t) for the purpose of subsection 21(3), respecting the requirements for the notices to the purchaser of a pre-arranged funeral plan, including the manner in which the notices must be provided and the form and content of the notices;

(u) for the purpose of clause 21(4)(a), respecting the requirements for the interim report to be filed with the Registrar with respect to pre-arranged funeral plans and trust accounts held by a seller;

(v) prescribing the requirements for care funds;

(w) prescribing the requirements for licensing and the renewal of licences;

(x) prescribing the terms and conditions subject to which licences are issued;

(y) prescribing the requirements for cemetery plans to be filed with the Registrar;

(z) respecting the requirements for the operation and maintenance of cemeteries and crematoria;

(aa) respecting the requirements for containers used in the cremation process;

(ab) prescribing the classes of trustees who may be approved by the Registrar;

(ac) prescribing the records to be kept by persons referred to in Section 38;

(ad) respecting the inspection of cemeteries and crematoria;

(ae) respecting the examination of records required to be kept by this Act or the regulations;

(af) requiring reports or other information to be filed annually or on some other periodic basis or at the request of the Registrar by persons referred to in Section 38;

(ag) prescribing the form and content of reports or other information required to be filed pursuant to this Act;

(ah) requiring the carrying of liability insurance by persons referred to in Section 38;

(ai) prescribing the maximum fees that may be charged for services by operators;

(aj) prescribing the minimum fee that must be charged for maintenance of a lot, grave or memorial;

(ak) prescribing the maximum percentage of money payable under a pre-arranged funeral plan or pre-need cemetery plan on account of administrative expenses;

(al) prescribing fees for the purpose of this Act and the regulations;

(am) respecting the requirements for burial;

(an) prescribing circumstances that constitute acts of default under Section 39;

(ao) respecting circumstances in which the principal from a care fund may be disbursed and any conditions attaching to money disbursed;

(ap) respecting the performance by the Registrar of any duties or functions of an operator after an act of default has occurred under Section 39;

(aq) respecting the power of the Registrar to address issues arising from acts of default;

(ar) respecting the terms and conditions of the appointment of administrators appointed under Section 41;

(as) respecting the powers, duties and functions of administrators appointed under Section 41;

(at) respecting the operation of cemeteries or the termination of operation of cemeteries in circumstances referred to in subsection 41(4);

(au) prescribing forms, or requiring forms to be in the form prescribed by the Registrar, and providing for their use;

(av) exempting any person or class of persons from this Act or the regulations or any provision of either of them;

(aw) defining any word or expression used in this Act and not expressly defined in this Act;

(ax) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.

**(2)** The exercise of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 62, s. 28; 2004, c. 1, s. 2; 2014, c. 10, s. 17; 2018, c. 30, s. 5.

**Offence and penalty**

**46 (1)** Any person who

(a) violates any provision of this Act or the regulations; or

(b) fails to comply with any direction made pursuant to this Act or the regulations by the Registrar,

is guilty of an offence.

**(2)** Subject to subsection (4), an individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than $1,000 and not more than $25,000 or to imprisonment for a period of up to two years, or to both a fine and imprisonment.

**(3)** Subject to subsection (4), a corporation that is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than $3,000 and not more than $300,000.

**(4)** The minimum fine for a violation of Section 7 is $5,000 for an individual and $10,000 for a corporation.

**(5)** Where a corporation commits an offence, every principal, director, manager, employee or agent of the corporation who authorized the contravention or assented to, acquiesced in or participated in it is guilty of the offence, whether or not the corporation has been prosecuted for the offence.

**(6)** In addition to any other penalty under this Act, the court may do one or both of the following:

(a) order the person to comply with the provision of this Act or the regulations respecting which the person was convicted;

(b) where the court is satisfied that monetary benefits have accrued to the convicted person, order the person to pay compensation or make restitution to any person. R.S., c. 62, s. 29; 2018, c. 30, s. 6.

**Limitation period**

**47** A prosecution for an offence under this Act may not be commenced more than three years after the later of

(a) the date on which the offence was committed; and

(b) the date on which the evidence of the offence first came to the attention of the Registrar. 2018, c. 30, s. 7.

CHAPTER C-17

# An Act Respecting Cemetery Companies

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Cemetery Companies Act*. R.S., c. 63, s. 1.

**Formation of company**

**2** **(1)** Any number of persons, not fewer than 10, may form themselves into a company for the purpose of establishing, maintaining, conducting, managing or operating a public cemetery by signing their names to an instrument of incorporation in the form prescribed by the regulations and by otherwise complying with the requirements of this Act.

**(2)** Where such persons

(a) subscribe for stock to an amount adequate to purchase or otherwise acquire the cemetery or the ground required for such a cemetery;

(b) pay to one of their number in trust an amount equal to 20% of the stock so subscribed;

(c) execute an instrument of incorporation in the form prescribed by the regulations; and

(d) register such instrument, together with a receipt from the person mentioned in clause (b) for the amount so paid to the per-

son, in the registry of deeds for the registration district in which such ground is situated,

such company shall henceforth become and be a body corporate, by the name designated in the instrument so registered, and may take, hold, preserve, protect, improve, embellish, sell and convey land to be used exclusively as a cemetery or place for the burial of the dead. R.S., c. 63, s. 2.

**Limited liability**

**3** No member of the company is personally liable for any obligation of the company beyond the amount unpaid on any share or shares owned by any such member, together with any amount unpaid on any assessment made under this Act. R.S., c. 63, s. 3.

**Deemed shareholders**

**4** Every owner of a lot, containing not less than 100 superficial feet, in a cemetery established, maintained, conducted, managed or operated by such company, who has paid not less than 25% of the price of the lot is deemed to be a shareholder in the company and every such lot is deemed a share in the company. R.S., c. 63, s. 4.

**Directors**

**5** **(1)** The affairs and property of the company shall be managed by nine directors, and a majority of the directors form a quorum.

**(2)** The first directors must be chosen by ballot from among the shareholders whose names are affixed to the instrument so registered, and thereafter the directors are elected annually by the shareholders at the annual meeting of the company, which must be held on the third Monday in January in every year.

**(3)** Notice of the meeting must be given by the secretary-treasurer to each shareholder at least 10 days prior to the meeting.

**(4)** A copy of the notice must be posted in at least three prominent places in the vicinity of the cemetery.

**(5)** Where any vacancy occurs in the office of director by death, resignation, removal or otherwise the remaining directors shall appoint a shareholder of the company to fill the vacancy.

**(6)** Any shareholder so appointed holds office until the annual meeting of the company next following the shareholder's appointment and is eligible for re-election. R.S., c. 63, s. 5.

**Voting**

**6** Every shareholder is entitled to one vote for every share held by the shareholder provided that where a member holds more than 10 shares, the shareholder is entitled to only one vote for each five shares in excess of 10 so held. R.S., c. 63, s. 6.

**Officers**

**7** **(1)** The directors shall elect

(a) one of their number to be president of the company, who shall preside at every meeting of the directors and who shall not vote except in case of an equality of votes, when the president has the casting vote;

(b) one of their number or a shareholder to be secretary-treasurer, who shall receive such compensation as may be allowed by the company.

**(2)** In the absence of the president or secretary-treasurer the directors may choose one of their number as acting president or acting secretary-treasurer. R.S., c. 63, s. 7.

**Bylaws**

**8** The directors may make such bylaws, rules or regulations, not inconsistent with this Act as they consider necessary and proper for the management of the affairs of the company. R.S., c. 63, s. 8.

**Duties of secretary-treasurer and records**

**9** **(1)** The directors shall provide the secretary-treasurer with all books necessary for the keeping of proper accounts and records of the company and shall also provide the secretary-treasurer with a plan of the cemetery, showing the size and location of the lots therein.

**(2)** The secretary-treasurer shall keep a record of all bylaws, proceedings at meetings, accounts and funds of the company, and shall render a detailed account, at the annual meeting, of receipts and expenditures.

**(3)** The secretary-treasurer shall keep a list or other suitable record of the names of all lot holders, showing the number or numbers, referable to the plan, of the lot or lots held by each and the location of graves in the lot or lots, and the secretary-treasurer shall also keep a record of the names, ages, date of burial and number of lot in which each is buried, of all persons interred in the cemetery, and shall perform such other duties as the directors direct.

**(4)** Such bylaws, plan and list or record must be available to any person at all reasonable times for the purpose of searching and making extracts therefrom without payment of any fee. R.S., c. 63, s. 9.

**Instalment**

**10** The directors may call for instalments on the sums subscribed for, and may appoint a time for the payment thereof, and if the same are not then paid, the rights of the subscriber, and every instalment paid on the subscriber's shares are forfeited, provided that the directors may remit such forfeiture, if the instalments are paid with interest within one year from the time so appointed. R.S., c. 63, s. 10.

**Assessments**

**11** The directors, or a majority of the shareholders present at any annual or at any special meeting called for that purpose, have power to assess lot holders rateably in proportion to the number and dimensions of lots held by them for any money required for protecting, enlarging, fencing or improving the cemetery, or for the purchase of land, or for any other necessary purpose connected with the man-

agement thereof, and the company may sue for and recover the amount of any assessment as a private debt from any lot holder, provided that no larger sum than four dollars may be assessed against any one lot holder in any one year. R.S., c. 63, s. 11.

**Dividends and rights of shareholders**

**12** **(1)** From and out of the proceeds of the sales of burial sites made by the company, the company may pay to its shareholders who do not desire to take land in the cemetery to the full extent of the stock subscribed and paid for by them, interest on their paid up stock not represented by land in the cemetery, at such rate, not exceeding seven per cent a year as the directors may determine, and the company may also repay to such shareholders the amount of paid up stock held by them not represented by land in the cemetery.

**(2)** Every such person is entitled to all the rights and privileges of a shareholder, in respect of the shares of the capital stock of the company held by the person and fully paid up, and that are not represented by land in the cemetery, until the amount paid for the shares is repaid to the person by the company, and upon such repayment the person ceases to be a shareholder in respect of such shares.

**(3)** Except as aforesaid, no dividend or profit of any kind may be paid by the company to any member thereof. R.S., c. 63, s. 12.

**Use of lot proceeds**

**13** One half of the proceeds of all sales of burial sites made by the company must be first applied to the payment of the purchase money of the land acquired by the company, and, subject to Section 12, the residue to preserving, improving and embellishing the land as a cemetery or burial ground, and to the incidental expenses of the company, and after payment of the purchase money, the proceeds of future sales must be applied to the preservation, improvement and embellishment of the cemetery, and to the incidental expenses thereof, and to no other purpose whatsoever. R.S., c. 63, s. 13.

**Powers of company and authority of executors**

**14** **(1)** The company is authorized and empowered to receive, take, hold, manage and enjoy any real or personal property, which may from time to time be donated, devised or bequeathed to the company in trust for the permanent or other improvement of the property of the company or any part thereof, or any lot or lots therein, in accordance with the conditions or provisions contained in any deed of trust, devise, bequest or donation made or given to the company or executed in favour of the company, and to assume and undertake the duty and obligation of preserving and maintaining in proper manner for any time or forever, any particular lot, monument or enclosure in the cemetery of the company, and to enter into agreements binding the company to preserve and maintain in a proper manner for any time or forever, such lot, monument or enclosure in such cemetery designated in the deed of trust, devise, bequest or donation.

**(2)** Executors, administrators or trustees may pay over and transfer to the company, money or securities in their hands, which they are by the will of their testator or other instrument, directed to apply for or towards the purposes in this Section specified. R.S., c. 63, s. 14.

**Tax exemption**

**15** The cemetery of any company, and the lots or plots therein when conveyed by the company to individual proprietors for burial sites, are exempt from taxation of any kind, and are not liable to be seized or sold on execution. R.S., c. 63, s. 15.

**Burial regulations**

**16** The company shall, subject to the approval of the Governor in Council, make regulations to ensure all burials within the cemetery are being conducted in a decent and proper manner. R.S., c. 63, s. 16.

**Poor and strangers**

**17** The directors shall lay out and keep in reserve and in good order a portion of ground sufficiently large for the burial of the poor and strangers, and such graves shall be marked and numbered as the directors see fit. R.S., c. 63, s. 17.

**Registration of conveyance**

**18** The conveyance of a lot sold by the company for a burial site does not require to be registered for any purpose whatever, and is not affected by any Act respecting the registration of deeds, nor does any judgment, mortgage or encumbrance subsist on or against any lot so conveyed. R.S., c. 63, s. 18.

**Powers of directors and disposal of lot by holder**

**19** **(1)** The directors have power

(a) to allot and sell lots, and deeds or conveyances of any lot made by the company must be executed by the president and secretary-treasurer, but the corporate seal of the company is not necessary;

(b) to repair, straighten, re-erect or alter in any way they consider desirable any grave, gravestone, monument, fence or curbing that is not kept in proper repair by the owner of the lot in which the grave, gravestone, monument, fence or curbing is situated;

(c) to improve and put in good order any lot that, in the opinion of the directors, has been neglected and is in need of care and, in the name of the company, to sue for and to collect the cost of making the improvement from the owner of the lot if, after 10 days notice in writing requiring the owner to do so, the improvement is not made by the owner.

**(2)** Any lot holder wishing to dispose of the lot holder's lot shall first offer the same to the company at the price paid by the lot holder for the lot, not including any assessment, and on refusal of the company to purchase the lot, the lot holder may then dispose of the same to any person by written transfer and entry on the books of the company by the secretary-treasurer. R.S., c. 63, s. 19.

**Companies Winding Up Act and use of surplus**

**20** **(1)** Where any company incorporated under this Act desires to be wound up, the company may be wound up under the *Companies Winding Up Act*, if

no lot has been sold for the purpose of burial, or if any lots have been sold for such purposes, with the consent in writing of the owner of every such lot.

**(2)** The property of any company so wound up is freed and discharged from all trusts and the proceeds of any such property devised or conveyed by way of gift to the company in trust for the purpose of a cemetery must be applied to such charitable or benevolent purpose as the Governor in Council directs. R.S., c. 63, s. 20.

**Regulations**

**21 (1)** The Minister of Service Nova Scotia may make regulations prescribing the form of the instrument of incorporation referred to in Section 2.

**(2)** The form contained in the Schedule to Chapter 63 of the Revised Statutes, 1989, is deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Section.

**(3)** The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

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CHAPTER C-18

# An Act Respecting the Institute of Certified Management Consultants of Atlantic Canada

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Certified Management Consultants Act.* R.S., c. 65, s. 1.

## Interpretation

**2** In this Act,

"bylaws" means bylaws of the Institute;

"Institute" means the Institute of Certified Management Consultants of Atlantic Canada incorporated pursuant to the *Societies Act*. R.S., c. 65, s. 2.

## Bylaws and appointment of Registrar

**3** **(1)** The Institute may make bylaws

(a) prescribing the qualifications for and conditions of registration for applicants for membership in the Institute;

(b) prescribing a curriculum and courses of study to be pursued by applicants for membership in the Institute and the subjects upon which such applicants must be examined;

(c) providing for the issuing of certificates of membership to applicants for membership who have met the requirements for membership;

(d) governing the conduct of members in the Institute in the practice of their business or profession by prescribing or providing for a code of ethics, rules of professional conduct and standards of practice and by providing for a complaint procedure and for the

suspension, expulsion or other penalty for professional misconduct, incapacity or incompetence.

**(2)** The Institute shall appoint a Registrar who shall perform the duties assigned to the Registrar by this Act, receive complaints from the public or members of the Institute respecting members of the Institute and perform such other duties as may be assigned to the Registrar by the Institute.

**(3)** The bylaws made pursuant to this Section must be open to examination by the public at the head office of the Institute during normal office hours. R.S., c. 65, s. 3.

**Membership in Institute**

**4 (1)** The Institute shall grant membership in the Institute to any individual who applies therefor in accordance with the bylaws and who

(a) is of good character;

(b) is of the age of majority;

(c) complies with the academic and experience requirements specified in the bylaws; and

(d) passes such examinations as the Board of Directors of the Institute sets or approves in accordance with the bylaws.

**(2)** The Registrar shall keep a register in which is entered the names of all members in good standing of the Institute and only those members so registered are entitled to the privileges of membership in the Institute.

**(3)** The register must be open to examination by the public at the head office of the Institute during normal office hours. R.S., c. 65, s. 4.

**Appeal against refusal of membership**

**5 (1)** An individual who is refused membership in the Institute or a member of the Institute who is disciplined by the Institute may appeal to the Supreme Court of Nova Scotia against the refusal of membership or disciplinary action.

**(2)** Where a person appeals pursuant to this Section, a copy of the notice of appeal must be served on the Registrar and the Registrar shall file with the prothonotary of the Supreme Court of Nova Scotia a record of the proceeding that resulted in the failure or refusal to grant membership or the decision of the Institute imposing a disciplinary sanction, together with any transcript of evidence.

**(3)** An appeal pursuant to this Section may be made on a question of law or fact, or both, and the Supreme Court of Nova Scotia may rescind any decision, may exercise all powers of the Institute and may direct the Institute to take any action that the Institute is empowered to take as the Court considers proper and, for such purposes, the Court may substitute its opinion for that of the Institute or the Court may refer the matter back for rehearing, in whole or in part, in accordance with such directions as the Court considers proper. R.S., c. 65, s. 5.

**Use of designation by member**

**6** **(1)** Every member in good standing of the Institute may

(a) use the designation "Certified Management Consultant"; and

(b) use the designation "C.M.C." to indicate that the member is a certified management consultant.

**(2)** No person shall

(a) use the designation "Certified Management Consultant"; or

(b) use the designation "C.M.C." to indicate that the person is a certified management consultant,

unless the person is a member in good standing of the Institute.

**(3)** In any prosecution for an offence under this Act, a certificate of the Registrar stating that an individual is or is not a member in good standing of the Institute is prima facie proof that that person is or is not a member in good standing of the Institute. R.S., c. 65, s. 6.

**Rights of non-members**

**7** Nothing in this Act affects the right of any person who is not a member of the Institute to practise as or purport to be a management consultant so long as the person does not use the designation "Certified Management Consultant" or "C.M.C.". R.S., c. 65, s. 7.

**Use of designation by non-members**

**8** Nothing in this Act affects the right of any person who is not a member of the Institute to use the initials "C.M.C." after that person's name so long as that person is not practising as a management consultant. R.S., c. 65, s. 8.

**Offence and penalty**

**9** Every person who contravenes this Act is guilty of an offence and liable on summary conviction to a fine not exceeding $500. R.S., c. 65, s. 9.

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CHAPTER C-19

# An Act to Provide for Change of Name

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Change of Name Act*. R.S., c. 66, s. 1.

## Interpretation

**2** In this Act,

"applicant" means a person applying for a change of name under this Act;

"application" means an application for a change of name under this Act;

"approved" means approved by the Registrar;

"authorized agency" means an organization or police service referred to in subsection 12(4);

"change of name" means any change of name or birth registration by way of alteration, substitution, addition or abandonment;

"infant child" means a child who has not attained the age of 16 years;

"judge" means a judge of the Supreme Court of Nova Scotia;

"name" means given name or surname or both;

"prescribed" means prescribed by or under this Act or by the regulations;

"Registrar" means Registrar General of the Province, and includes the Deputy Registrar General. R.S., c. 66, s. 2; 2011, c. 37, s. 2; 2015, c. 13, s. 1; 2018, c. 31, s. 1.

**Who may apply**

**3 (1)** Subject to the provisions of this Act, a person who is 16 years of age or older and

(a) was born in the Province; or

(b) has been ordinarily resident in the Province for at least three months immediately preceding the application,

may make application for a change of name.

**(2)** Notwithstanding subsection (1), a person who is under 16 years of age may apply for or give a consent in respect of a change of name of that person's child, whether born in or out of wedlock, in the same manner and circumstances as a person who is 16 years of age or older. R.S., c. 66, s. 3; 2015, c. 13, s. 2; 2018, c. 31, s. 2.

**Consent of spouse**

**4** A married person shall not make an application for a change of surname without the consent of the married person's spouse except where

(a) consent is dispensed with under this Act; or

(b) the married person wishes to change the name of the married person's birth registration to the name the married person was commonly known by prior to marriage. R.S., c. 66, s. 4.

**Application to change spouse's or infant's name**

**5 (1)** A married person may make an application for a change of name of the married person's spouse, with the consent of the spouse, or for a change of name of one or more of the married person's unmarried infant children, with the consent of the other parent.

**(2)** A widowed person may make an application for a change of name of that person's unmarried infant child. R.S., c. 66, s. 5.

**Application by divorcee respecting infant**

**6** A person whose marriage has been dissolved or annulled may make an application for a change of name of one or more of the person's unmarried infant children, with the consent of the other parent. R.S., c. 66, s. 6.

**Name change upon divorce**

**7 (1)** Where the Supreme Court of Nova Scotia issues a divorce judgment or grants a decree absolute for dissolution of marriage or for nullity of marriage, the Court may, notwithstanding Section 3, at the time of issuing the judg-

ment or granting the decree, or at any time after the date on which the judgment is issued or the decree is granted, upon the application of the petitioner or the respondent, order that the name of the petitioner or the respondent be changed upon the dissolution of the marriage to the name desired by that person.

**(2)** Where the Supreme Court of Nova Scotia grants a decree or order for a change of name pursuant to subsection (1), it may also decree or order the change of name of infant children who are in the lawful custody of the petitioner or the respondent.

**(3)** Before making a decree or order pursuant to subsection (2), the written consent of the parent of the children not requesting the decree or order must be obtained by the Court unless the Court dispenses with such consent for one or more of the reasons that are set forth in Section 10 pertaining to dispensation by a judge.

**(4)** Where an application pursuant to this Section is granted, the decree or order shall state the name to which the name of the applicant or the applicant's child is changed and adequate particulars of the birth of the person to identify the appropriate records and, upon receiving a certified copy of that order and of the certificate of divorce or a certified copy of the decree, the Registrar shall register the change of name accordingly. R.S., c. 66, s. 7.

**Application for illegitimate infant**

**8** **(1)** The mother of an unmarried infant child born out of wedlock and not adopted or legitimated may make an application to change the child's name.

**(2)** Where such a child has been registered with the surname of a person acknowledging to be the father, that person's consent is required to change the child's name.

**(3)** A person, shown on the registration of the birth of an unmarried infant child, born out of wedlock and not adopted or whose parents have not married each other subsequent to the birth of the child, as the father of the child, may make an application to change the name of the child, with the consent of the mother.

**(4)** A person, not shown on the registration of the birth of an unmarried infant child, born out of wedlock and not adopted or legitimated, as the father of the child, may, with the consent of the mother, make an application to change the child's name where the person furnishes the Registrar with a true copy of an order of a court of competent jurisdiction determining that person to be the father of the child. R.S., c. 66, s. 8.

**Application by guardian, representative or agency**

**9** With the consent of a judge,

(a) the guardian of a person under the *Guardianship Act*;

(b) the representative for a person under the *Adult Capacity and Decision-making Act* to whom authority to change the name of the person has been granted; or

(c) an agency to which the care and custody of a child is committed or transferred under the *Children and Family Services Act*,

may apply to change the name of the person or child. 2017, c. 4, s. 75.

**Dispensing with consent**

**10 (1)** Where a judge is satisfied that a person whose consent is required under this Act

(a) is dead;

(b) is of unsound mind;

(c) is missing or cannot be found;

(d) has deserted or neglected to provide proper care and maintenance for a spouse or child;

(e) has suffered a child whose name is to be changed to be supported by a child-placing agency for more than two years continuously immediately preceding the date of the application;

(f) is divorced and neither has custody nor is contributing to the support of the child at the time of the application;

(g) is living separate and apart from the person whose name is to be changed; or

(h) is a person whose consent in all the circumstances of the case ought to be dispensed with,

the judge may order that the person's consent be dispensed with, if it is in the interest of the person whose name is to be changed to do so.

**(2)** Notwithstanding subsection (1), a judge may dispense with the consent of a parent of an unmarried infant child on whose behalf an application is being made where the child has been known by the proposed name for a period of at least three years immediately preceding the application. R.S., c. 66, s. 10.

**Filing and form of application**

**11 (1)** An application for a change of name under this Act must be filed with the Registrar and must be in the approved form.

**(2)** An application must include

(a) an affidavit of bona fides in the approved form or to the like effect;

(b) the consent in the approved form or to the like effect of every person, subject to subsection (3), whose consent is necessary under this Act or a copy of any order made under Section 10;

(c) information with respect to the person whose name is to be changed regarding previous legal changes of name under this Act or under a similar enactment of any other province of Canada; and

(d) such further documentary evidence or information as may be required by the Registrar.

**(3)** The Registrar may dispense with a person's consent if the Registrar is satisfied that the person is dead. R.S., c. 66, s. 12; 2011, c. 37, s. 4.

**Fingerprints required**

**12** **(1)** Subject to the regulations, where an application is made to change the name of a person, that person must be fingerprinted by an authorized agency in accordance with the prescribed procedures.

**(2)** The fingerprints taken by an authorized agency pursuant to subsection (1) must be submitted to the Royal Canadian Mounted Police, along with the present and proposed name and date of birth of the person whose name is to be changed, for the purpose of linking the person's present and proposed name if the person has a criminal record.

**(3)** The Registrar shall not approve an application to change the name of a person who is required to be fingerprinted under subsection (1) until the Registrar is satisfied that the person's fingerprints have been provided to the Royal Canadian Mounted Police.

**(4)** The following are authorized agencies for the purpose of this Section:

(a) the Provincial Police;

(b) the Royal Canadian Mounted Police;

(c) a municipal police department or other police department providing policing services in the Province;

(d) a prescribed organization.

**(5)** An authorized agency shall put in place reasonable and sufficient safeguards to protect the confidentiality of the fingerprints of applicants and other personal information relating to applicants in its custody or under its control.

**(6)** The Registrar may enter into an agreement with the Royal Canadian Mounted Police, an authorized agency or any person or organization, for any purpose related to this Section, including an agreement respecting

(a) the protection of the confidentiality of; and

(b) the retention and destruction of,

fingerprints and other personal information provided to the Royal Canadian Mounted Police, authorized agency or other person or organization pursuant to this Section. 2011, c. 37, s. 5.

**Criminal record check required**

**13** Subject to the regulations, where an application is made to change the name of a person, that person must submit to a criminal record check. 2020, c. 6, s. 1.

**Duty of Registrar**

**14** **(1)** The Registrar shall, upon

(a) all requirements of this Act being complied with; and

(b) payment of the prescribed fee,

register the change of name by the issuance of a certificate thereof in the prescribed form.

**(2)** Notwithstanding subsection (1), the Registrar shall not register a change of name for a person if that person's criminal record check discloses a conviction of a designated offence.

**(3)** For the purpose of subsection (2), "designated offence" means an offence listed in paragraph (a), (c), (c.1), (d), (d.1) or (e) of the definition of "designated offence" in subsection 490.011(1) of the *Criminal Code* (Canada). R.S., c. 66, s. 13; 2020, c. 6, s. 2.

**Certificate in Register**

**15 (1)** Where a change of name has been registered under Section 14, a certificate thereof in the prescribed form must be entered in a book entitled the Change of Name Register, to be kept for that purpose in the office of the Registrar, and such certificate must be under the hand of the Registrar.

**(2)** Where a change of name has been so effected, the Registrar shall make the necessary alteration in the margin of any record in the Registrar's office pertaining to any such person. R.S., c. 66, s. 14.

**Duplicate certificate**

**16** A duplicate of the certificate referred to in Section 14 must be issued by the Registrar to anyone applying for the same upon payment of the prescribed fee and such duplicate is for all purposes conclusive evidence of its contents. R.S., c. 66, s. 15.

**Notice of certificate**

**17 (1)** The Registrar shall cause notice of a certificate referred to in Section 14 to be published forthwith in the Royal Gazette unless publication is dispensed with pursuant to subsection (2).

**(2)** The Registrar may dispense with publication of notice of the certificate as required under subsection (1) if, in the Registrar's opinion,

(a) the applicant would be unduly prejudiced or embarrassed by the publication;

(b) the change of name applied for is of a minor character;

(c) the applicant has been commonly known under the name applied for and granted; or

(d) the publication is not in the public interest. R.S., c. 66, s. 16; 2011, c. 37, s. 6.

**Effect of name change**

**18 (1)** Without restricting the effect that a change of name may have at law, any person whose name has been changed in accordance with this Act or any other enactment shall

(a) upon production of a duplicate of the certificate of change of name issued under this Act or any other enactment;

(b) upon satisfactory proof of identity; and

(c) upon payment of the prescribed fee,

be entitled to have the person's new name substituted in lieu of the person's former name in any and every certificate, instrument, document, contract or other writing or record whatsoever, whether it is or is not of the same class as those hereinbefore recited and whether it is public or private.

**(2)** Subsection (1) does not apply to any document or record made or deposited in the office of a prothonotary or court clerk or court of probate or registry of deeds before the name change so as to require any amendment or other change of such document or record. R.S., c. 66, s. 17.

**Annulment of change**

**19 (1)** The Registrar may, if satisfied that any change of name has been obtained by fraud, duress or misrepresentation, annul the change of name by order, effective from a date named therein.

**(2)** A memorandum of the order must be endorsed in the Change of Name Register and notice of the annulment must be published forthwith in the Royal Gazette and a true copy of the order of annulment sent by registered mail to the last known address of the person whose name has been annulled, addressed to the person in the name that has been annulled.

**(3)** The Registrar shall without charge make any alterations in the Registrar's records that are necessary by reason of the order.

**(4)** The Registrar may in any such case by order require any person to whom a duplicate of a certificate of change of name has been issued to deliver it up to the Registrar forthwith. R.S., c. 66, s. 18.

**Appeal**

**20 (1)** Where the Registrar refuses to register a change of name or makes an order to annul a change of name, any person interested may appeal therefrom to a judge and, after hearing evidence and considering submissions by the parties, the judge may make an order that is final and binding on the Registrar.

**(2)** A notice of appeal must be served on the Registrar. R.S., c. 66, s. 19.

**Fraud or misrepresentation**

**21 (1)** Any person who by fraud or misrepresentation obtains a change of name under this Act is guilty of an offence and liable on summary conviction to a fine of not more than $500.

**(2)** Any person who refuses or neglects to comply with an order issued under subsection 19(4) is guilty of an offence and liable on summary conviction to a fine of not more than $100. R.S., c. 66, s. 20.

**Certificates and forms**

**22** The Minister of Service Nova Scotia may prescribe the certificates and forms to be used for the purpose of this Act. 2018, c. 31, s. 3.

**Regulations**

**23** **(1)** The Governor in Council may make regulations

(a) prescribing the fees payable upon an application and upon any certificate, search or other matter required or permitted to be given or done under this Act;

(b) providing for the return of any fee or part thereof where an application is refused;

(c) exempting persons or classes of persons from the fingerprinting requirement pursuant to Section 12;

(d) respecting procedures to be followed when a person applying for a change of name is fingerprinted, including prescribing additional information or documentation to be provided to an authorized agency;

(e) respecting the process by which fingerprints are provided to the Royal Canadian Mounted Police;

(f) establishing requirements to protect the confidentiality of fingerprints and other personal information relating to applications for changes of name in the custody or under the control of an authorized agency, including

(i) restrictions on the time that such personal information may be retained by an authorized agency, and

(ii) the manner in which records of fingerprints and other personal information relating to applicants are to be destroyed by an authorized agency;

(g) prescribing an organization as an authorized agency;

(h) exempting persons or classes of persons from the criminal record check requirement pursuant to Section 13;

(i) respecting procedures for criminal record checks;

(j) respecting any matter necessary or advisable to carry out the intent and purposes of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 66, ss. 21, 22; 2011, c. 37, s. 7; 2018, c. 31, s. 4.

**Existing rights**

**24** Nothing herein affects or is deemed to affect any right that may exist at law to change a name in any manner except to the extent that such right is affected by this Act. R.S., c. 66, s. 23.

CHAPTER C-20

# An Act Respecting Chartered Professional Accountants of Nova Scotia

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(The table of contents is not part of the statute)

Organizational Practice Requirements



Practice Inspections



Protection from Other Proceedings



Confidentiality



Complaints and Discipline

**Short title**

**1** This Act may be cited as the *Chartered Professional Accountants Act*.
2015, c. 30, s. 1.

**Interpretation**

**2** In this Act,

"approved LLP" means a limited liability partnership approved by CPA Nova Scotia to engage in the practice of chartered professional accounting as a limited liability partnership through the process set out in the bylaws;

"bankrupt" means bankrupt as defined in the *Bankruptcy and Insolvency Act* (Canada);

"Board" means the Board of Directors of CPA Nova Scotia;

"bylaw" means, unless the context requires otherwise, a bylaw of CPA Nova Scotia made by the Board pursuant to Section 13 or 14;

"candidate" means an individual who is registered in the professional education program established by CPA Nova Scotia;

"CGANS" means the Certified General Accountants Association of Nova Scotia as established by Chapter 10 of the Acts of 1998, the *Certified General Accountants Act*;

"chartered professional accountant" means an individual who is permitted by this Act to use the designation "Chartered Professional Accountant" in English and "comptable professionnel agréé" in French or "CPA" after the individual's name;

"chartered professional accounting" means the provision of any professional service usually or ordinarily performed by chartered professional accountants, whether or not such services are offered to or provided to the public;

"Chief Executive Officer" means the President and Chief Executive Officer of CPA Nova Scotia;

"CMANS" means the Society of Management Accountants of Nova Scotia as established by Chapter 35 of the Acts of 2005, the *Certified Management Accountants of Nova Scotia Act*;

"code of professional conduct" means the rules or code of conduct or ethics adopted by the Board;

"complainant" means a person that files a complaint;

"complaint" means

(a) a notice in writing alleging potential conduct unbecoming, incapacity, professional incompetence or professional misconduct by a registrant or registered firm; or

(b) a referral by the Chief Executive Officer in circumstances set out in the bylaws;

"Complaint Review Committee" means the Complaint Review Committee appointed by the Board in accordance with the bylaws;

"Complaints Committee" means the Complaints Committee appointed by the Board in accordance with the bylaws;

"conduct unbecoming" means any conduct outside the practice of chartered professional accounting that is likely to harm the standing of the practice of chartered professional accounting as a profession or to impair public confidence in the profession of chartered professional accounting;

"Court" means the Supreme Court of Nova Scotia;

"CPA Nova Scotia" means Chartered Professional Accountants of Nova Scotia, a body corporate continued under this Act;

"Discipline Committee" means the Discipline Committee appointed by the Board in accordance with the bylaws;

"extra-provincial regulatory body" means any chartered-professional-accounting regulatory body in another province of Canada or in Bermuda;

"fellow designation" means any of the designations of

(a) "Fellow of the Certified General Accountants" and "FCGA" permitted for use by members of CGANS or CGA-Canada;

(b) "Fellow of the Certified Management Accountants" and "FCMA" permitted for use by members of CMANS or CMA Canada; and

(c) "Fellow of the Chartered Accountants" and "FCA" permitted for use by members of ICANS;

"firm" means an organization that is

(a) carrying on the practice of public accounting;

(b) using any of the protected designations as part of the name or description of the organization; or

(c) carrying on any other activity identified in the bylaws as being an activity that, if undertaken to the extent set out in the bylaws, would cause the organization to be considered a firm for the purpose of this Act;

"Fitness to Practise Committee" means the Fitness to Practise Committee as may be appointed by the Board in accordance with the bylaws;

"former Act" means Chapter 5 of the Acts of 2015, the *Chartered Professional Accountants Act*;

"hearing panel" means a panel selected from among the members of the Discipline Committee to conduct a hearing and to perform such other functions as are set out in this Act and the bylaws;

"honorary designation" means any of the designations of

(a) "Honorary Certified General Accountant" and "GGA (Hon)" permitted for use by members of CGANS or CGA-Canada;

(b) "Honorary Certified Management Accountant" and "CMA (Hon)" permitted for use by members of CMANS or CMA Canada; and

(c) "Honorary Member of the Institute of Chartered Accountants of Nova Scotia" and "CA (Hon)" as elected by the members of ICANS;

"ICANS" means the Institute of Chartered Accountants of Nova Scotia established by the former Act;

"incapacity" means the status whereby a member suffers or suffered from a medical, physical, mental or emotional condition, disorder or addiction that renders or rendered a member unable to practise with competence;

"inspector" means an inspector appointed pursuant to this Act;

"investigation panel" means a panel selected from among the members of the Complaints Committee to investigate a complaint and to perform such other functions as are set out in this Act and the bylaws;

"investigator" means an individual appointed pursuant to this Act and the bylaws to investigate a complaint who may or may not be a member of an investigation panel;

"legacy body" means CGANS, CMANS or ICANS;

"legacy designation" means any of the designations of

(a) "Certified General Accountant";

(b) "Certified Management Accountant";

(c) "Chartered Accountant";

(d) "CGA";

(e) "CMA"; and

(f) "CA";

"legacy member" means a member holding a legacy designation or, depending on the context, a member who has become the holder of a CPA designation by virtue of a legacy designation;

"limited liability partnership" or "LLP" means a limited liability partnership within the meaning of the *Partnership Act* that is engaged in, or holds itself out as engaging in, the profession of chartered professional accounting, whether as a Nova Scotia LLP or an extra-provincial LLP;

"member" means an individual registered as a member of CPA Nova Scotia;

"officer" means an officer of the Board as described in Section 8;

"organization" includes a sole proprietorship, corporation, company, society, association, partnership or limited liability partnership, any association of individuals and any similar body;

"practice of public accounting" means

(a) an audit, a review and any other assurance engagement governed by the standard of professional practice of the Chartered Professional Accountants of Canada, as amended from time to time, or other Canadian standards published by the Chartered Professional Accountants of Canada, or corresponding standards established in a jurisdiction outside of Canada including

(i) an audit of historical financial information and all related opinions, declarations, consents or other reports,

(ii) an assurance engagement other than an audit or review of historical financial information where an opinion, compliance or other attestation is provided, which may include reporting on controls, compliance with agreements and value-for-money audits in the public sector, and

(iii) a review of historical financial information and all related opinions, consents, declarations or other reports; and

(b) specified audit procedures and agreed-upon procedure engagements governed by the standards of professional practice of the Chartered Professional Accountants of Canada, as amended from time to time,

but does not include a compilation engagement as defined by the standards of professional practice of the Chartered Professional Accountants of Canada, as amended from time to time, or the business of public bookkeeping if none of the acts or functions included in clause (a) or (b) are performed;

"profession" means the profession of chartered professional accounting;

"professional corporation" means a corporation registered as a professional corporation by CPA Nova Scotia pursuant to the bylaws that meets the registration criteria and does one or more of the following:

(a) carries on the practice of public accounting;

(b) uses any of the protected designations as part of the name or description of the corporation; or

(c) carries on any other activity identified in the bylaws as being an activity that, if undertaken to the extent set out in the bylaws, would cause the corporation to be considered a professional corporation for the purpose of this Act;

"professional incompetence" means a lack of the ability or the failure to apply the knowledge, skills or judgement relevant to the practice of the profession of a nature or to an extent that requires a registration sanction or remediation;

"professional misconduct" means conduct or acts occurring in the course of the practice of the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional, including

(a) a breach of the standards of practice, code of professional conduct or the handbook of professional standards as approved by Chartered Professional Accountants of Canada;

(b) a breach of this Act, the regulations or the bylaws;

(c) practising accounting while the ability to practise accounting is impaired;

(d) any contravention of the provisions of an Act of the Parliament of Canada, an enactment of the Province or the laws of a

foreign jurisdiction, or regulations made thereunder, that is inconsistent with the proper professional behaviour of an individual registered by CPA Nova Scotia; and

(e) failing to abide by any registration conditions or restrictions or any order or direction issued under this Act, the regulations or the bylaws;

"professional services" means the services offered by a chartered professional accountant;

"protected designations" means any of the designations of

(a) "Chartered Professional Accountant";

(b) "Fellow of the Chartered Professional Accountants of Nova Scotia";

(c) "Honorary Chartered Professional Accountant";

(d) "CPA";

(e) "FCPA";

(f) "CPA (Hon)";

(g) "Public Accountant";

(h) "PA";

(i) "Licensed Public Accountant"; and

(j) "LPA";

"Public Accounting Licensing Committee" means the Public Accounting Licensing Committee appointed by the Board in accordance with the bylaws and by the Governor in Council;

"public representative" means a member of the Board or of a committee of the Board who

(a) has never been a member, student or candidate of a legacy body; or

(b) is not and has never been a member, student or candidate of an accounting profession;

"registered firm" means a firm that is registered by CPA Nova Scotia;

"registrant" means a member, student, candidate or an individual whose name appears on a register maintained by CPA Nova Scotia;

"Registration Appeals Committee" means the Registration Appeals Committee appointed by the Board in accordance with the bylaws;

"Registration Committee" means the Registration Committee appointed by the Board in accordance with the bylaws;

"registration sanction" means

(a) the imposition of conditions or restrictions on registration by a hearing panel or its equivalent in another jurisdiction;

(b) a reprimand, condition or restriction imposed by an investigation panel or its equivalent in another jurisdiction, and con-

sented to by the registrant or registered firm, outside of an informal resolution process;

(c) a

(i) reprimand,

(ii) suspension of registration, or

(iii) revocation of registration,

issued by a hearing panel or its equivalent in another jurisdiction; or

(d) such other sanction as may be set out in the bylaws;

"regulated services" means those chartered professional accounting services specified as such in the bylaws;

"representative" means the member identified by a registered firm who, on behalf of a registered firm, is to receive communications from CPA Nova Scotia and speak on behalf of and bind the registered firm;

"respondent" means a registrant or registered firm that is subject to a complaint;

"settlement agreement" means an agreement that resolves a complaint referred to the Discipline Committee;

"student" means an individual who is registered in a pre-professional education program established by CPA Nova Scotia. 2015, c. 30, s. 2; 2019, c. 4, s. 2.

**CPA Nova Scotia continued**

**3 (1)** CPA Nova Scotia is continued as the corporation known as the "Chartered Professional Accountants of Nova Scotia".

**(2)** The corporation may continue to operate under the name "CPA Nova Scotia" and may use the initials "CPANS".

**(3)** Effective August 2, 2016,

(a) all assets, property and liabilities of CGANS, CMANS and ICANS are the assets, property and liabilities of CPA Nova Scotia; and

(b) CGANS, CMANS and ICANS are dissolved.

**(4)** No action, appeal, application or other proceeding being carried on or power or remedy being exercised with respect to the operations of CGANS, CMANS and ICANS is to be discontinued or abated on account of this Act, but may be continued in the name of CPA Nova Scotia, which has the same rights, is subject to the same liabilities and shall pay or receive the same costs as if the action, appeal, application or other proceedings had been commenced or defended in the name of CPA Nova Scotia. 2015, c. 30, s. 3.

**Rights and duties**

**4 (1)** CPA Nova Scotia has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

**(2)** Where, at the end of a fiscal year, CPA Nova Scotia has surplus funds, the funds must be applied to the promotion and implementation of the objects of CPA Nova Scotia and may not be distributed to registrants or registered firms. 2015, c. 30, s. 4.

**Objects**

**5** In order to serve and protect the public interest in the practice of chartered professional accounting, CPA Nova Scotia shall

(a) preserve the integrity of the accounting profession;

(b) maintain public confidence in the ability of the accounting profession to regulate itself;

(c) govern and regulate the practice of the profession and govern and regulate registrants and registered firms in accordance with this Act and the bylaws, including

(i) establishing, maintaining, developing and enforcing

(A) standards of qualification for registration and continuation of registration,

(B) standards of practice, and

(C) standards of professional ethics, knowledge, skill and proficiency,

(ii) regulating the provision of regulated services,

(iii) licensing members to engage in the practice of public accounting,

(iv) regulating the practice, competence and professional conduct of registrants and registered firms, and

(v) regulating the use of protected designations in accordance with this Act and the bylaws;

(d) promote and foster greater public awareness of the practice of chartered professional accounting;

(e) promote and increase the professional knowledge, skill and proficiency of registrants and registered firms in financial reporting, strategy and governance, management accounting, audit, assurance, finance and taxation and other matters relating to the practice of chartered professional accounting;

(f) where not inconsistent with the public interest, advance the professional interests of registrants and registered firms; and

(g) do such other lawful acts and things as are incidental to the attainment of the purposes and objects of CPA Nova Scotia. 2015, c. 30, s. 5; 2019, c. 4, s. 3.

**Board**

**6** There is a Board of Directors to govern the affairs of CPA Nova Scotia. 2015, c. 30, s. 6.

**Board composition**

**7** **(1)** Subject to Section 8, the Board is composed of

(a) 10 persons elected from and by the members of CPA Nova Scotia; and

(b) up to two public representatives,

all of whom must be elected or appointed pursuant to and for such terms as are set out in the bylaws.

**(2)** Bylaws governing the election or appointment of Board members and their terms of office are subject to the following requirements:

(a) no more than one member of the Board may be a non-resident of the Province;

(b) public representatives must be appointed by the Board in such number as is set out in the bylaws.

**(3)** Notwithstanding subsection (1), public representatives continue to hold office until their successors are appointed or until such time as they are reappointed. 2015, c. 30, s. 8.

**Replacement of elected Board member**

**8** Where a member of the Board who was elected ceases to hold office before the person's term expires, the Board may appoint a new member to hold office for the unexpired portion of the term. 2015, c. 30, s. 9.

**Board elections**

**9** For greater certainty, the Board members elected in each Board election must be elected from the membership of CPA Nova Scotia regardless of their legacy designations. 2015, c. 30, s. 10.

**Officers**

**10** Subject to Sections 8 and 9, the officers of the Board must

(a) be set out in the bylaws;

(b) be appointed or elected in accordance with the bylaws; and

(c) serve such terms as provided in the bylaws. 2015, c. 30, s. 11.

**Annual general meeting**

**11** An annual general meeting must be held for such matters as may be set out in the bylaws, at such time and place and after such notice as is determined by the bylaws. 2015, c. 30, s. 12.

**Meetings**

**12** **(1)** The Board may at any time call a meeting of CPA Nova Scotia in accordance with the bylaws.

**(2)** The Chair of the Board shall convene a meeting of CPA Nova Scotia in accordance with the bylaws.

**(3)** The Chair of the Board shall convene a meeting of CPA Nova Scotia at the request of members in circumstances set out in the bylaws. 2015, c. 30, s. 13.

**Bylaws regulating business and affairs of CPA Nova Scotia**

**13 (1)** Subject to Section 14, the Board may make bylaws regulating the business and affairs of CPA Nova Scotia, including bylaws

(a) respecting the holding of Board meetings, including required meetings, the notice for such meetings, the quorum and the procedure to be followed and the manner of voting;

(b) respecting the powers and duties of the Chief Executive Officer;

(c) establishing and empowering committees of the Board, including the Complaint Review Committee, Complaints Committee, Discipline Committee, Fitness to Practise Committee, Public Accounting Licensing Committee, Registration Committee and Registration Appeals Committee and such other committees as needed, to carry out the business and affairs of the Board, including

(i) governing the names, authority, powers, duties and quorums of such committees,

(ii) governing the composition of the committees, and in so doing applying the principle that for the first five years following August 2, 2016, the Board shall strive to include equal representation from legacy bodies, if it best serves the public interest,

(iii) governing the manner of appointment, terms of office, reappointment and qualifications of committee members, including governing the public representation required on any committee,

(iv) establishing the functions, operations, processes, practices and procedures of each committee,

(v) determining the manner in which the members of a committee must be notified of a meeting and the consequences, if any, of failing to provide notice, and

(vi) determining the means by which a committee makes decisions;

(d) respecting the protected designations that organizations may use or exempting certain organizations from the application of Section 39;

(e) respecting the designations or initials required or authorized to be used by individuals who are

(i) members of an extra-provincial regulatory body, or

(ii) entitled by a regulator in a foreign jurisdiction to use a protected designation;

(f) prescribing the circumstances under which the Registration Committee or the Registration Appeals Committee may authorize a member to use a legacy designation;

(g) permitting the making of arrangements with or affiliating with any organization, and the entering into of arrangements necessary, to provide for the delivery of any professional education program or pre-professional education program;

(h) authorizing the making of agreements, co-operative arrangements or affiliations with any organization, including legacy bodies and extra-provincial regulatory bodies;

(i) providing for the payment of expenses of members of the Board or committees of the Board and remuneration and payment of expenses of employees of CPA Nova Scotia;

(j) prescribing the circumstances under which and means by which a complaint may be referred to the Fitness to Practise Committee and the circumstances under and means by which a complaint may be referred by the Fitness to Practise Committee to the Complaints Committee;

(k) prescribing the examination fees and tuition, if any, payable by students, candidates and any other individual or firm seeking registration by CPA Nova Scotia;

(l) respecting the fees to be paid by individuals and firms for initial registration, renewal or reinstatement and applications and any other fees and the time when they must be paid, and any fees for late or dishonoured payments or late filings;

(m) respecting file and document storage, retention and destruction;

(n) regulating and governing the professional conduct of registrants and registered firms, including the adoption and amendment of a code of professional conduct;

(o) providing for registration categories of individuals and firms in CPA Nova Scotia, including the rights of and obligations, restrictions and limitations on each category;

(p) providing for the establishment of specialty areas for individuals or firms in CPA Nova Scotia, and the academic standards, education programs, examination requirements, experience requirements, professional qualifications and any other requirements for initial registration, continued registration or renewal of registration for each area and the rights of and obligations, restrictions and limitations on each area;

(q) prescribing the circumstances in which a registrant or registered firm may practise through or as a professional corporation or organization or in any other business arrangement;

(r) respecting academic standards, education programs, examination requirements, experience requirements, professional qualifications and any other requirements for initial registration, continued registration or renewal of registration for each category of registration for individuals and firms in CPA Nova Scotia;

(s) respecting the registers that are to be kept by the Chief Executive Officer, including the information that is to be maintained in those registers and which information therein must be made available to the public, and, without limiting the generality of the foregoing, stipulating the circumstances in which the name of an individual or a firm must be removed from any register;

(t) respecting the approval process, qualifications, requirements, obligations and ongoing monitoring of organizations that seek or hold the designation of a training office;

(u) establishing a professional education program and a pre-professional education program;

(v) establishing prerequisites for entrance to any professional education program or pre-professional education program;

(w) permitting the entering into of arrangements to provide for

(i) the delivery of any professional education program or pre-professional educational program, and

(ii) the monitoring, assessment, evaluation and verification of the experience of any student, candidate or other person seeking admission to CPA Nova Scotia;

(x) distinguishing the use of protected designations by individuals or firms not registered by CPA Nova Scotia;

(y) stipulating the designations or initials that a member who was a member of a legacy body or an extra-provincial regulatory body immediately before August 2, 2016, may use;

(z) establishing a registration process for individuals and firms, including the authority to stipulate the function, process, power and authority of the Chief Executive Officer, the Registration Committee and the Registration Appeals Committee in the registration process, and, without limiting the generality of the foregoing, governing

(i) the initial registration and the renewal, suspension, revocation and reinstatement of such registration,

(ii) the names by which firms may be known or operate,

(iii) the resignation of members,

(iv) the requirement that each registered firm designate a representative, and the qualifications required and responsibilities of that representative, and

(v) the imposition of conditions or restrictions on such registration;

(aa) prescribing the time and manner in which registered firms must comply with the firm name and designation requirements set out in this Act or bylaws together with the consequences for failing to ensure a firm name or designation complies with those requirements;

(ab) prescribing the publication or disclosure of suspensions imposed pursuant to Section 32 or subsection 89(1) or registration conditions or restrictions imposed pursuant to subsection 27(2) or 89(1);

(ac) prescribing a suspension appeal process in respect of suspensions imposed pursuant to Section 32, including the authority to stipulate which suspensions imposed thereunder are to be subject to the right of appeal;

(ad) stipulating those professional services that are regulated services and regulating the provision of those services by registrants or registered firms;

(ae) respecting the complaints and discipline process, including

(i) establishing processes for receiving and responding to complaints or other information concerning the conduct, capacity, practice or professional competence of registrants or registered firms,

(ii) establishing a mechanism to consider and determine claims of solicitor-client privilege during an investigation or hearing, including the production and use of the document and how any privilege must be maintained,

(iii) establishing the process for making a determination pursuant to Section 79,

(iv) establishing processes for investigating the conduct, capacity, practice or professional competence of a registrant or registered firm,

(v) respecting the appointment, powers and responsibilities of investigators,

(vi) prescribing the process by which a complaint is to be processed and disposed of,

(vii) establishing a range of the outcomes available to an investigation panel at the conclusion of an investigation,

(viii) prescribing the manner by which a complaint is provided from an investigation panel to a hearing panel and by which a matter is referred from an investigation panel to a hearing panel,

(ix) prescribing the content of and process to be followed with respect to settlement agreements,

(x) establishing processes for the conduct of hearings,

(xi) establishing the outcomes available to a hearing panel and the range of sanctions the panel may impose at the conclusion of the hearing,

(xii) establishing the form and content of any disclosure or publication of matters leading to or following a hearing or otherwise involving a registration sanction,

(xiii) respecting the imposition of publication bans or other orders respecting the openness of a hearing process,

(xiv) respecting awards of costs, including solicitor and client costs, and

(xv) establishing processes for the appeal of hearing panel decisions and orders;

(af) respecting the Complaint Review Committee and, without limiting the generality of the foregoing, prescribing

(i) the time frame in which a notice of review must be filed and upon whom the notice of review must be served,

(ii) the parties to a review, and

(iii) the information that must be provided by the decision-maker whose decision is under review by the Complaint Review Committee;

(ag) respecting professional standards for registrants or registered firms and, without limiting the generality of the foregoing, the authority of CPA Nova Scotia to

(i) establish a committee to address matters involving a breach of professional standards,

(ii) conduct a practice inspection of a registrant or registered firm with authority to establish selection criteria regarding which registrants or registered firms are to be subject to a practice inspection or the geographic area in which registrants or registered firms are to be subject to a practice inspection,

(iii) require a registrant or registered firm to do or refrain from doing any act,

(iv) retain inspectors,

(v) enter into agreements with extra-provincial regulatory bodies or other regulatory bodies,

(vi) recover costs incurred in conducting a practice inspection and such other costs as may be incurred by the committee in discharging its obligations under this Act or the bylaws,

(vii) notwithstanding Sections 69 and 70, share information with other committees of CPA Nova Scotia, the Chief Executive Officer or extra-provincial regulatory bodies or other regulatory bodies, and

(viii) stipulate such other powers and responsibilities as may be required for the maintenance and enforcement of professional standards;

(ah) respecting the obligation of a registrant or registered firm to report bankruptcy to the Board, and the consequences of such status together with the procedure to be followed by a registrant or registered firm who wishes to regain any registration status lost as a result of being or becoming bankrupt;

(ai) respecting continuing professional development requirements for registrants, including

(i) the nature and extent of continuing professional development that a registrant must complete in a given period,

(ii) the form, manner and timing of reporting of continuing professional development activities,

(iii) the undertaking of audits of member compliance with continuing professional development requirements,

(iv) the consequences that may result from a registrant's failure to satisfy the continuing professional development requirements,

(v) the right to disclose a registrant's failure to satisfy the continuing professional development requirements to any extra-provincial regulatory body of which the registrant is a member, candidate or student, and

(vi) the mandate and powers of the Chief Executive Officer and committees of CPA Nova Scotia with respect to continuing professional development;

(aj) respecting the provision and maintenance of professional liability insurance for registrants and firms;

(ak) respecting the regulation of registrants or registered firms who practise outside the Province, including the imposition of additional reporting or compliance requirements on or exempting registrants or registered firms from the application of any provision of the bylaws;

(al) authorizing the making of agreements, co-operative arrangements or affiliations with other institutions, organizations or professional bodies, whether or not located within the Province;

(am) respecting the maintenance, continuation, alteration and removal of honours, awards and recognitions held by legacy members and the creation, alteration and removal of new or existing honours, awards and recognitions; and

(an) governing, establishing or prescribing any other thing that is necessary for the effective administration of CPA Nova Scotia.

**(2)** Without restricting the authority of the Board to make bylaws under subsection (1), before a bylaw is made, the Board shall determine whether the nature of the proposed bylaw sufficiently impacts the interests of members to warrant consultation with members and, where it does, the manner and extent of such consultation. 2015, c. 30, s. 14; 2018, c. 4, s. 2; 2019, c. 4, s. 4.

**Bylaws respecting Board members and meetings**

**14** The Board may also make bylaws

(a) establishing the procedure for the election of Board members;

(b) governing the number of public representatives and the process by which they are appointed;

(c) governing the election of Board members or the appointment of Board members to complete the terms of elected Board members who for any reason cannot complete their full terms;

(d) governing the remuneration of members of the Board apart from the reimbursement of expenses;

(e) permitting matters to be put to a vote of members by mail or electronic voting or such other means as technology permits and setting out particulars with respect to how such votes must occur;

(f) respecting the calling and conduct of meetings, including the annual general meeting, of CPA Nova Scotia;

(g) fixing the terms of office of Board members;

(h) respecting the officer positions and their terms on the Board; and

(i) respecting the procedure for the election of the Chair and other officers of the Board. 2015, c. 30, s. 15.

**Review and approval of bylaws**

**15 (1)** The Board shall circulate a proposed bylaw to members for review 30 days before a resolution is made for its approval.

**(2)** A bylaw made pursuant to Section 13 comes into force, is repealed or amended the day the resolution creating, amending or repealing the bylaw is approved by the Board, unless otherwise stated.

**(3)** A bylaw made pursuant to Section 14 does not come into force, and is not made until a majority of members present at a special or general meeting of CPA Nova Scotia approves the creation, amendment or repeal of the bylaw. 2015, c. 30, s. 16.

**Bylaws with immediate force and effect**

**16** Notwithstanding Sections 13 to 15, the bylaws filed with the Minister of Finance and Treasury Board immediately before August 2, 2016, have immediate force and effect. 2015, c. 30, s. 17.

**Availability of bylaws**

**17** Bylaws are public documents and any bylaw, requirement, standard, code or rule adopted by such bylaw must be made available by the Board for public inspection on request during the usual business hours of CPA Nova Scotia, and must be posted on the CPA Nova Scotia website. 2015, c. 30, s. 18.

**Bylaws and motions requiring special resolution**

**18 (1)** In this Section, "special resolution" means a resolution passed by a majority of not less than 75% of the votes cast by the Board members who voted in respect of that resolution.

**(2)** Bylaws passed pursuant to clause 13(1)(ad) and such other bylaws as the Board may specify bylaw may only be adopted by the Board by way of a special resolution.

**(3)** Notwithstanding any other provision of this Act, any provision of the regulations or any provision of the bylaws, any motion

(a) imposing additional requirements in areas in which legacy members were licensed or authorized to practise immediately before August 2, 2016;

(b) substantively changing the chartered professional accountant certification model, including management accounting and financial reporting as foundational requirements and practical experience requirements, or which materially affects access to the profession;

(c) promoting an accounting designation other than CPA;

(d) that results in materially less rigour in an existing rule of professional conduct; or

(e) that reduces Chartered Professional Accountants of Canada's commitment to support standard-setting or the current level of support for setting accounting and assurance standards,

may only be adopted by the Board by way of a special resolution. 2015, c. 30, s. 7.

**Members of Public Accounting Licensing Committee**

**19** Notwithstanding clause 13(1)(c), the Governor in Council may appoint two members of the Public Accounting Licensing Committee of whom

(a) one must be an individual who holds a public accounting licence in the Province; and

(b) one must be a public representative. 2019, c. 4, s. 5.

**Chief Executive Officer**

**20 (1)** The Board shall employ an individual as Chief Executive Officer of CPA Nova Scotia and fix the Chief Executive Officer's remuneration, and may authorize the Chief Executive Officer to do any act or exercise any power or jurisdiction that by this Act or the bylaws the Board is authorized to do or exercise, except make bylaws.

**(2)** The Chief Executive Officer has the powers and duties given to the Chief Executive Officer by this Act and the bylaws and otherwise by the Board.

**(3)** The Chief Executive Officer may delegate to one or more employees or committees of CPA Nova Scotia or, with the approval of the Board, to any other person any of the Chief Executive Officer's powers, duties or functions subject to any restrictions or conditions that the Board may specify. 2015, c. 30, s. 19.

**Staff**

**21** The Board may authorize the hiring of staff to conduct the business of CPA Nova Scotia and may set the terms of employment of such persons. 2015, c. 30, s. 20.

REGISTRATION

**Registers**

**22** **(1)** The Chief Executive Officer shall keep a register or registers of individuals registered by CPA Nova Scotia and a register or registers of organizations registered or approved by CPA Nova Scotia, which registers must contain all of the information specified in the bylaws.

**(2)** The Chief Executive Officer shall make the registers referred to in subsection (1) available to the public upon request. 2015, c. 30, s. 21.

**Registration and Registration Appeals Committees**

**23** **(1)** The Board shall appoint a Registration Committee and a Registration Appeals Committee and the membership, power, authority and procedures of these committees must be set out in the bylaws.

**(2)** The Board shall appoint the Chair of the Registration Committee and the Chair of the Registration Appeals Committee.

**(3)** The Chief Executive Officer, the Registration Committee and the Registration Appeals Committee shall perform such registration functions as are set out in this Act and the bylaws.

**(4)** When performing such registration functions as are set out in this Act and the bylaws, the Registration Appeals Committee has all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*. 2015, c. 30, s. 22.

**Registration of individuals**

**24** The Chief Executive Officer shall register any individual who

(a) was a member or registered student of CGANS, a member of CMANS or a member or registered student of ICANS immediately before August 2, 2016, and who continues to meet all of the requirements for registration or continued registration in CPA Nova Scotia set out in the bylaws; or

(b) meets all of the requirements for registration or continued registration set out in the bylaws. 2015, c. 30, s. 23.

**Public accounting licence**

**25** Notwithstanding Section 24, the Chief Executive Officer shall issue a public accounting licence to any individual who

(a) was licensed as a public accountant by the Public Accountants Board of the Province of Nova Scotia immediately before September 1, 2019; and

(b) continues to meet the licensing renewal criteria applicable to a public accounting licence. 2019, c. 4, s. 6.

**Registration of firms**

**26** The Chief Executive Officer shall register any firm that

(a) was registered as a professional corporation or limited liability partnership by a legacy body or was a firm whose name had been approved by a legacy body, immediately before August 2, 2016; or

(b) qualifies for registration or continued registration as a registered firm pursuant to the bylaws. 2015, c. 30, s. 24.

**Privileges of and restrictions on registrants**

**27 (1)** The privileges of those individuals and firms registered pursuant to Section 24 or 26 are as set out in the bylaws.

**(2)** Conditions or restrictions that applied to an individual or firm registered by a legacy body immediately before August 2, 2016, continue to apply to the individual or firm when registered by CPA Nova Scotia.

**(3)** Without restricting the generality of subsection (2), any former member of a legacy body who did not fulfill the professional development hours required under the legacy body's Act remains obligated to satisfy those requirements and is subject to the jurisdiction of CPA Nova Scotia with respect to these unfulfilled requirements. 2015, c. 30, s. 25.

**Categories and conditions**

**28 (1)** When registering or renewing the registration of an individual or firm, the Chief Executive Officer shall register the individual or firm in the registration category in which the Chief Executive Officer, the Registration Committee or the Registration Appeals Committee determines the applicant qualifies for registration pursuant to the bylaws.

**(2)** The Chief Executive Officer or the Registration Committee may impose conditions or restrictions on an individual's or firm's registration on such terms and for such period as the Chief Executive Officer considers to be in the public interest. 2015, c. 30, s. 26.

**Certification is proof**

**29** A document signed by the Chief Executive Officer certifying that anything is or is not recorded in a register is admissible in evidence as prima facie proof of the matter certified, without proof of the signature or appointment of the Chief Executive Officer. 2015, c. 30, s. 27.

**Notification of conditions or refused application**

**30** Where the Chief Executive Officer or the Registration Committee

(a) imposes conditions or restrictions on an applicant's registration; or

(b) refuses an application for registration,

the Chief Executive Officer shall notify the applicant of the decision to do so and of the registration appeal process set out in the bylaws. 2015, c. 30, s. 28.

**Renewal**

**31** The Chief Executive Officer shall renew the registration of a registrant or registered firm if the registrant or registered firm meets the registration renewal criteria specified in the bylaws. 2015, c. 30, s. 29.

**Suspension**

**32** The Chief Executive Officer may suspend the registration of a registrant or registered firm for failure to maintain any registration requirements set out in this Act or the bylaws. 2015, c. 30, s. 30.

**Effect of suspension**

**33 (1)** This Act and the bylaws continue to apply to a registrant or registered firm during the period of a suspension.

**(2)** An individual whose registration is suspended is not entitled to engage in the practice of chartered professional accounting nor to use a protected designation during the period of the suspension.

**(3)** A firm whose registration is suspended is not entitled to offer the services of a chartered professional accountant nor to use a protected designation during the period of the suspension. 2015, c. 30, s. 31.

**Restoration of registration status**

**34** Where the period of the suspension of a registrant or registered firm has expired, the conditions imposed on a registrant or registered firm have been satisfied or the restrictions imposed on a registrant or registered firm have been removed, the Chief Executive Officer shall restore the registration status to the registrant or registered firm in the form it existed before the imposition of the suspension, conditions or restrictions, if the registrant or registered firm otherwise meets the criteria for registration or, where the registration status has expired, the criteria for renewal of registration. 2015, c. 30, s. 32.

**Revocation**

**35** The Chief Executive Officer shall revoke the registration of a registrant or registered firm if a suspension imposed pursuant to Section 32 remains in effect for longer than the period specified by the bylaws. 2015, c. 30, s. 33.

**Suspension appeals**

**36 (1)** The bylaws must stipulate which suspensions imposed pursuant to Section 32 may be appealed to the Registration Appeals Committee.

**(2)** The Registration Appeals Committee shall follow the procedure for a suspension appeal set out in the bylaws.

**(3)** The decision of the Registration Appeals Committee is final. 2015, c. 30, s. 34.

**Classes of public accounting licences**

**37** CPA Nova Scotia may establish classes of public accounting licences and the educational qualification and practical experience required to obtain and maintain a licence of a particular class. 2019, c. 4, s. 7.

**Appeals**

**38 (1)** An individual who has been denied a licence, disputes the conditions placed on a licence or otherwise disagrees with a decision of the licensing committee, may appeal the decision by serving the licensing committee with a notice of appeal within 30 days of the date of the decision.

**(2)** CPA Nova Scotia shall establish a committee to hear appeals from the licensing committee, which shall conduct its own proceedings in accordance with the rules of natural justice, this Act, the bylaws and its own rules of procedure. 2019, c. 4, s. 7.

**Use of designations**

**39 (1)** A member may use the designation "Chartered Professional Accountant" in English and "comptable professionnel agréé" in French or "CPA" after the member's name.

**(2)** An individual entitled to use a fellow designation by the Board or an extra-provincial regulatory body may use the designation "Fellow of the Chartered Professional Accountants" or "FCPA" after the individual's name.

**(3)** An individual entitled to use an honorary designation by the Board or an extra-provincial regulatory body may use the designation "Honorary Chartered Professional Accountant" or "CPA (Hon)" after the individual's name.

**(4)** The right of an individual or registered firm to use a protected designation pursuant to this Section is subject to any restrictions or conditions specified in this Act or the bylaws.

**(5)** An individual who is a member of an extra-provincial regulatory body may use or be required to use such designations or initials as are set out in the bylaws.

**(6)** Only an individual holding a valid public accounting licence issued by CPA Nova Scotia may purport to be a "Public Accountant" or "Licensed Public Accountant". 2015, c. 30, s. 35; 2019, c. 4, s. 8.

**Use of legacy designation with protected designation**

**40 (1)** In this Section, "mandatory tagging period" means a period of 10 years following August 2, 2016, or such shorter period as the Board may specify following August 2, 2021.

**(2)** Where a member uses a protected designation and the member is entitled to use a legacy designation pursuant to Section 41, the member shall use the legacy designation in conjunction with the protected designation for the mandatory tagging period.

**(3)** Where a member uses a protected designation and the member is entitled to use a legacy designation pursuant to Section 41, the member may use the legacy designation in conjunction with the use of the protected designation at any time after the mandatory tagging period. 2015, c. 30, s. 36; 2018, c. 4, s. 3.

**Use of legacy designation**

**41** A member may not use a legacy designation unless the member was entitled to use it prior to August 2, 2016, or the member is authorized to use a legacy designation by the Registration Committee or the Registration Appeals Committee in accordance with the bylaws. 2018, c. 4, s. 4.

**Misleading use of designation**

**42** No individual or organization other than a member or registered firm shall use a legacy designation or a protected designation nor any derivation or combination of those initials, words or expressions whether alone or in combination with other initials, words or expressions where it is used to imply that a person is entitled to practise as a chartered professional accountant nor imply that the individual or organization is registered by CPA Nova Scotia. 2015, c. 30, s. 38.

**Legacy designation must be tagged**

**43** No individual shall use any legacy designation without the designation "Chartered Professional Accountant" or "CPA" being appended to it. 2015, c. 30, s. 39.

**Restriction on public accounting**

**44** **(1)** No individual shall purport to be a public accountant unless the individual holds a valid public accounting licence issued by CPA Nova Scotia.

**(2)** No individual shall

(a) engage in the practice of public accounting in the Province unless the individual holds a valid public accounting licence issued by CPA Nova Scotia;

(b) engage in the practice of public accounting in the Province except in association with a registered firm;

(c) engage in the practice of public accounting in contravention of any condition or restriction on the individual's public accounting licence imposed under this Act or by agreement between the individual and CPA Nova Scotia; or

(d) knowingly furnish false or misleading information in an application under this Act or in any statement required to be furnished under this Act or the bylaws of CPA Nova Scotia. 2019, c. 4, s. 9.

**Permitted use of designations**

**45** **(1)** No organization shall use a protected designation in its name, except as provided for in the bylaws.

**(2)** Subject to subsection 39(5),

(a) no individual other than an individual authorized by subsection 39(1) shall use the designation “Chartered Professional Accountant” in English, “comptable professionnel agréé” in French or “CPA”;

(b) no individual other than an individual authorized by subsection 39(2) to use a fellow designation shall use the designation “Fellow of the Chartered Professional Accountants” or “FCPA”; and

(c) no individual other than an individual authorized by subsection 39(3) to use an honorary designation shall use the designation “Honorary Chartered Professional Accountant” or “CPA (Hon)”.

**(3)** No individual shall use a fellow designation without the designation “Fellow of the Chartered Professional Accountants” or “FCPA” being appended to it.

**(4)** No individual shall use any honorary designation without the designation “Honorary Chartered Professional Accountant” or “CPA (Hon)” being appended to it.

**(5)** Subsection (2) does not apply to any individual who was resident in the Province immediately before August 2, 2016, and who at that time was entitled by a regulator in a foreign jurisdiction to use

(a) the designation “chartered professional accountant”, “certified public accountant”, “CPA” or “FCPA”, in upper or lower case, or an equivalent, either alone or in combination with any other words or letters;

(b) any name, title or description implying that the individual is a chartered professional accountant or certified public accountant; or

(c) any name, title, initials or descriptions implying that the individual is a certified accountant or a certified public accountant,

if such an individual appends to the designation “CPA” or “FCPA” such other designation as the Board may by bylaw require.

**(6)** Subject to subsection (5), no individual or organization may use the designation “certified professional accountant” or “certified public accountant” alone or in combination with any other words.

**(7)** Subsections (1) and (2) do not apply if an individual or organization uses a term, title, initials, protected designation or description when making reference to authentic professional accounting qualifications or designations obtained by the individual or organization from a body in a foreign jurisdiction in

(a) a speech or other presentation given at a professional or academic conference or other similar forum;

(b) an application for employment or a private communication respecting the retainer of the individual’s or organization’s services, if the reference is made to indicate the individual’s or organization’s educational background; or

(c) a proposal submitted in response to a request for proposals, if the reference is made to demonstrate that the individual or organization meets the requirements for the work to which the request for proposals relates, if the individual or organization expressly indicates that the individual or organization is not a member of a legacy body. 2015, c. 30, s. 40.

ORGANIZATIONAL PRACTICE REQUIREMENTS

**Organization must be registered**

**46** **(1)** Subject to this Act and the bylaws, a member may offer professional services to the public through an organization.

**(2)** An organization that carries on the practice of public accounting in the Province must be a registered firm.

**(3)** A member may carry on the practice of public accounting through an organization in the Province only if the organization is a registered firm. 2015, c. 30, s. 41.

**Corporations**

**47** A member may only offer professional services through a corporation in the Province that

(a) carries on the practice of public accounting;

(b) uses any of the protected designations as part of the name or description of the corporation; or

(c) carries on any other activity specified in the bylaws as being an activity that, if undertaken to the extent specified in the bylaws, would cause the corporation to be considered a professional corporation for the purpose of this Act,

if the corporation is a registered firm and a professional corporation. 2015, c. 30, s. 42.

**Limited liability partnership**

**48** A member may only offer professional services through a limited liability partnership in the Province if the LLP is an approved LLP. 2015, c. 30, s. 43.

**Firm must be registered**

**49** A firm shall not carry on any business in the Province unless it is registered by CPA Nova Scotia. 2015, c. 30, s. 44.

**Carrying on business through an organization**

**50** No person shall carry on any business through an organization that

(a) carries on the practice of public accounting;

(b) uses any of the protected designations as part of the name or description of the corporation; or

(c) carries on any other activity identified in the bylaws as being an activity that, if undertaken to the extent set out in the bylaws, would cause the organization to be considered a firm for the purpose of this Act,

unless the organization is a registered firm. 2015, c. 30, s. 45.

**LLP must be approved**

**51** No person shall carry on the practice of chartered professional accounting through an LLP unless the LLP is an approved LLP. 2015, c. 30, s. 46.

**No use of legacy designation after registration or approval ceases**

**52** An organization that ceases to be registered or approved by CPA Nova Scotia shall change its name to remove the words "chartered professional accountant" or "chartered professional accountants", the initials "CPA" or any legacy designation or any combination thereof used by the organization. 2015, c. 30, s. 47.

**Permitted activity**

**53** A registered firm shall not carry on any business or activity other than the provision of professional services authorized by its registration and the provision of other services directly associated with the provision of those services. 2015, c. 30, s. 48.

**Permitted investments**

**54** Sections 49 and 53 do not prohibit a registered firm from investing its own funds in real property, other than for development purposes, or in stocks, mutual funds, debt obligations, insurance, term deposits or similar investments. 2015, c. 30, s. 49.

**Invalid act**

**55** No act of a professional corporation, including a transfer of property to or by the professional corporation, is invalid merely because it contravenes Section 49, 52 or 53. 2015, c. 30, s. 50.

**Application of Act to registrant**

**56** This Act and the bylaws of CPA Nova Scotia apply to a registrant notwithstanding any relationship that the registrant may have with an organization. 2015, c. 30, s. 51.

**Fiduciary, ethical and confidentiality obligations**

**57** The fiduciary, ethical and confidentiality obligations of a registrant to an individual receiving professional services

(a) are not diminished by the fact that the services are provided on behalf of an organization; and

(b) apply equally to an organization on whose behalf the services are provided and to its directors, officers and shareholders. 2015, c. 30, s. 52.

**Liability of registrant**

**58** The liability of a registrant for a professional liability claim is not affected by the fact that the registrant is providing services on behalf of a registered firm or organization. 2015, c. 30, s. 53.

**Joint and several liability of registrant**

**59** A registrant is jointly and severally liable with a professional corporation for all professional liability claims made against the corporation in respect of errors or omissions that were made or occurred while the registrant was a voting shareholder of the corporation. 2015, c. 30, s. 54.

**Joint and several liability of organization**

**60** Where the conduct of a registrant through whom an organization was providing professional services at the time the conduct occurred is the subject of an investigation, inquiry or inspection,

(a) any power that may be exercised pursuant to this Act with respect to the registrant may be exercised in respect of the organization; and

(b) the organization is jointly and severally liable with the registrant for all fines and costs the registrant is ordered to pay. 2015, c. 30, s. 55.

**Restriction on practice**

**61** A restriction imposed on the practice of a registrant through whom a registered firm provides professional services applies to the firm in relation to its provision of professional services through the registrant. 2015, c. 30, s. 56.

PRACTICE INSPECTIONS

**May be conducted**

**62** CPA Nova Scotia, through the Chief Executive Officer or a committee appointed pursuant to the bylaws, may conduct inspections respecting the practices of registrants and registered firms under such circumstances and with such authority as is set out in the bylaws. 2015, c. 30, s. 57.

**Appointment of inspectors**

**63** The Chief Executive Officer may appoint inspectors for the purpose of practice inspections. 2015, c. 30, s. 58.

**Powers and duties of inspectors**

**64** **(1)** Every inspector who exercises powers pursuant to this Act shall, on request, produce written proof of the inspector's appointment.

**(2)** In conducting an inspection pursuant to this Act, an inspector may, with necessary modifications, exercise any of the powers conferred pursuant to Section 86.

**(3)** The results of a practice inspection must be dealt with in the manner set out in the bylaws. 2015, c. 30, s. 59.

**Offence**

**65** No individual shall obstruct an inspector in the execution of the inspector's duties or withhold from the inspector or conceal, alter or destroy any document or thing relevant to the inspection. 2015, c. 30, s. 60.

PROTECTION FROM OTHER PROCEEDINGS

**Act done in good faith under this Act**

**66** No action or other proceeding may be instituted against CPA Nova Scotia, the Board, a committee, an investigator, an inspector, a member of the Board or of a committee established pursuant to this Act or the bylaws or any employee, officer, agent or individual acting on the instructions of any of them for anything done in good faith in the performance or intended exercise of any duty or power pursuant to this Act or the bylaws or for any alleged neglect or default in the performance or exercise in good faith of such duty or power. 2015, c. 30, s. 61.

**Act done in good faith under legacy body's Act**

**67** No action or other proceeding may be instituted against a committee, an investigator, an inspector, a member of a committee established pursuant to the legacy body's Act or its bylaws or any employee, officer, agent or individual acting on the instructions of any of them for anything done in good faith in the performance or intended exercise of any duty or power pursuant to the legacy body's Act or its bylaws or for any alleged neglect or default in the performance or exercise in good faith of such a duty or power. 2015, c. 30, s. 62.

**Complaint made in bad faith**

**68** No action or other proceeding may be instituted against any person, including CPA Nova Scotia, as a result of the submission of a complaint or the disclosure of any information or any document pursuant to this Act, or anything contained in such complaint, information or document, unless the submission of the complaint or the disclosure is made in bad faith. 2015, c. 30, s. 63.

CONFIDENTIALITY

**Disclosure of information**

**69** Every individual involved in the administration of this Act and any member of the Board or a committee of the Board who receives or has knowledge of confidential information shall not publish, release or disclose the information and shall maintain confidentiality with respect to all information that comes to that individual's knowledge, except

(a) as required for the administration of this Act or the bylaws or proceedings pursuant to this Act or the bylaws or to comply with the purpose of this Act;

(b) to one's own legal counsel;

(c) as otherwise required by law; or

(d) with the consent of the person to whom the information relates. 2015, c. 30, s. 64.

**Complaints**

**70** All complaints received or under investigation and all proceedings of the Complaints Committee must be kept confidential by CPA Nova Scotia. 2015, c. 30, s. 65.

**Permitted disclosure**

**71** Notwithstanding Sections 69 and 70,

(a) the Chief Executive Officer, or an individual designated by the Chief Executive Officer, may disclose to the public

(i) information that is otherwise available to the public, or

(ii) subject to the terms of the decision of an investigation panel or a hearing panel, particulars of any registration sanctions that have been imposed on a registrant or registered firm or the decision of an investigation panel to issue an interim suspension or restriction pending completion of an investigation and any disciplinary proceeding that may follow;

(b) the Chief Executive Officer may disclose, with or without a request for disclosure, to an extra-provincial regulatory body or another regulatory body in which the registrant or registered firm complained of is a member, student or candidate or in which the firm is registered or by which the member, student, candidate or firm is regulated or registered

(i) that a complaint with respect to a registrant or registered firm of CPA Nova Scotia has been received, the particulars of the complaint and that the matter is or will be under investigation, or

(ii) that a restriction, condition or suspension of registration has been imposed pursuant to Section 32 or 89;

(c) the Chief Executive Officer may disclose to law enforcement authorities any information about possible criminal activity on the part of a registrant or registered firm;

(d) an investigation panel may authorize the Chief Executive Officer to release specific information to a specific individual or individuals if it is determined by an investigation panel that it is in the public interest to do so;

(e) the Chief Executive Officer may disclose information with respect to a complaint to a regulatory body in another jurisdiction if it is relevant and concerns the fitness of a registrant for membership in the other jurisdiction; and

(f) the Board may, by bylaw, stipulate what other information with respect to matters relating to a registrant or registered firm may be disclosed or confirmed by CPA Nova Scotia. 2015, c. 30, s. 66.

**Acts of members, employees and agents**

**72** There is a rebuttable presumption that a registered firm knows of any act, conduct, omission, matter or thing with respect to its members, employees or agents that, in the course of carrying out the business of the firm, breaches the code of professional conduct or the standards of practice of the profession. 2015, c. 30, s. 67.

COMPLAINTS AND DISCIPLINE

**Discipline process**

**73** The Chief Executive Officer, the Chair of the Complaints Committee, the Chair of the Discipline Committee and investigators shall perform such discipline process functions and have such discipline process authority as is set out in this Act and the bylaws. 2015, c. 30, s. 68.

**Complaints Committee**

**74** The Board shall appoint a Complaints Committee composed of such number of members and public representatives as is set out in the bylaws. 2015, c. 30, s. 69.

**Duties and powers**

**75** The Complaints Committee shall perform such duties and have such authority as is set out in the bylaws. 2015, c. 30, s. 70.

**Chair**

**76 (1)** The Board shall appoint a Chair and a Vice-chair of the Complaints Committee.

**(2)** The Vice-chair shall act as Chair in the absence of the Chair.

**(3)** When, for any reason, neither the Chair nor the Vice-chair is available, the Board may appoint a member of the Complaints Committee to act as chair of the Committee. 2015, c. 30, s. 71.

**Subject of complaint**

**77** A complaint may be made against any registrant or registered firm. 2015, c. 30, s. 72.

**Interpretation of Sections 71 and 73 to 117**

**78** In Sections 71 and 73 to 117,

"registered firm" includes

(a) a firm that was formerly registered by CPA Nova Scotia; and

(b) a firm that was registered as a professional corporation or limited liability partnership by a legacy body or was a firm whose name had been approved by a legacy body;

"registrant" includes a former member, student or candidate of, or an individual whose name formerly appeared on a register maintained by, CPA Nova Scotia or a legacy body. 2015, c. 30, s. 73.

**Limitation period**

**79** A complaint against a registrant or registered firm must be brought within the latest of six years of the individual or firm

(a) ceasing to be registered by CPA Nova Scotia;

(b) ceasing to be a member of ICANS, CMANS or CGANS; and

(c) ceasing to be a registered student of ICANS,

unless it is determined that exceptional circumstances exist having regard to the risk to the public, which determination must be made in accordance with the process set out in the bylaws. 2015, c. 30, s. 74.

**CEO may refer complaint**

**80** The Chief Executive Officer may refer information concerning potential professional misconduct, conduct unbecoming, professional incompetence or incapacity to the Chair of the Complaints Committee and such a referral by the Chief Executive Officer must be considered a complaint and addressed by the Chair of the Complaints Committee in the same manner as any other complaint received by the Chair of the Complaints Committee. 2015, c. 30, s. 75.

**Withdrawal of complaint**

**81** A complaint may only be withdrawn with the consent of the Chair of the Complaints Committee. 2015, c. 30, s. 76.

**Complaint procedure**

**82** All complaints must be processed in the manner set out in the bylaws. 2015, c. 30, s. 77.

**Powers of Complaints Committee**

**83** The Complaints Committee and each member of the Committee has all the powers conferred by this Act and the bylaws in the discharge of the Committee's or the member's functions and has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2015, c. 30, s. 78.

**Duties and authority of Chair**

**84 (1)** The Chair of the Complaints Committee shall, as required, appoint an investigation panel in accordance with the bylaws to perform such duties and have such authority as is set out in the bylaws.

**(2)** The Chair of the Complaints Committee may sit on an investigation panel and, in such case, shall act as the chair of the investigation panel.

**(3)** Where the Chair of the Complaints Committee is not appointed to an investigation panel, the Chair of the Complaints Committee shall appoint a chair of the investigation panel. 2015, c. 30, s. 79.

**Investigation panel may appoint investigators**

**85 (1)** The investigation panel may appoint investigators for the purpose of disciplinary matters and shall have the authority to fix the retainer, mandate and reporting requirements of any investigator.

**(2)** Every investigator who exercises powers pursuant to this Act shall, on request, produce written proof of the investigator's appointment. 2015, c. 30, s. 80.

**Powers of investigator**

**86** **(1)** In conducting an investigation pursuant to this Act, an investigator may

(a) at any reasonable time, enter and inspect the business premises of the respondent under investigation, other than any part of the premises used as a dwelling, without the consent of the owner or occupier;

(b) question and require the respondent or anyone who works with the respondent to provide information that the investigator believes is relevant to the investigation;

(c) require the production of and examine any document or thing that the investigator believes is relevant to the investigation, including a client file;

(d) subject to the bylaws, require the production of any document or thing that the investigator believes is relevant to the investigation;

(e) subject to subsection (2), upon providing a receipt for the item, remove any document or thing that the investigator believes is relevant to the investigation for the purpose of making copies or extracts of any document or information; and

(f) use any data storage, processing or retrieval device or system in order to produce a document in readable form.

**(2)** The making of the copies or extracts pursuant to clause (1)(e) must be carried out with reasonable dispatch, taking into account the scope and complexity of the work involved in making the copies or extracts, and the document or thing must afterwards be returned promptly to the person from whom it was taken. 2015, c. 30, s. 81.

**Duty not to obstruct**

**87** No individual shall obstruct an investigator executing the investigator's duties or withhold from the investigator or conceal, alter or destroy any document or thing relevant to the investigation. 2015, c. 30, s. 82.

**Matter arising during investigation**

**88** Where, during an investigation, any matter arises or comes to the attention of an investigation panel that might form the subject-matter of a charge or complaint against the respondent, the Committee may investigate that matter or thing that arises in the course of an investigation although the matter or thing was not mentioned in the original complaint. 2015, c. 30, s. 83.

**Powers of investigation panel**

**89** **(1)** An investigation panel may order that the respondent's registration be suspended, or be subject to any restriction or condition that the investigation panel may specify pending, during or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by the investigation panel or a hearing panel, if there are reasonable grounds to believe that

(a) there is a risk of harm to members of the public or to the public interest; and

(b) making the order would likely reduce the risk.

**(2)** An order may be made pursuant to subsection (1) at any time without a hearing.

**(3)** The respondent must be served with a notice in writing, with reasons, of any decision made pursuant to subsection (1). 2015, c. 30, s. 84.

**Request for meeting with panel**

**90** A respondent who receives written notice pursuant to subsection 89(3) may request in writing, within 30 days, an opportunity to meet with the investigation panel. 2015, c. 30, s. 85.

**Procedure for meeting**

**91** Where a request is received pursuant to Section 90, the investigation panel shall

(a) provide an opportunity for the respondent to meet with the investigation panel as soon as possible after receipt of the request; and

(b) after meeting with the respondent, confirm, vary or terminate the suspension, restrictions or conditions imposed pursuant to Section 89. 2015, c. 30, s. 86.

**Actions panel may take**

**92** Following the investigation of a complaint by an investigation panel, the investigation panel may take such action as is set out in the bylaws. 2015, c. 30, s. 87.

**Information relevant to decision**

**93** An investigation panel shall provide the respondent and the complainant with such information relevant to the decision as is set out in the bylaws. 2015, c. 30, s. 88.

**Action for failure to comply with order**

**94** Where the respondent fails to comply with an order issued by an investigation panel, the Chief Executive Officer may take such action against the respondent as is set out in the bylaws. 2015, c. 30, s. 89.

**Discipline Committee**

**95** The Board shall appoint a Discipline Committee composed of such number of members and public representatives as is set out in the bylaws. 2015, c. 30, s. 90.

**Duties and authority**

**96** The Discipline Committee shall perform such duties and have such authority as is set out in the bylaws. 2015, c. 30, s. 91.

**Chair**

**97** **(1)** The Board shall appoint a Chair and a Vice-chair of the Discipline Committee.

**(2)** The Vice-chair shall act as Chair in the absence of the Chair.

**(3)** When, for any reason, neither the Chair nor the Vice-chair is available, the Board may appoint a member of the Discipline Committee to act as Chair of the Committee. 2015, c. 30, s. 92.

**CEO may refer information**

**98** The Chief Executive Officer may, in the circumstances set out in the bylaws, refer information directly to the Chair of the Discipline Committee and such a referral by the Chief Executive Officer must be considered to be charges and must be addressed by the Chair of the Discipline Committee in the same manner as any charges referred to the Chair by an investigation panel. 2015, c. 30, s. 93.

**Settlement agreement**

**99** After determining that all or part of a matter must be referred to the Discipline Committee, the Chief Executive Officer and the respondent may enter into a settlement agreement, which must conform to the requirements of the bylaws and which must be considered and approved by both the investigation panel and the hearing panel, if the matter was referred by an investigation panel, or by the hearing panel alone, as stipulated in the bylaws. 2015, c. 30, s. 94.

**Powers of Discipline Committee**

**100** The Discipline Committee and each member of the Committee has all the powers conferred by this Act and the bylaws in the discharge of the Committee's or the member's functions as well as the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*. 2015, c. 30, s. 95.

**Hearing panel**

**101** **(1)** The Chair of the Discipline Committee shall, as required, appoint a hearing panel in accordance with the bylaws to perform such duties and have such authority as is set out in the bylaws.

**(2)** The Chair of the Discipline Committee may sit on a hearing panel and, in such case, shall act as the chair of the hearing panel.

**(3)** Where the Chair of the Discipline Committee is not appointed to a hearing panel, the Chair of the Discipline Committee shall appoint a chair of the hearing panel. 2015, c. 30, s. 96.

**Conduct of hearings**

**102** A hearing panel shall conduct its hearings in the manner set out in the bylaws. 2015, c. 30, s. 97.

**Parties**

**103** The parties to the hearing before the hearing panel are CPA Nova Scotia and the respondent. 2015, c. 30, s. 98.

**Rights of parties**

**104 (1)** In a proceeding before a hearing panel, the parties have the right to

(a) natural justice;

(b) representation by legal counsel;

(c) the opportunity to present evidence and make submissions, including the right to cross-examine witnesses;

(d) disclosure of relevant information and documents as required by the bylaws; and

(e) receipt of written reasons for a decision within a reasonable time as prescribed by the bylaws.

**(2)** An individual who is the respondent or a representative of a registered firm that is the respondent is a compellable witness in a hearing before a hearing panel.

**(3)** A hearing panel shall hear each case in the manner it considers fit in order to provide a full and proper inquiry. 2015, c. 30, s. 99.

**Attendance by respondent**

**105 (1)** An individual who is the respondent or a representative of the registered firm that is the respondent shall attend at the hearing before the hearing panel.

**(2)** In the event of non-attendance by an individual who is the respondent or a representative of the registered firm that is the respondent, the hearing panel, upon proof of service in accordance with the bylaws, may proceed with the hearing without further notice to the individual or firm, render its decision and take such other action as it is authorized to take pursuant to this Act. 2015, c. 30, s. 100.

**Duties and powers of hearing panel**

**106 (1)** Following a hearing, the hearing panel may take such action and make any order as is authorized by the bylaws.

**(2)** The hearing panel may order costs against a respondent in accordance with the bylaws.

**(3)** The hearing panel shall issue a decision setting out its written reasons together with an order and shall provide the decision and order to the Chief Executive Officer of CPA Nova Scotia, the respondent and, subject to any publication bans, such other persons as the hearing panel may determine.

**(4)** The decision and order of a hearing panel have effect immediately upon service on the individual who is the respondent or representative of the registered firm that is the respondent or from such time as the decision may direct. 2015, c. 30, s. 101.

**Decision of panel is decision of Committee**

**107** The decision of a panel of a committee constitutes the decision of the Discipline Committee. 2015, c. 30, s. 102.

**Notification of complaint disposition**

**108** The Chief Executive Officer shall provide notice of an order, determination, settlement agreement or other disposition of a complaint in accordance with the bylaws. 2019, c. 4, s. 10.

**Complaint Review Committee**

**109** The Board shall appoint a Complaint Review Committee composed of such number of members and public representatives as is set out in the bylaws. 2015, c. 30, s. 104.

**Duties and powers**

**110** The Complaint Review Committee shall perform such duties and have such authority as is set out in the bylaws. 2015, c. 30, s. 105.

**Chair**

**111** The Board shall appoint a Chair and a Vice-chair of the Complaint Review Committee. 2015, c. 30, s. 106.

**Review of dismissal of complaint**

**112 (1)** A complainant may seek a review of a dismissal of a complaint to the Complaint Review Committee.

**(2)** The review must be conducted in the manner set out in the bylaws.

**(3)** The Complaint Review Committee may consider a review request pursuant to subsection (1) even if the Complaint Review Committee has previously rendered a decision on a review of another complaint dismissal decision in respect of the same complaint or respondent.

**(4)** The decision of the Complaint Review Committee is final. 2015, c. 30, s. 107.

**Fitness to Practise Committee**

**113** The Board may appoint a Fitness to Practise Committee which shall perform such duties and have such authority as is set out in the bylaws. 2015, c. 30, s. 108.

**Liability not affected by resignation**

**114** A registrant or registered firm whose application to resign from the register has been accepted by the Chief Executive Officer continues to be responsible for the consequences of any matter arising before the acceptance of the resignation and any process undertaken or underway pursuant to Sections 73 to 117 is not affected by the resignation. 2015, c. 30, s. 109.

**Jurisdiction of CPA Nova Scotia continues**

**115** Where a registrant or registered firm ceases to be registered for any reason, the registrant or registered firm remains subject to the jurisdiction of CPA Nova Scotia with respect to any disciplinary matter. 2015, c. 30, s. 110.

**Appeal**

**116** A party may appeal on any point of law from the decision or order of a hearing panel to the Nova Scotia Court of Appeal within the time and in the manner specified in the bylaws. 2015, c. 30, s. 111.

**Order of the Court**

**117** Where a respondent does not comply with an order issued by a hearing panel within the time specified in the order and the period for an appeal has expired, the Chief Executive Officer may file a certified copy of the order with the Court, and enforce the order as if it were an order of the Court. 2015, c. 30, s. 112.

CUSTODIANSHIP

**Interpretation of Sections 119 to 124**

**118** In Sections 119 to 124,

"custodianship order" means an order made pursuant to subsection 119(1);

"property" includes client files and other documents. 2015, c. 30, s. 113.

**Custodianship order**

**119 (1)** Subject to subsection (5), on an application by CPA Nova Scotia, the Court may order that all or part of the property that is or should be in the possession or control of a member be given into the custody of a custodian appointed by the Court.

**(2)** A custodianship order applies to property, wherever it may be located, that is or should be in the possession or control of a member in connection with a member's practice or the business or affairs of a client or former client of the member.

**(3)** A custodianship order applies to property that is or should be in the possession or control of the member before or after the order is made.

**(4)** An application for a custodianship order may be made without notice.

**(5)** A custodianship order may be made only if

(a) the member's membership has been suspended or revoked;

(b) the member has died or disappeared;

(c) the member is incapacitated;

(d) the member has neglected or abandoned the member's practice without making adequate provision for the protection of the member's clients' interests;

(e) the member has failed to conduct the member's practice in accordance with any restriction or condition to which the member is subject pursuant to this Act;

(f) there are reasonable grounds for believing that the member has or may have dealt improperly with property; or

(g) there are reasonable grounds for believing that circumstances exist with respect to the member or the member's practice that make an application for a custodianship order necessary for the protection of the public. 2015, c. 30, s. 114.

**Purpose of custodianship order**

**120** A custodianship order may only be made for one or more of the following purposes:

(a) preserving the property;

(b) distributing or destroying the property;

(c) preserving or carrying on the member's practice;

(d) winding up the member's practice. 2015, c. 30, s. 115.

**Custodians**

**121** **(1)** The Court may appoint as custodian

(a) CPA Nova Scotia; or

(b) a member of CPA Nova Scotia who is not subject to a current registration sanction, conditions or restrictions imposed or otherwise suspended pursuant to this Act.

**(2)** Where CPA Nova Scotia is appointed as custodian, it may appoint an agent to act on its behalf. 2015, c. 30, s. 116.

**Contents of custodianship order**

**122** A custodianship order may

(a) authorize the custodian to employ or engage any professional or other assistance that is required to carry out the custodian's duties;

(b) authorize the custodian or a sheriff or any police officer or other individual acting on the direction of the custodian or a sheriff to

(i) enter, by force if necessary, any building, dwelling or other premises, or any vehicle or other place, where there are reasonable grounds for believing that property that is or should be in the possession or control of the member may be found,

(ii) search the building, dwelling, premises, vehicle or place,

(iii) open, by force if necessary, any safety deposit box or other receptacle,

(iv) require an individual to provide access to property that is or should be in the possession or control of the member, and

(v) seize, remove and deliver to the custodian property that is or should be in the possession or control of the member;

(c) require a police officer to accompany the custodian or sheriff in the execution of the order;

(d) give directions to the custodian regarding the manner in which the custodian should carry out the order;

(e) require the member to account to CPA Nova Scotia and to any other individual named in the order for any property that the Court may specify;

(f) provide for the discharge of the custodian on completion of the custodian's duties under the order and any subsequent orders relating to the same matter; and

(g) give any other directions that the Court considers necessary in the circumstances. 2015, c. 30, s. 117.

**Award for compensation**

**123** In a custodianship order or on a subsequent application, the Court may make such award as it considers appropriate for the compensation of the custodian and the reimbursement of the custodian's expenses by the member, whether out of the property held by the custodian, by the member or the member's estate or otherwise as the Court may specify. 2015, c. 30, s. 118.

**Application to vary**

**124** CPA Nova Scotia, the member or the custodian may apply to the Court to vary or discharge a custodianship order. 2015, c. 30, s. 119.

**Application to former members**

**125** Sections 118 to 124 apply with necessary modifications with respect to an individual who resigns as a member of CPA Nova Scotia or whose membership is revoked. 2015, c. 30, s. 120.

CIVIL OR OTHER PROCEEDINGS

**Interpretation of Sections 126 and 128**

**126 (1)** In this Section and Section 128,

"civil proceeding" means any proceeding of a civil nature other than an arbitration proceeding or a proceeding before an adjudicative tribunal, board or commission of inquiry; and

"legal proceeding" means any civil proceeding, discovery, inquiry, proceeding before a tribunal, board or commission or arbitration, in which evidence may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the contravention of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to or

arising from this Act or the bylaws or by an extra-provincial regulatory body or other body regulating the practice of public accounting.

**(2)** A witness in a legal proceeding, whether a party to the proceeding or not, shall not offer evidence with respect to information obtained, gathered or given by the witness as a result of a registration, registration appeal, investigation, disciplinary hearing, fitness to practise or practice inspection process of CPA Nova Scotia, and shall not offer any evidence concerning and is excused from producing any complaint, response, report, statement, memorandum, recommendation, document or information prepared for any such process, including information gathered in the course of any such process or admitted into evidence in any such process. 2015, c. 30, s. 121.

**Public records**

**127** Section 126 does not apply to documents or records that have been made available to the public by CPA Nova Scotia. 2015, c. 30, s. 122.

**Admissibility in civil proceeding**

**128** Unless otherwise determined by a court of competent jurisdiction, a decision issued pursuant to disciplinary proceedings, a practice inspection or reinstatement, or a complaint, response, report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary, fitness to practise, hearing and practice inspection processes of CPA Nova Scotia, including information gathered in the course of an investigation or produced for an investigation panel, a hearing panel, the Fitness to Practise Committee or staff members of CPA Nova Scotia, is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2015, c. 30, s. 123.

REINSTATEMENT

**Application**

**129** Where, as a result of the discipline process, an individual or firm is no longer registered by CPA Nova Scotia, the individual or firm may apply to the Registration Committee for reinstatement of registration by CPA Nova Scotia unless otherwise ordered or agreed to between CPA Nova Scotia and the individual or firm. 2015, c. 30, s. 124.

**Procedure**

**130 (1)** The Registration Committee shall review applications for reinstatement and perform such other duties and have such authority as is set out in this Act and the bylaws.

**(2)** Applications for reinstatement must proceed in accordance with the bylaws.

**(3)** Where a reinstatement application has been approved by the Registration Committee, the Committee shall

(a) determine whether publication of the reinstatement is required in the interest of the public; and

(b) direct the Chief Executive Officer to register the individual or firm subject to any restrictions and conditions it considers appropriate with respect to the reinstatement of the applicant.

**(4)** An applicant for reinstatement is responsible for all of the applicant's own expenses incurred in the reinstatement application and proceeding, and is also responsible for all of the costs incurred by CPA Nova Scotia in the reinstatement application and proceeding, whether the application is accepted, rejected or withdrawn. 2015, c. 30, s. 125.

**Rights of applicant**

**131** In a proceeding before the Registration Committee, an applicant has the right to

(a) representation by legal counsel or another representative at the applicant's expense; and

(b) a reasonable opportunity to present a response and make submissions. 2015, c. 30, s. 126.

**Timing of application**

**132** Unless otherwise ordered or agreed, an application for reinstatement must not be made earlier than

(a) two years after the revocation; and

(b) six months after any previous application. 2015, c. 30, s. 127.

**Decision final**

**133** The decision of the Registration Committee is final. 2015, c. 30, s. 128.

**Enforcement of order for costs**

**134** The Registration Committee may direct the Chief Executive Officer to file an order for costs issued by the Registration Committee in the Court and, once filed, the order may be enforced in the same manner as a judgment of the Court. 2015, c. 30, s. 129.

OFFENCES AND PENALTIES

**Offences and penalties**

**135 (1)** An individual or organization that contravenes Section 42, 43, 44 or 45 is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine of not more than $5,000;

(b) for a second or subsequent offence, to a fine of not more than $10,000; and

(c) to imprisonment for a term of not more than six months.

**(2)** Where a corporation contravenes this Act, a director or an officer of the corporation who authorized, permitted or acquiesced in the contravention is also guilty of an offence and liable on summary conviction to the penalties

set out in subsection (1), whether or not the corporation has been prosecuted or convicted.

**(3)** Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

**(4)** Unless the Court directs otherwise, fines payable under this Section as a result of a prosecution by or on behalf of the Board are payable to the Crown in right of the Province.

**(5)** For greater certainty, any information to be laid pursuant to this Act may be laid or made by the Chief Executive Officer or other individual designated by the Board.

**(6)** In a prosecution of an offence contrary to this Act, the onus to prove that an individual accused of an offence has the right to practise chartered professional accounting, or that an individual comes within any of the exemptions provided by this Act, is on the individual accused.

**(7)** For the purpose of this Act, proof of the performance of one act in the practice of chartered professional accounting is sufficient to establish that an individual has engaged in the practice of chartered accounting. 2015, c. 30, s. 130; 2019, c. 4, s. 11.

**Injunction**

**136 (1)** In the event of a threatened or continuing contravention of this Act, CPA Nova Scotia may apply to a judge for an injunction to restrain the person from continuing or committing the contravention and the judge, where the judge considers it to be just, may grant such an injunction.

**(2)** A judge may, on an application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a contravention of this Act. 2015, c. 30, s. 131.

TRANSITIONAL

**Application before legacy body**

**137** An application for registration made to a legacy body commenced but not concluded before August 2, 2016, must be dealt with pursuant to this Act. 2015, c. 30, s. 132.

**Order by legacy body**

**138** Any order or direction given by any legacy body, its chief executive officer or any committee thereof continues as if made pursuant to this Act or bylaws. 2015, c. 30, s. 133.

**Prior inspection or proceeding**

**139** Any ICANS or CGANS practice inspection or proceeding before ICANS's or CGANS's Professional Standards Committee commenced before August 2, 2016, must, unless the individual who is the subject of the practice

inspection or proceeding and the Chief Executive Officer of CPA Nova Scotia otherwise agree, be concluded pursuant to the applicable Act, as if this Act had not come into force. 2015, c. 30, s. 134.

**Prior complaint**

**140** A complaint made or disciplinary proceeding commenced before August 2, 2016, must, unless the respondent and Chief Executive Officer otherwise agree, be concluded pursuant to the applicable Act, as if this Act had not come into force. 2015, c. 30, s. 135.

**Agreement to proceed under this Act**

**141** Where agreement is reached pursuant to Section 139 or 140 to proceed pursuant to this Act, the process and authority under this Act must be adapted as nearly as possible to fit the circumstances of the matter commenced pursuant to the applicable Act. 2015, c. 30, s. 136.

**New complaint**

**142** A complaint made on or after August 2, 2016, concerning conduct that occurred before August 2, 2016, must be dealt with pursuant to this Act. 2015, c. 30, s. 137.

**Regulations**

**143 (1)** The Governor in Council may make regulations defining or further defining any word or expression used but not defined in this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2015, c. 30, s. 138.

CHAPTER C-21

# An Act to Make Mandatory the Reporting of Child Pornography

**Table of Contents**

(The Table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Child Pornography Reporting Act*. 2008, c. 35, s. 1.

**Interpretation**

**2** In this Act,

"child pornography" means child pornography as defined in the *Criminal Code* (Canada);

"informant" means a person reporting information pursuant to Section 3;

"reporting entity" means an organization or person designated as a reporting entity by the regulations. 2008, c. 35, s. 2.

**Duty to report**

**3** Every person who reasonably believes that a representation or material is child pornography shall promptly report to a reporting entity any information, whether or not it is confidential or privileged, that the person has respecting the representation or material. 2008, c. 35, s. 3.

**Act does not require or authorize seeking out**

**4** Nothing in this Act requires or authorizes a person to seek out child pornography. 2008, c. 35, s. 4.

**No action lies and informants**

**5 (1)** No action lies against any person for reporting information pursuant to Section 3 unless the reporting of that information is done falsely and maliciously.

**(2)** Except as permitted in the course of judicial proceedings or otherwise by law, or with the written consent of the informant, no person shall disclose the identity of an informant to any person.

**(3)** No person shall dismiss, suspend, demote, discipline, harass, interfere with or otherwise disadvantage an informant. 2008, c. 35, s. 5.

**Duty of reporting entity**

**6** Where, after reviewing a report made to it pursuant to Section 3, a reporting entity that is not a law enforcement agency reasonably believes that the representation or material is child pornography, the reporting entity shall report the matter to a law enforcement agency and take any further action as may be set out in the regulations. 2008, c. 35, s. 6.

**Offence and penalty**

**7 (1)** Every person who contravenes Section 3 is guilty of an offence and is liable on summary conviction to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months, or to both.

**(2)** No prosecution for a contravention of Section 3 may be commenced more than two years after the contravention occurred. 2008, c. 35, s. 7.

**Offence and penalty for false report**

**8** Every person who falsely and maliciously reports to a reporting entity that a representation or material is child pornography is guilty of an offence and is liable on summary conviction to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months, or to both. 2008, c. 35, s. 8.

**Regulations**

**9 (1)** The Governor in Council may make regulations

(a) designating one or more organizations or persons as reporting entities for the purpose of receiving reports of child pornography under this Act;

(b) prescribing the duties of a reporting entity;

(c) defining any word or expression used but not defined in this Act;

(d) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2008, c. 35, s. 9.

CHAPTER C-22

# An Act Respecting Services to Children and their Families, the Protection of Children and Adoption

**Table of Contents**

(The table of contents is not part of the statute)

WHEREAS the family exists as the basic unit of society, and its well-being is inseparable from the common well-being;

AND WHEREAS children are entitled to protection from abuse and neglect;

AND WHEREAS the rights of children are enjoyed either personally or with their family;

AND WHEREAS children have basic rights and fundamental freedoms no less than those of adults and a right to special safeguards and assistance in the preservation of those rights and freedoms;

AND WHEREAS children are entitled, to the extent they are capable of understanding, to be informed of their rights and freedoms and to be heard in the course of and to participate in the processes that lead to decisions that affect them;

AND WHEREAS the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;

AND WHEREAS when it is necessary to remove children from the care and supervision of their parents or guardians, they should be provided for, as nearly as possible, as if they were under the care and protection of wise and conscientious parents;

AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time;

AND WHEREAS social services are essential to prevent or alleviate the social and related economic problems of individuals and families;

AND WHEREAS the rights of children, families and individuals are guaranteed by the rule of law and intervention into the affairs of individuals and families so as to protect and affirm these rights must be governed by the rule of law;

AND WHEREAS the preservation of a child's cultural, racial and linguistic heritage promotes the healthy development of the child;

AND WHEREAS the cultural identity of Mi'kmaw and aboriginal children is uniquely important for the exercise of the child's aboriginal and treaty rights:

preamble amended 2015, c. 37, s. 1.

**Short title**

**1** This Act may be cited as the *Children and Family Services Act*. 1990, c. 5, s. 1.

**Purpose and paramount consideration**

**2 (1)** The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

**(2)** In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. 1990, c. 5, s. 2.

**Interpretation**

**3 (1)** In this Act,

"aboriginal child" means a child who is registered under the *Indian Act* (Canada), and includes a Mi'kmaw child;

"agency" means an agency continued by or established and incorporated pursuant to this Act, and includes the Minister where the Minister is acting as an agency and Mi'kmaw Family and Children's Services of Nova Scotia;

"band" means a band as defined in the *Indian Act* (Canada) within the Province;

"care" means the physical care and control of a child;

"care and custody" means the care and custody of a child pursuant to this Act or an order or agreement made pursuant to this Act;

"child" means a person under 19 years of age;

"child in care" means, except in Sections 83 to 107, a child who is in the care and custody of an agency

(a) pursuant to an agreement made pursuant to this Act;

(b) as a result of being taken into care; or

(c) pursuant to a court order made pursuant to this Act;

"child-care services" means

(a) assessment, counselling and referral services;

(b) child-protection and child-placing services;

(c) parenting-skill and support services;

(d) consulting, research and evaluation services with respect to child-care services;

(e) such other services as the Minister may approve or license as child-care services;

"child-caring facility" means

(a) a foster home;

(b) a secure treatment facility;

(c) a residential child-caring facility;

(d) a residential treatment centre;

(e) a young-offender facility; or

(f) such other facility as the Minister may approve or license as a child-caring facility;

"common-law relationship" means a relationship between two persons who have cohabitated in a marriage-like relationship for a period of at least two years;

"community", with respect to a child, includes all persons who have a beneficial and meaningful relationship with the child and, where the child is a registered member of a band, includes members of the child's band;

"conference" means a meeting of all or some of

(a) the parties to a proceeding;

(b) their legal counsel;

(c) the child who is the subject of the proceeding, if appropriate;

(d) the guardian *ad litem* of the child who is the subject of the proceeding and the guardian's legal representative or the legal representative of the child if no guardian *ad litem* is appointed;

(e) any counsellors, therapists or other persons providing services to a party to the proceeding or a child who is the subject of the proceeding; and

(f) any other person whose attendance would be beneficial to the conferencing process;

"court" means, unless the context otherwise requires,

(a) in any area of the Province where the Supreme Court of Nova Scotia (Family Division) is entitled to exercise jurisdiction, the Supreme Court (Family Division), and includes a judge of that Court; or

(b) in any area of the Province where the Supreme Court (Family Division) is not entitled to exercise jurisdiction, the Family Court, and includes a judge of that Court;

"cultural connection plan" means a written plan that offers information and guidance to preserve a child's cultural identity and, where the child is a Mi'kmaw child, is developed with input from the child's band and fosters the child's connection with the child's First Nation, culture, heritage, spirituality and traditions;

"custody" means lawful custody, whether by operation of law, written agreement or order of a court of competent jurisdiction;

"customary care" means the care and supervision of a Mi'kmaw child or aboriginal child by a person who is not the child's parent, according to the custom of the child's band or Aboriginal community;

"emotional abuse" means acts that seriously interfere with a child's healthy development, emotional functioning and attachment to others such as

(a) rejection;

(b) isolation, including depriving the child of normal social interactions;

(c) deprivation of affection or cognitive stimulation;

(d) inappropriate criticism, humiliation or expectations of or threats or accusations towards the child; or

(e) any other similar acts;

"family group conference" means one or more mediated conferences which may include relatives of the child and members of the child's community;

"former Act" means Chapter 68 of the Revised Statutes, 1989, the *Children's Services Act*;

"foster parent" means a foster parent approved by an agency pursuant to this Act;

"kinship placement" means a placement with a foster parent who

(a) is a relative of the child; or

(b) has an established relationship with the child;

"Mi'kmaw child" means a child of Mi'kmaw ancestry who is

(a) registered as an Indian under the *Indian Act* (Canada); or

(b) considered Mi'kmaw according to band custom and law;

"Minister" means the Minister of Community Services;

"neglect" means the chronic and serious failure to provide to the child

(a) adequate food, clothing or shelter;

(b) adequate supervision;

(c) affection or cognitive stimulation; or

(d) any other similar failure to provide;

"order" includes the refusal to make an order;

"parent or guardian" of a child means

(a) the mother of the child, if the mother

(i) has custody of the child under a written agreement or court order, or

(ii) resides with and has care of the child;

(b) the father of the child, if the father

(i) has custody of the child under a written agreement or court order, or

(ii) resides with and has care of the child;

(c) an individual residing with and having the care of the child;

(d) an individual who, under a written agreement or a court order, has custody of the child, is required to provide support for the child or has a right of access to the child;

(e) a mother or father who

(i) has an application before a court respecting custody or access or against whom there is an application before a court for support for the child at the time proceedings are commenced pursuant to this Act, or

(ii) is providing support or exercising access to the child at the time proceedings are commenced pursuant to this Act,

but does not include a foster parent;

"peace officer" means a member of the Royal Canadian Mounted Police, a police officer appointed by a municipality, a sheriff, a deputy sheriff or a member of the military police of the Canadian Armed Forces;

"relative" of a person means a person related by blood, marriage or common-law relationship or, where the person is adopted, by adoption, marriage or common-law relationship;

"representative" means a person appointed as a representative of an agency pursuant to this Act;

"sexual abuse" means

(a) the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct; or

(b) the use of a child in, or exposure to, prostitution, pornography or any unlawful sexual practice.

**(2)** Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;

(b) the child's relationships with relatives;

(c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

(d) the bonding that exists between the child and the child's parent or guardian;

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

(f) the child's physical, mental and emotional level of development;

(g) the child's cultural, racial and linguistic heritage;

(h) the child's sexual orientation, gender identity and gender expression;

(i) the religious faith, if any, in which the child is being raised;

(j) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

(k) the child's views and wishes, if they can be reasonably ascertained;

(l) the effect on the child of delay in the disposition of the case;

(m) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(n) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(o) any other relevant circumstances.

**(3)** Where a person is directed pursuant to this Act in respect of a proposed adoption to make an order or determination in the best interests of a child, the person shall take into consideration those of the circumstances enumerated in subsection (2) that are relevant, except clauses (j), (m) and (n) thereof. 1990, c. 5, s. 3; 2015, c. 37, s. 2.

**Supervision of Act and right of Minister to appear in court**

**4 (1)** The Minister has the general supervision and management of this Act and the regulations.

**(2)** The Minister may appear and be heard in any court with respect to any matter arising pursuant to this Act. 1990, c. 5, s. 4.

**Delegation of powers, privileges, duties or functions**

**5 (1)** The Minister may designate, in writing, a person to have, perform and exercise any of the powers, privileges, duties and functions of the Minister pursuant to this Act and shall, when so designating, specify the powers, privileges, duties and functions to be had, performed and exercised by the person so designated.

**(2)** A person designated pursuant to subsection (1) shall, in addition, perform such duties as the Governor in Council or the Minister prescribes. 1990, c. 5, s. 5.

**Personnel**

**6** **(1)** There may be appointed by the Minister, in accordance with the *Civil Service Act*, such persons as the Minister may designate to carry out duties in accordance with this Act and the regulations.

**(2)** Where an appointment of a person is made pursuant to subsection (1) and the person signs or executes a document in the exercise of a power or function conferred upon the person by this Section, the person shall refer to the name of the person's office together with the words "Authorized pursuant to Section 6 of the *Children and Family Services Act*" and, where a document contains such a reference, the document

(a) must be received in evidence without further proof of the authority of the person who signed or executed the same; and

(b) may be relied upon by the person to whom the document is directed or given and by all other persons as an effective exercise of the power or function to which the document relates. 1990, c. 5, s. 6.

**Payment by Minister of appropriations**

**7** The Minister may make payments in respect of child-care services and child-caring facilities in such amounts as are appropriated annually for those purposes. 1990, c. 5, s. 7; 2015, c. 37, s. 3.

**Agencies**

**8** **(1)** Every society within the meaning of the former Act is continued as an agency within the meaning of this Act.

**(2)** On the recommendation of the Minister and the approval of the Governor in Council, an agency may be established and, upon the approval by the Governor in Council of the name, constitution, territorial jurisdiction and bylaws and upon the filing of the constitution and bylaws with the Registrar of Joint Stock Companies, the agency is a body corporate under the name of "The Children's Aid Society of . . ." or "Family and Children's Services of . . ." or such other name as the Governor in Council approves.

**(3)** The Minister may alter the territorial jurisdiction of an agency.

**(4)** An agency may

(a) with the approval of the Minister, change its name or amend its constitution and bylaws;

(b) engage such persons as may be necessary for carrying on its affairs;

(c) do such acts and things as may be convenient or necessary for the attainment of its objects, the carrying out of its functions and the exercise of its powers.

**(5)** The Minister may, in any part of the Province, act as an agency and, whether or not acting as an agency, has throughout the Province all the powers, rights and privileges of an agency. 1990, c. 5, s. 8.

**Functions of agency**

**9** The functions of an agency are to

(a) protect children from harm;

(b) work with other community and social services to prevent, alleviate and remedy the personal, social and economic conditions that might place children and families at risk;

(c) provide guidance, counselling and other services to families for the prevention of circumstances that might require intervention by an agency;

(d) investigate allegations or evidence that children may be in need of protective services;

(e) develop and provide services to families to promote the integrity of families, before and after intervention pursuant to this Act;

(f) supervise children assigned to its supervision pursuant to this Act;

(g) provide care for children in its care or care and custody pursuant to this Act;

(h) provide adoption services and place children for adoption pursuant to this Act;

(i) provide services that respect and preserve the cultural, racial and linguistic heritage of children and their families;

(j) take reasonable measures to make known in the community the services the agency provides; and

(k) perform any other duties given to the agency by this Act or the regulations. 1990, c. 5, s. 9.

**Inspection of agency**

**10** The Minister or a person authorized by the Minister may enter, inspect and evaluate an agency and examine the records, books and accounts of the agency. 1990, c. 5, s. 10.

**Suspension of agency board**

**11 (1)** On the recommendation of the Minister, the Governor in Council may, by order, declare that on or after a day specified in the order the powers of the agency's board of directors are revoked or suspended, for the reasons specified in the order.

**(2)** Where an order has been made pursuant to subsection (1), the functions of the agency may be assumed by the Minister from the date specified in the order and the Minister may provide for the operation and management of the agency and has all the powers of the agency's board of directors. 1990, c. 5, s. 11.

**Representatives**

**12** The Minister or an agency with the approval of the Minister may appoint representatives in accordance with the regulations to exercise the powers, duties and functions of representatives pursuant to this Act and may prescribe the territorial jurisdiction of the representatives to be the whole of the Province or a part thereof. 1990, c. 5, s. 12; 2015, c. 37, s. 74.

**Social worker's investigation powers**

**13 (1)** When conducting an investigation in respect of a child, a social worker employed by an agency may

(a) attend at the residence of the child and any other place frequented by the child;

(b) interview and examine the child;

(c) interview any parent or guardian of the child;

(d) interview any person who cares for or has an opportunity to observe the child;

(e) interview any person who provides health, social, educational or other services to the child or to any parent or guardian of the child;

(f) interview other persons about past parenting; and

(g) interview other persons and gather any evidence that the social worker considers necessary or advisable to complete the investigation.

**(2)** A social worker employed by an agency may exercise any of the powers enumerated in subsection (1) regardless of whether the social worker has the consent of a parent or guardian of the child. 2015, c. 37, s. 4.

**Services to promote integrity of family**

**14 (1)** Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to or placed in the care of a parent or guardian of the child, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.

**(2)** Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

(a) improving the family's financial situation;

(b) improving the family's housing situation;

(c) improving parenting skills;

(d) improving child-care and child-rearing capabilities;

(e) improving homemaking skills;

(f) counselling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(i) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations. 1990, c. 5, s. 13; 2015, c. 37, s. 5.

**Duty to provide services to child**

**15 (1)** The Minister shall provide to a child under 16 years of age appropriate child-care services or placement in a child-caring facility if it appears to the Minister that

(a) there is no parent or guardian willing to assume responsibility for the child; or

(b) the child is a child in care who requires child-care services or placement in a child-caring facility.

**(2)** The Minister shall, where the conditions in subsections 21(1) and (2) are met, provide to a child 16 years of age or more but under 19 years of age appropriate child-care services or placement in a child-caring facility if it appears to the Minister that

(a) there is no parent or guardian willing to assume responsibility for the child; or

(b) the child is a child in care who requires child-care services or placement in a child-caring facility. 2015, c. 37, s. 6.

**Approval of facilities and services**

**16 (1)** The Minister may approve or license child-caring facilities and child-care services for the purpose of this Act, and a foster home approved by an agency is deemed to have been approved by the Minister.

**(2)** No person shall conduct, maintain, operate or manage a child-caring facility or a child-care service that is not approved or licensed by the Minister.

**(3)** An approval or licence given or issued pursuant to this Act to any person or agency to conduct, maintain, operate or manage a child-caring facility or a child-care service may be suspended or cancelled by the Minister.

**(4)** Where the Minister determines that it would otherwise be necessary to suspend or cancel an approval or licence given or issued pursuant to this Act to a person or agency to conduct, maintain, operate or manage a child-caring facility, the Minister may, with the consent of the person or agency, appoint an interim manager to conduct, maintain, operate and manage the child-caring facility until such time as the Minister determines that the circumstance that would otherwise have necessitated the suspension or cancellation have been ameliorated.

**(5)** A child-caring facility or child-care service is subject to the supervision of the Minister and the Minister or a person authorized by the Minister

may enter, inspect and evaluate a child-caring facility or child-care service and examine the records, books and accounts thereof.

**(6)** A person who contravenes subsection (2) and a director, officer or employee of a corporation who authorizes, permits or concurs in such contravention by the corporation is guilty of an offence and upon summary conviction is liable to a fine of not more than $5,000 or to imprisonment for one year or to both. 1990, c. 5, s. 15; 2015, c. 37, s. 7.

**Ministerial operation of facilities**

**17** **(1)** The Minister may maintain and conduct

(a) residential child-caring facilities;

(b) residential treatment centres;

(c) secure treatment facilities;

(d) such child-caring facilities and child-care services as the Minister approves for the purpose of this Act.

**(2)** The Governor in Council may appoint an advisory board for a facility, centre or service referred to in subsection (1), to assist and advise in the administration and operation of the facility, centre or service and to perform such functions and exercise such powers as are prescribed by the regulations.

**(3)** The Governor in Council may designate a member of a board to chair the meetings of the board and may prescribe the terms of office of the members of the board.

**(4)** The members of a board must be reimbursed for necessary and reasonable expenses incurred by them in carrying out their duties and may be paid such allowances as the Governor in Council prescribes. 1990, c. 5, s. 16; 2015, c. 37, s. 8.

**Temporary-care agreement**

**18** **(1)** A parent or guardian who is temporarily unable to care adequately for a child in that person's custody and an agency may enter into a written agreement for the agency's temporary care and custody of the child.

**(2)** An agency shall not enter into a temporary-care agreement unless the agency

(a) has determined that an appropriate placement that is likely to benefit the child is available; and

(b) is satisfied that no less restrictive course of action, such as care in the child's own home, is appropriate for the child in the circumstances.

**(3)** No temporary-care agreement may be made for a period exceeding six months, but the parties to a temporary-care agreement may extend it for further periods if the total term of the temporary-care agreement, including its extensions, does not exceed an aggregate of 12 months.

**(4)** A temporary-care agreement may empower the agency to consent to medical treatment for the child if a parent's consent would otherwise be necessary.

**(5)** A temporary-care agreement must be in the form prescribed by the regulations. 1990, c. 5, s. 17.

**Special-needs agreement**

**19 (1)** A parent or guardian who is unable to provide the services required by a child in the parent or guardian's custody because the child has special needs, as prescribed by the regulations, may enter into a written agreement with an agency or the Minister for the care and custody of the child or provision of services to meet the child's special needs.

**(2)** A special-needs agreement made pursuant to this Section must be made for a period not exceeding one year, but may be extended for further periods each not exceeding one year, with the approval of the Minister.

**(3)** A special-needs agreement made pursuant to this Section may empower the agency or the Minister to consent to medical treatment for the child where a parent's or guardian's consent would otherwise be required.

**(4)** A special-needs agreement made pursuant to this Section must be in the form prescribed by the regulations. 1990, c. 5, s. 18.

**Services agreement with child 16 to 18**

**20 (1)** A child who is 16 years of age or more but under 19 years of age and in need of protective services may enter into a written agreement with an agency or the Minister for the provision of services if the services are likely to ameliorate the circumstances of the child such that the child is no longer in need of protective services.

**(2)** A services agreement made pursuant to this Section must be made for a period not exceeding one year, but may be extended for further periods each not exceeding one year, with the approval of the Minister.

**(3)** A services agreement made pursuant to this Section must be in the form prescribed by the regulations. 1990, c. 5, s. 19; 2015, c. 37, s. 9.

**Placement agreement**

**21 (1)** A child who is 16 years of age or more but under 19 years of age and in need of protective services may enter into a written agreement with an agency or the Minister for a placement or assistance in obtaining a placement if the child

(a) does not reside with a parent or guardian; or

(b) is or may be in need of protective services in respect of a parent or guardian with whom the child resides.

**(2)** An agency may not enter into a placement agreement pursuant to this Section unless the agency determines that

(a) an appropriate placement that is likely to benefit the child is available; and

(b) a placement is not otherwise available to the child from any source.

**(3)** A placement agreement made pursuant to this Section must be made for a period not exceeding one year, but may be extended for further periods each not exceeding one year, with the approval of the Minister.

**(4)** A placement agreement made pursuant to this Section must be in the form prescribed by the regulations. 2015, c. 37, s. 10.

**Placement considerations**

**22** Where the Minister or an agency enters into an agreement pursuant to Section 18, 19 or 20, the Minister or the agency shall, where practicable, in order to ensure the child's best interests are served, take into account

(a) the maintenance of regular contact between the child and the parent or guardian;

(b) the desirability of keeping brothers and sisters in the same family unit;

(c) the child's need to maintain contact with the child's relatives and friends;

(d) the preservation of the child's cultural, racial and linguistic heritage; and

(e) the continuity of the child's education and religion. 1990, c. 5, s. 20.

**Mediator**

**23 (1)** An agency and a parent or guardian of a child may, at any time, agree to the appointment of a mediator to attempt to resolve matters relating to the child who is or may become a child in need of protective services.

**(2)** Where a mediator is appointed pursuant to subsection (1) after proceedings to determine whether the child is in need of protective services have been commenced, the court, on the application of the parties, may grant an order for mediation for a period not exceeding three months.

**(3)** Where an order for mediation is granted pursuant to subsection (2), the court may extend any time limit applicable under subsection 54(1), 58(1) or (2) by a period equal to the period of the mediation.

**(4)** The court may grant an order for mediation only once in respect of any proceeding. 1990, c. 5, s. 21; 2015, c. 37, s. 11.

**Child is in need of protective services**

**24 (1)** In this Section**,** "substantial risk" means a real chance of danger that is apparent on the evidence.

**(2)** A child is in need of protective services if

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

(c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

(d) there is a substantial risk that the child will be sexually abused as described in clause (c);

(e) a child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;

(f) the child has suffered emotional abuse, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;

(h) the child suffers from a mental, emotional or developmental condition that, where not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the condition;

(i) the child has been exposed to, or has been made aware of, violence by or towards

(i) a parent or guardian, or

(ii) another person residing with the child,

and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence;

(j) the child is experiencing neglect by a parent or guardian of the child;

(k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;

(l) the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody;

(m) the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;

(n) the child is under 12 years of age and has killed or seriously injured another person or caused serious damage to another person's property, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, the necessary services or treatment;

(o) the child is under 12 years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of a parent or guardian of the child or because of the parent's or guardian's failure or inability to supervise the child adequately. 1990, c. 5, s. 22; 1996, c. 10, s. 1; 2015, c. 37, s. 12.

**Duty to report**

**25 (1)** Every person who has information, whether or not it is confidential or privileged, indicating that a child is in need of protective services shall forthwith report that information to an agency.

**(2)** No action lies against a person by reason of that person reporting information pursuant to subsection (1), unless the reporting of that information is done falsely and maliciously.

**(3)** Every person who contravenes subsection (1) is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months or to both.

**(4)** No proceedings may be instituted pursuant to subsection (3) more than two years after the contravention occurred.

**(5)** Every person who falsely and maliciously reports information to an agency indicating that a child is in need of protective services is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months or to both. 1990, c. 5, s. 23; 1996, c. 10, s. 2.

**Duty of professionals and officials to report**

**26 (1)** In this Section, "suffer abuse", when used in reference to a child, means be in need of protective services within the meaning of clause 24(2)(a), (c), (e), (f), (h), (i) or (j).

**(2)** Notwithstanding any other Act, every person who performs professional or official duties with respect to a child, including

(a) a health care professional, including a physician, nurse, dentist, pharmacist or psychologist;

(b) a teacher, school principal, social worker, family counsellor, member of the clergy, operator or employee of a child-care facility;

(c) a peace officer or a medical examiner;

(d) an operator or employee of a child-caring facility or child-care service;

(e) a youth or recreation worker,

who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a child

(f) has or may have suffered abuse;

(g) is or may be suffering abuse; or

(h) is or may be about to suffer abuse in the imminent future,

shall forthwith report the suspicion and the information upon which it is based to an agency.

**(3)** This Section applies whether or not the information reported is confidential or privileged.

**(4)** Nothing in this Section affects the obligation of a person referred to in subsection (2) to report information pursuant to Section 25.

**(5)** No action lies against a person by reason of that person reporting information pursuant to subsection (2), unless the reporting is done falsely and maliciously.

**(6)** Every person who contravenes subsection (2) is guilty of an offence and upon summary conviction is liable to a fine of not more than $5,000 or to imprisonment for a period not exceeding one year or to both.

**(7)** No proceedings may be instituted pursuant to subsection (6) more than two years after the contravention occurred.

**(8)** Every person who falsely and maliciously reports information to an agency indicating that a child is or may be suffering or may have suffered abuse is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months or to both. 1990, c. 5, s. 24; 1996, c. 10, s. 3; 2015, c. 37, s. 13; 2018, c. 33, s. 17.

**Duty to report location of child**

**27** **(1)** Every person who receives notice from an agency that there are reasonable and probable grounds to believe that a child is in need of protective services shall, upon obtaining information that would allow the child to be located, forthwith report the information to the agency.

**(2)** This Section applies whether or not the information obtained is confidential or privileged.

**(3)** No action lies against a person by reason of that person reporting information pursuant to subsection (1), unless the reporting of that information is done falsely and maliciously.

**(4)** Every person who contravenes subsection (1) is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months or to both.

**(5)** No proceedings may be instituted pursuant to subsection (4) more than two years after the contravention occurred.

**(6)** Every person who falsely and maliciously reports information to an agency pursuant to subsection (1) is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months or to both. 2015, c. 37, s. 14.

**Duty to report third-party abuse**

**28** **(1)** In this Section, a child is abused by a person other than a parent or guardian if the child

(a) suffers physical harm, inflicted by a person other than a parent or guardian of the child or caused by the failure of a person other than a parent or guardian of the child to supervise and protect the child adequately;

(b) is sexually abused by

(i) a person other than a parent or guardian of the child, or

(ii) by another individual,

where the person, with the care of the child knows or should know of the possibility of sexual abuse and fails to protect the child; or

(c) suffers emotional abuse, caused by the intentional conduct of a person other than a parent or guardian of the child.

**(2)** Every person who has information, whether or not it is confidential or privileged, indicating that a child under the age of 16

(a) has or may have suffered abuse;

(b) is or may be suffering abuse; or

(c) is or may be about to suffer abuse in the imminent future,

by a person other than a parent or guardian shall forthwith report the information to an agency.

**(3)** Every person who contravenes subsection (2) is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months or to both.

**(4)** No proceedings may be instituted pursuant to subsection (3) more than two years after the contravention occurred.

**(5)** No action lies against a person by reason of that person reporting information pursuant to subsection (2) unless the reporting of that information is done falsely and maliciously.

**(6)** Every person who falsely and maliciously reports information to an agency indicating that a child is or may be suffering or may have suffered abuse by a person other than a parent or guardian is guilty of an offence and upon summary conviction is liable to a fine or not more than $2,000 or to imprisonment for a period not exceeding six months, or to both. 1990, c. 5, s. 25; 1996, c. 10, s. 4; 2015, c. 37, s. 15.

**Confidential information**

**29** The duty to report pursuant to Sections 25 to 28 applies even if the information on which the person's belief is based is confidential and its disclosure is restricted by legislation or otherwise, but it does not apply to information that is privileged because of a solicitor-client relationship. 2015, c. 37, s. 16.

**Order to produce documents for inspection or for access or entry**

**30 (1)** Upon the *ex parte* application of an agency, where the court is satisfied that

(a) there are reasonable and probable grounds to believe that a person or organization has possession, custody or control of records or documents containing information necessary for the agency to determine whether a child is in need of protective services; and

(b) that person or organization has refused or is unwilling to permit the production and inspection of those records or documents,

the court may grant an order directing that person or organization to produce the records or documents for inspection by a representative.

**(2)** Where a representative has been refused access to a child or entry to premises where a child resides or is located, the agency may apply *ex parte* to the court and, where the court is satisfied that there are reasonable and probable grounds to believe that the child may be in need of protective services and that it is necessary to

(a) enter specified premises;

(b) conduct a physical examination of the child;

(c) interview the child;

(d) search specified premises and take possession of anything that there are reasonable and probable grounds to believe will afford evidence that a child is in need of protective services;

(e) remove the child and attend with the child for a medical examination of, or interview, the child on such reasonable terms and conditions as the court may order, including the presence of a parent or guardian or, in their absence, some other suitable adult person,

to determine whether the child is in need of protective services, the court may grant an order authorizing a representative named therein to do anything referred to in clauses (a) to (e) as the court considers necessary to so determine.

**(3)** A representative acting pursuant to subsection (2) may enlist the assistance of a peace officer.

**(4)** A hearing in respect of an application made pursuant to this Section must be held in camera except that the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 26; 2015, c. 37, s. 74.

**Detention of child by peace officer**

**31 (1)** Where a peace officer has reasonable and probable grounds to believe that a child who is under the age of 16 years or who is a child in care is in need of protective services, the peace officer may detain the child and shall forthwith take such reasonable steps as are necessary to

(a) notify an agency and the child's parent or guardian of the detention; and

(b) at the direction of the representative,

(i) deliver the child to the representative,

(ii) return the child to the child's parent or guardian, or

(iii) deliver the child to the child's placement.

**(2)** Where a peace officer has reasonable and probable grounds to believe that a child has committed an offence for which the child cannot be convicted because the child was under 12 years of age, the peace officer may detain the child and shall forthwith take such reasonable steps as are necessary to

(a) notify an agency and the child's parent or guardian of the detention; and

(b) at the direction of the representative,

(i) deliver the child to the representative,

(ii) return the child to the child's parent or guardian, or

(iii) deliver the child to the child's placement.

**(3)** Where a child is delivered to a representative pursuant to subsection (1) or (2), the representative shall immediately return the child to the child's parent or guardian or, as permitted by and in accordance with Section 37, take the child into care. 1990, c. 5, s. 27; 2015, c. 37, ss. 17, 74.

**Abandoned child**

**32 (1)** Subject to subsection (2), where it appears to a representative that a child has been abandoned, a child's only parent or guardian has died, or no parent or guardian of the child is available to exercise custodial rights over the child or has made adequate provision for the child's care, the agency may assume the temporary care and custody of the child, for a period not to exceed 72 hours, during which time the agency shall make all reasonable efforts to locate or contact a parent or guardian or, in the absence of a parent or guardian, a relative of the child who is willing and able to provide for the child's care.

**(2)** Where the agency is unable to locate or contact a parent or guardian, the agency may place the child with

(a) a relative of the child; or

(b) a person who has an established relationship with the child,

who is willing and able to provide for the child's care.

**(3)** Where a parent or guardian is located or contacted, the agency shall immediately

(a) return the child to the parent or guardian;

(b) at the request of the parent or guardian, place the child with another person with the consent of that other person; or

(c) take the child into care as permitted by and in accordance with Section 37.

**(4)** The agency shall commence an application in accordance with Section 36 if

(a) the child has been placed with a relative of the child or a person who has an established relationship with the child pursuant to subsection (2); and

(b) within 30 days of placing the child,

(i) the agency is unable to locate or contact a parent or guardian of the child, and

(ii) the relative of the child or the person who has an established relationship with the child does not commence an application for care and custody of the child.

**(5)** Where the agency is unable within 72 hours to locate or contact a parent or guardian or, in the absence of a parent or guardian, a relative of the child who is willing and able to provide for the child's care, the representative shall take the child into care as permitted by and in accordance with Section 37. 1990, c. 5, s. 28; 2015, c. 37, ss. 18, 74.

**Runaway child**

**33** **(1)** Upon the *ex parte* application of a parent or guardian, or an agency having the care and custody of a child, where the court is satisfied that

(a) the child has withdrawn from the care and control of the parent or guardian or the agency, as the case may be, without the consent of the parent or guardian or the agency, respectively; and

(b) the parent or guardian or the agency, as the case may be, has reasonable and probable grounds to believe that the child's health or safety may be at risk,

the court may issue an order authorizing a peace officer to locate and detain the child and, upon detaining the child, the peace officer shall, as soon as is practicable,

(c) return the child to the parent or guardian or the agency named in the order;

(d) deliver the child to a representative; or

(e) deliver the child to a child-caring facility as directed by a representative.

**(2)** Where a child is delivered to a representative pursuant to subsection (1), the representative shall immediately either return the child to the child's parent or guardian or, as permitted by and in accordance with Section 37, take the child into care.

**(3)** A hearing in respect of an application made pursuant to this Section must be held in camera except that the court may permit any person to be present if the court considers it appropriate.

**(4)** This Section does not apply to a child 16 years of age or more unless the child is a child in care. 1990, c. 5, s. 29; 2015, c. 37, ss. 19, 74.

**Protective-intervention order**

**34 (1)** Upon the application of an agency, a judge of the Supreme Court of Nova Scotia may make a protective-intervention order pursuant to this Section directed to any person if the judge is satisfied that the person's contact with a child is causing, or is likely to cause, the child to be a child in need of protective services.

**(2)** The judge may make a protective-intervention order in the child's best interests, ordering that the person named in the order

(a) cease to reside with the child;

(b) not contact the child or associate in any way with the child,

and imposing such terms and conditions as the judge considers appropriate for implementing the order and protecting the child.

**(3)** A protective-intervention order made pursuant to this Section is in force for such period, not exceeding six months, as the order specifies.

**(4)** Upon the application of the agency or the person named in the protective-intervention order, a judge of the Supreme Court of Nova Scotia may from time to time vary or terminate the order or extend the order for a further period, each not exceeding six months.

**(5)** Where an order is made pursuant to this Section, the agency may enlist the assistance of a peace officer to enforce the order.

**(6)** Any person who contravenes a protective-intervention order is guilty of an offence and upon summary conviction is liable to a fine of not more than $5,000 or to imprisonment for a period not exceeding one year, or to both.

**(7)** Section 115 applies with necessary changes to a hearing pursuant to this Section. 1990, c. 5, s. 30; 2015, c. 37, s. 20.

**Interpretation**

**35** In Sections 36 to 64,

"proceeding" means a proceeding pursuant to those Sections;

"third party" means a person added to a proceeding pursuant to clause 40(1)(f). 2015, c. 37, s. 21.

**Court application by agency**

**36** An agency may make application to the court to determine whether a child under 16 years of age is in need of protective services or, where a representative has taken a child into care pursuant to Section 37 without an application having been made pursuant to this Section, the agency shall make such application. 1990, c. 5, s. 32; 2015, c. 37, ss. 22, 74.

**Taking into care**

**37 (1)** A representative may, without warrant or court order, take a child into care

(a) at any time before or after an application to determine whether a child is in need of protective services has been commenced, if the child is under 16 years of age; or

(b) at any time after an application to determine whether a child is in need of protective services has been commenced, if the child is 16 years of age or more but under 19 years of age,

if the representative has reasonable and probable grounds to believe that the child is in need of protective services and the child's health or safety cannot be protected adequately otherwise than by taking the child into care.

**(2)** On taking a child into care, a representative shall forthwith serve a notice of taking a child into care upon the parent or guardian if known and available to be served.

**(3)** A representative taking a child into care may enlist the assistance of a peace officer.

**(4)** Where a child has been taken into care pursuant to this Section, an agency has the temporary care and custody of the child until a court orders otherwise or the child is returned to the parent or guardian. 1990, c. 5, s. 33; 2015, c. 37, ss. 23, 74.

**Entry and search**

**38 (1)** Where a parent or guardian or other person has refused to give up the child or to permit entry to premises where the child may be located and the court is satisfied on the basis of a representative's sworn information that there are reasonable and probable grounds to believe that

(a) the child is in need of protective services; and

(b) the child's health or safety cannot be protected adequately otherwise than by taking the child into care,

the court may issue an order *ex parte* authorizing a representative named therein to enter, by force if necessary, any premises specified in the order and to search for the

child for the purpose of taking the child into care as permitted by and in accordance with Section 37.

**(2)** Where it is not practicable, an order made pursuant to subsection (1) need not describe the child by name or specify any particular premises.

**(3)** Where a representative has reasonable and probable grounds to believe a child is in need of protective services and the health or safety of a child is in immediate jeopardy, the representative may, without warrant or court order, enter, by force if necessary, any premises and search for the child for the purpose of taking the child into care as permitted by and in accordance with Section 37.

**(4)** A representative acting pursuant to this Section may enlist the assistance of a peace officer.

**(5)** A hearing pursuant to this Section must be held in camera except that the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 34; 2015, c. 37, ss. 24, 74.

**Return of child**

**39** A representative may, at any time prior to the first hearing of an application to determine whether a child is a child in need of protective services, return the child taken into care to the parent or guardian, if such return would be consistent with the purpose of this Act and not contrary to any outstanding court order or written agreement, and, where the child is returned, the agency may withdraw its application. 1990, c. 5, s. 35; 2015, c. 37, s. 25.

**Parties to proceeding**

**40** **(1)** The parties to a proceeding pursuant to Sections 36 to 64 are

(a) the agency;

(b) the child's parent or guardian;

(c) the child, if the child is 16 years of age or more, unless the court otherwise orders pursuant to subsection 42(1);

(d) the child, if the child is 12 years of age or more, and so ordered by the court pursuant to subsection 42(2);

(e) the child, if so ordered by the court pursuant to subsection 42(4); and

(f) a third party added as a party at any stage in the proceeding pursuant to the *Civil Procedure Rules* or *Family Court Rules*, as the case may be.

**(2)** At any stage of a proceeding, where an agency other than the Minister is a party, the court shall add the Minister as a party upon application by the Minister.

**(3)** Where the child who is the subject of a proceeding is or is entitled to be a Mi'kmaw child, the Mi'kmaw Family and Children's Services of Nova Scotia must receive notice in the same manner as a party to the proceedings

and may, with its consent, be substituted for the agency that commenced the proceeding.

**(4)** On a hearing to review a disposition order pursuant to Section 60 or on an application to terminate, or vary access under, an order for permanent care and custody pursuant to Section 63, a foster parent of the child

(a) is entitled to the same notice of the proceeding as a party;

(b) may be present at the hearing;

(c) may be represented by counsel; and

(d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

**(5)** Where the child who is the subject of a proceeding is or is entitled to be a Mi'kmaq child,

(a) at an interim hearing;

(b) at a disposition hearing;

(c) on a hearing to review a disposition order pursuant to Section 60; or

(d) on an application to terminate, or vary access under, an order for permanent care and custody pursuant to Section 63,

the child's band, where known,

(e) is entitled to the same notice of the proceeding as a party, which notice may be served upon any member of the band council;

(f) may have a designate present at the hearing;

(g) may be represented by counsel; and

(h) may make submissions to the court,

but shall take no further part in the hearing without leave of the court. 1990, c. 5, s. 36; 1996, c. 10, s. 5; 2015, c. 37, s. 25.

**Parties requiring notice of proceeding**

**41 (1)** Where the child who is the subject of the proceeding is under one year of age when the proceeding is commenced, and the mother or father of the child is not the child's parent or guardian, notice of the proceeding must be served upon the mother or father, as the case may be, not later than 45 days after the proceeding is commenced.

**(2)** Where the identity or whereabouts of the mother or father is unknown to the agency, the court shall inquire of each party to the proceeding to attempt to ascertain the identity or whereabouts of the mother or father, as the case may be.

**(3)** Where more than one person is identified as a possible father, each such person must be served with notice pursuant to subsection (1). 2015, c. 37, s. 26.

**Child as party and appointment of guardian**

**42** **(1)** A child who is 16 years of age or more is a party to a proceeding unless the court otherwise orders and, where a party, is, upon the request of the child, entitled to counsel for the purposes of a proceeding.

**(2)** A child who is 12 years of age or more must receive notice of a proceeding and, upon request by the child at any stage of the proceeding, the court may order that the child be made a party to the proceeding, if the court determines that such status is desirable to protect the child's interests.

**(3)** Where the court orders that a child under 16 years of age be made a party to a proceeding, the court shall appoint a guardian *ad litem* for the child.

**(4)** Upon the application of a party or on its own motion, the court may, at any stage of a proceeding, order that a guardian *ad litem* be appointed for a child who is the subject of the proceeding and, where the child is not a party to the proceeding, that the child be made a party to the proceeding, if the court determines that such a guardian is desirable to protect the child's interests and, where the child is 16 years of age or more, that the child is not capable of instructing counsel.

**(5)** Where a child is represented by counsel or a guardian *ad litem* pursuant to this Section, the Minister shall in accordance with the regulations, pay the reasonable fees and disbursements of the counsel or guardian as the case may be, including the reasonable fees and disbursements of counsel for the guardian. 1990, c. 5, s. 37; 2015, c. 37, s. 27.

**Disclosure or discovery**

**43** **(1)** Subject to any claims of privilege, an agency shall make full, adequate and timely disclosure to a parent or guardian and to any other party of the allegations, intended evidence and orders sought in a proceeding.

**(2)** Upon the application by a party, the court may order disclosure or discovery by any other party in accordance with the *Civil Procedure Rules* and the *Family Court Rules*. 1990, c. 5, s. 38.

**Interim hearing**

**44** **(1)** As soon as practicable, but in any event no later than five working days after an application is made to determine whether a child is in need of protective services or a child has been taken into care, whichever is earlier, the agency shall bring the matter before the court for an interim hearing, on two days notice to the parties, but the notice may be waived by the parties or by the court.

**(2)** Where at an interim hearing pursuant to subsection (1) the court finds that there are no reasonable and probable grounds to believe that the child is in need of protective services, the court shall dismiss the application and the child, where in the care and custody of the agency, shall be returned forthwith to the parent or guardian.

**(3)** Where the parties cannot agree upon, or the court is unable to complete an interim hearing respecting, interim orders pursuant to subsection (4), the court may adjourn the interim hearing and make such interim orders pursuant to

subsection (4) as may be necessary pending completion of the hearing and subsection (8) does not apply to the making of an interim order pursuant to this subsection, but the court shall not adjourn the matter until it has determined whether there are reasonable and probable grounds to believe that the child is in need of protective services.

**(4)** Within 30 days after the child has been taken into care or an application is made, whichever is earlier, the court shall complete the interim hearing and make one or more of the following interim orders:

(a) the child shall remain in, be returned to or be placed in the care and custody of a parent or guardian or third party, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate, including the future taking into care of the child by the agency in the event of non-compliance by the parent or guardian with any specific terms or conditions;

(b) a parent or guardian or other person may not reside with or contact or associate in any way with the child;

(c) the child shall be placed in the care and custody of a person other than a parent or guardian or third party, with the consent of that other person, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate;

(d) where the child is or is entitled to be an aboriginal child, the child shall be placed in the customary care and custody of a person, with the consent of that person, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate;

(e) the child shall remain or be placed in the care and custody of the agency;

(f) a parent or guardian or third party shall have access to the child on such reasonable terms and conditions as the court considers appropriate and, where an order is made pursuant to clause (c) or (e), access must be granted to a parent or guardian unless the court is satisfied that continued contact with the parent or guardian would not be in the child's best interests;

(g) referral of the child or a parent or guardian or third party for assessment, treatment or services;

(h) referral of the child or a parent or guardian or third party for a family group conference.

**(5)** Where the court makes an order pursuant to clause (4)(a) or (c), any representative of the supervising agency has the right to enter the residence of the child to provide guidance and assistance and to ascertain whether the child is being properly cared for.

**(6)** Where, subsequent to an interim order being made pursuant to subsection (4), the agency takes a child into care pursuant to Section 37 or clause (4)(a), the agency shall, as soon as practicable but in any event within five working days after the child is taken into care, bring the matter before the court and the court may pursuant to subsection (10) vary the interim order.

**(7)** In subsection (8), "substantial risk" means a real chance of danger that is apparent on the evidence.

**(8)** The court may not make an order pursuant to clause (4)(c) or (e) unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child cannot be protected adequately by an order pursuant to clause (4)(a) or (b).

**(9)** Where the agency places a child who is the subject of an order pursuant to clause (4)(e), the agency shall, where practicable, in order to ensure the best interests of the child are served, take into account

(a) the desirability of keeping brothers and sisters in the same family unit;

(b) the need to maintain contact with the child's relatives and friends;

(c) the preservation of the child's cultural, racial and linguistic heritage; and

(d) the continuity of the child's education and religion.

**(10)** The court may, at any time prior to the making of a disposition order pursuant to Section 55, vary or terminate an order made pursuant to subsection (4).

**(11)** Sections 36 to 64 apply notwithstanding that the child becomes 16 years of age after the child is taken into care or after the making of the application to determine whether the child is in need of protective services.

**(12)** For the purpose of this Section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances. 1990, c. 5, s. 39; 2015, c. 37, s. 28.

**Protection hearing**

**45 (1)** Where an application is made to the court to determine whether a child is in need of protective services, the court shall, not later than 90 days after the date of the application,

(a) hold a protection hearing and determine whether the child is in need of protective services; or

(b) refer the parties to conferencing, which may proceed as a family group conference, if

(i) the child is the subject of a supervision order pursuant to clause 44(4)(a), and

(ii) the court determines it to be in the child's best interests.

**(2)** In a hearing pursuant to this Section, the court shall not admit evidence relating only to the making of a disposition order pursuant to Section 55 unless all parties consent to the admission of such evidence or consent to the consolidation of the protection and disposition hearings.

**(3)** A parent or guardian or third party may admit that the child is in need of protective services as alleged by the agency.

**(4)** Where every party present at the protection hearing admits that the child is in need of protective services as alleged by the agency, the court may determine that the child is in need of protective services on the basis of those admissions.

**(5)** The court shall determine whether the child is in need of protective services as of the date of the protection hearing and shall, at the conclusion of the protection hearing, state, either in writing or orally on the record, the court's findings of fact and the evidence upon which those findings are based.

**(6)** Where the court finds that the child is not in need of protective services, the court shall dismiss the application. 1990, c. 5, s. 40; 2015, c. 37, s. 29.

**Purpose of conferencing**

**46** The purpose of conferencing is to facilitate the timely resolution of the issues that resulted in the proceeding being commenced in a manner that is consensual and that serves the child's best interests. 2015, c. 37, s. 30.

**Initial conference**

**47 (1)** Where the court refers the parties to conferencing, the initial conference must be held within 30 days of the referral.

**(2)** At the initial conference,

(a) the agency shall provide to the other parties a proposal for a service plan; and

(b) the parties shall attempt to negotiate a service plan for implementation. 2015, c. 37, s. 30.

**Subsequent conferences**

**48 (1)** After the initial conference is held, each subsequent conference must be held within 60 days of the preceding conference.

**(2)** The service plan must be reviewed and, where necessary, revised at each conference after the initial conference. 2015, c. 37, s. 30.

**Disclosure, discovery procedures**

**49** For greater certainty, during conferencing, a party may apply for, and the court may order, disclosure or discovery in accordance with the *Civil Procedure Rules* or the *Family Court Rules*, as the case may be. 2015, c. 37, s. 30.

**Application to terminate conferencing**

**50 (1)** Where a conference is not held

(a) within 60 days of the preceding conference; or

(b) within 30 days of the court ordering that the parties resume conferencing pursuant to clause (2)(a),

the agency shall apply within five working days to have the court consider whether to terminate conferencing.

**(2)** Where an application is made pursuant to subsection (1), the court may

(a) order that the parties resume conferencing if the court determines it to be in the child's best interests; or

(b) terminate conferencing. 2015, c. 37, s. 30.

**Termination of conferencing**

**51 (1)** A party may at any time terminate conferencing by filing a notice of termination of conferencing with the court and providing written notice thereof to the other parties.

**(2)** Where conferencing is terminated pursuant to clause 50(2)(b) or subsection (1), the court shall

(a) within five working days, schedule a pre-hearing conference; and

(b) within 60 days,

(i) where the parties are referred to conferencing pursuant to clause 45(1)(b), hold a protection hearing and determine whether the child is in need of protective services pursuant to Section 45, or

(ii) where the parties are referred to conferencing pursuant to clause 54(1)(b), hold a disposition hearing and make a disposition order pursuant to Section 55. 2015, c. 37, s. 30.

**Conclusion of conferencing and discontinuance of proceeding**

**52 (1)** The agency may apply to conclude conferencing and discontinue the proceeding if all the parties consent to doing so.

**(2)** When making an application pursuant to subsection (1), the agency shall file with the court an agreed statement of facts.

**(3)** Where the court determines it to be in the child's best interests to do so, the court may order that conferencing be concluded and the proceeding be discontinued.

**(4)** The court may not make an order for costs when an order is made pursuant to subsection (3). 2015, c. 37, s. 30.

**12-month deadline**

**53** Within 12 months of the parties being referred to conferencing under clause 45(1)(b), the agency shall terminate conferencing under subsection 51(1) or apply to conclude conferencing and discontinue the proceeding under subsection 52(1) if conferencing has not otherwise been terminated. 2015, c. 37, s. 30.

**Disposition hearing**

**54 (1)** Where the court finds the child is in need of protective services, the court shall, not later than 90 days after so finding,

(a) hold a disposition hearing and make a disposition order pursuant to Section 55; or

(b) refer the parties to conferencing, which may proceed as a family group conference, if

(i) the child is the subject of an order pursuant to clause 44(4)(a), and

(ii) the court determines it to be in the child's best interests.

**(2)** The evidence taken on the protection hearing must be considered by the court in making a disposition order.

**(3)** The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(b) a statement of the criteria by which the agency will determine when its care and custody or supervision is no longer required;

(c) where the agency proposes to remove the child from the care of a parent or guardian,

(i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

(ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(d) where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

**(4)** Where a parent or guardian consents to a disposition order being made pursuant to Section 55 that would remove the child from the parent or guardian's care and custody, the court shall

(a) ask whether the agency has offered the parent or guardian services that would enable the child to remain with the parent or guardian;

(b) ask whether the parent or guardian has consulted independent legal counsel in connection with the consent;

(c) satisfy itself that the parent or guardian understands and, where the child is 12 years of age or older, that the child under-

stands the nature and consequences of the consent and consents to the order being sought and every consent is voluntary; and

(d) satisfy itself that, where the child is 12 years of age or more and less than 16 years of age and has not been added as a party to the proceeding, the child has not expressed a desire to be a party to the proceeding.

**(5)** Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i) a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian. 1990, c. 5, s. 41; 2015, c. 37, s. 31.

**Disposition order**

**55 (1)** At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in, be returned to or be placed in the care and custody of a parent or guardian or third party, subject to the supervision of the agency, for a specified period, in accordance with Section 56;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian or third party, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 56;

(d) where the child is or is entitled to be an aboriginal child, the child shall remain in or be placed in the customary care and custody of a person, with the consent of that person, subject to the supervision of the agency, for a specified period, in accordance with Section 56;

(e) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 57 and 58;

(f) the child shall be placed in the temporary care and custody of the agency pursuant to clause (e) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 56 to 58;

(g) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 61.

**(2)** The court may not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 14,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

**(3)** Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (1)(e), (f) or (g), consider whether

(a) it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (1)(c), with the consent of the relative or other person; and

(b) where the child is or is entitled to be an aboriginal child, it is possible to place the child within the child's community.

**(4)** The court shall not make an order for permanent care and custody pursuant to clause (1)(g), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection 58(1), so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42; 2015, c. 37, s. 32.

**Supervision order**

**56 (1)** Where the court makes a supervision order pursuant to clause 55(1)(b), (c) or (f), the court may impose reasonable terms and conditions relating to the child's care and supervision, including

(a) a requirement that the agency supervise the child within the residence of the child;

(b) the place of residence of the child and the person with whom the child must, with the consent of that person, reside;

(c) the frequency of visits at the residence of the child by the agency;

(d) that a parent or guardian or other person may not reside with or contact or associate in any way with the child;

(e) access by the child to a parent or guardian or third party;

(f) the assessment, treatment or services, including family group conferencing, to be obtained for the child by a parent or guardian or other person having the care and custody of the child;

(g) the assessment, treatment or services, including family group conferencing, to be obtained by a parent or guardian or third party or other person who is residing with the child; and

(h) any other terms the court considers necessary.

**(2)** Where the court makes a supervision order, any representative of the supervising agency has the right to enter the residence of the child to provide guidance and assistance and to ascertain that the child is being properly cared for.

**(3)** As a term of the supervision order, the court may provide that non-compliance with any specific term or condition of the order may entitle the agency to take the child into care and, where the agency takes the child into care pursuant to this subsection or Section 37, as soon as is practicable, but in any event within five working days after the child is taken into care, the agency shall bring the matter before the court and the court may review and vary the order pursuant to Section 60.

**(4)** A supervision order made pursuant to clause 55(1)(b), (c) or (f) may be for a period less than 12 months, but in no case may a supervision order or orders extend beyond 12 consecutive months of supervision from the date of the initial supervision order pursuant to Section 55, subject to the maximum time limits set out in subsection 58(1) if an order is made pursuant to clause 55(1)(f). 1990, c. 5, s. 43; 2015, c. 37, s. 33.

**Temporary care and custody order**

**57** **(1)** Where the court makes an order for temporary care and custody pursuant to clause 55(1)(e) or (f), the court may impose reasonable terms and conditions, including

(a) access by a child to a parent or guardian or third party, unless the court is satisfied that continued contact with the parent or guardian or third party would not be in the best interests of the child;

(b) the assessment, treatment or services, including family group conferencing, to be obtained for the child by a parent or guardian or other person seeking the care and custody of the child;

(c) the assessment, treatment or services, including family group conferencing, to be obtained by a parent or guardian or third party;

(d) where an order is being made pursuant to clause 55(1)(f), the circumstances or time when the child may be returned to the parent or guardian or other person under a supervision order; and

(e) any terms the court considers necessary.

**(2)** Where an order for temporary care and custody is made, the court may impose as a term or condition of the order that the parent or guardian shall retain any right that the parent or guardian may have to give or refuse consent to medical treatment for the child.

**(3)** Where the agency places a child who is the subject of an order for temporary care and custody, the agency shall, where practicable, in order to ensure the best interests of the child are served, take into account

(a) the desirability of keeping brothers and sisters in the same family unit;

(b) the need to maintain contact with the child's relatives and friends;

(c) the preservation of the child's cultural, racial and linguistic heritage;

(d) the continuity of the child's education and religion; and

(e) where the child is or is entitled to be an aboriginal child, the desirability of placing the child

(i) in a kinship placement with a relative,

(ii) where unable to place the child in a kinship placement with a relative, in a kinship placement,

(iii) if unable to place the child in a kinship placement, with a member of the child's community who is approved as a foster parent, or

(iv) if unable to place the child in a kinship placement or with a member of the child's community who is approved as a foster parent, with an aboriginal foster parent. 1990, c. 5, s. 44; 2015, c. 37, s. 34.

**Duration of orders**

**58 (1)** The duration of a disposition order made pursuant to Section 55 may not exceed three months.

**(2)** Where the court has made an order for temporary care and custody, the total period of disposition orders, including any supervision orders, may not exceed

(a) where the child was under 14 years of age at the time of the application commencing the proceedings, 12 months; or

(b) where the child was 14 years or more at the time of the application commencing the proceedings, 18 months.

**(3)** Where the parties are referred to conferencing during a proceeding, the maximum cumulative duration of all disposition orders made pursuant to Section 55, as determined pursuant to subsection (2), is reduced by the amount of time equal to that spent by the parties in conferencing. 2015, c. 37, s. 35.

**Multiple proceedings**

**59** Where

(a) a child has been the subject of more than one proceeding;

(b) the proceeding closest in time to the current proceeding ended no less than five years prior to the commencement of the current proceeding; and

(c) the cumulative duration of all disposition orders made pursuant to clause 55(1)(e) with respect to all proceedings exceeds 36 months,

the court shall, in the child's best interests,

(d) dismiss the proceeding; or

(e) order that the child be placed in the permanent care and custody of the agency in accordance with Section 61. 2015, c. 37, s. 35.

**Review of order**

**60** **(1)** A party may at any time apply for review of a supervision order or an order for temporary care and custody, but in any event the agency shall apply to the court for review prior to the expiry of the order or if the child is taken into care while under a supervision order.

**(2)** Where all parties consent, the supervision by an agency of a child under a supervision order or the care and custody of a child under an order for temporary care and custody may be transferred to another agency, with the other agency's consent, and, where all parties, including the other agency, do not so consent, the court may, upon application, order the transfer of an agency's supervision or care and custody to another agency, in the child's best interests.

**(3)** Where an application is made pursuant to this Section, the child shall, prior to the hearing, remain in the care and custody of the person or agency having care and custody of the child, unless the court is satisfied, upon application, that the child's best interests require a change in the child's care and custody.

**(4)** Before making an order pursuant to subsection (5), the court shall consider

(a) whether the circumstances have changed since the previous disposition order was made;

(b) whether the plan for the child's care that the court applied in its decision is being carried out;

(c) what is the least intrusive alternative that is in the child's best interests; and

(d) whether the requirements of subsection (6) have been met.

**(5)** On the hearing of an application for review, the court may, in the child's best interests,

(a) vary or terminate the disposition order made pursuant to subsection 55(1), including any term or condition that is part of that order;

(b) order that the disposition order terminate on a specified future date; or

(c) make a further or another order pursuant to subsection 55(1), subject to the time limits specified in Section 58.

**(6)** Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection 55(1), so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46; 2015, c. 37, s. 36.

**Permanent care and custody order**

**61** **(1)** Where the court makes an order for permanent care and custody pursuant to clause 55(1)(g), the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

**(2)** Where the court makes an order for permanent care and custody, the court may not make any order for access by a parent, guardian or other person.

**(3)** Where a child is the subject of an order for permanent care and custody and the agency considers it to be in the child's best interests, the agency shall, where possible, facilitate communication or contact between the child and

(a) a relative of the child; or

(b) a person who has an established relationship with the child.

**(4)** Where practicable, a child, who is the subject of an order for permanent care and custody, must be placed with a family of the child's own culture, race, religion or language but, where such placement is not available within a reasonable time, the child may be placed in the most suitable home available with the approval of the Minister.

**(5)** An agency may, with the approval of the Minister, transfer the permanent care and custody of a child to another agency.

**(6)** Where the permanent care and custody of a child is transferred from one agency to another agency, the agency to which the permanent care and custody is transferred is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent, and the agency making the transfer ceases to have those rights, powers and responsibilities in relation to the child.

**(7)** At least 30 days prior to consenting to an order for adoption, the Minister shall inform any person who has been granted an order for access under subsection (2) of the Minister's intention to consent to the adoption. 1990, c. 5, s. 47; 1996, c. 10, s. 6; 2005, c. 15, s. 1; 2015, c. 37, s. 37.

**Cultural connection plan**

**62** The agency shall develop, in a timely manner, a cultural connection plan for a child who is in the permanent care and custody of the agency or is the subject of an adoption agreement pursuant to Section 84. 2015, c. 37, s. 38.

**Termination of permanent care and custody order**

**63** **(1)** An order for permanent care and custody terminates when

(a) the child reaches 19 years of age, unless, because the child is under a disability, the court orders that the agency's permanent care and custody be extended until the child reaches 21 years of age;

(b) the child is adopted;

(c) the child marries; or

(d) the court terminates the order for permanent care and custody pursuant to this Section.

**(2)** In subsection (1), "21 years of age" means 21 years of age notwithstanding the *Age of Majority Act*.

**(3)** A party to a proceeding may apply to terminate an order for permanent care and custody, in accordance with this Section, including the child if the child is 16 years of age or more at the time of application for termination.

**(4)** Where the child has been placed and is residing in the home of a person who has given notice of proposed adoption by filing the notice with the Minister, no application to terminate an order for permanent care and custody may be made during the continuance of the adoption placement until

(a) the application for adoption is made and the application is dismissed, discontinued or unduly delayed; or

(b) there is an undue delay in the making of an application for adoption.

**(5)** Notwithstanding subsection (4), the agency may apply at any time to terminate an order for permanent care and custody or to vary or terminate access under such an order.

**(6)** Notwithstanding subsection (3), a party, other than the agency, may not apply to terminate an order for permanent care and custody

(a) within 45 days after the making of the order for permanent care and custody;

(b) while the order for permanent care and custody is being appealed pursuant to Section 64;

(c) within five months after the expiry of the time referred to in clause (a);

(d) except with leave of the court, after

(i) five months from the expiry of the time referred to in clause (a),

(ii) six months from the date of the dismissal or discontinuance of a previous application by a party, other than the agency, to terminate an order for permanent care and custody, or

(iii) six months from the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody or of a dismissal of an application to terminate an order for permanent care and custody pursuant to subsection (10),

whichever is the later; or

(e) except with leave of the court, after two years from

(i) the expiry of the time referred to in clause (a), or

(ii) the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody pursuant to Section 64,

whichever is the later.

**(7)** A party may apply to terminate an order for permanent care and custody after 11 months but before two years from

(a) the expiry of the time referred to in clause (6)(a); or

(b) the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody pursuant to Section 64,

whichever is later.

**(8)** On the hearing of an application by the agency to vary access under an order for permanent care and custody, the court may, in the child's best interests, confirm, vary or terminate the access.

**(9)** The court shall hear an application

(a) for leave to apply to terminate an order for permanent care and custody no later than 30 days after the application is made; and

(b) to terminate an order for permanent care and custody no later than 90 days after the application is made.

**(10)** On the hearing of an application to terminate an order for permanent care and custody, the court may

(a) dismiss the application;

(b) adjourn the hearing of the application for a period not to exceed 90 days and refer the child, parent or guardian or other person seeking care and custody of the child for psychiatric, medical or other examination or assessment;

(c) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a parent or guardian or third party, subject to the supervision of the agency;

(d) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a person other than a parent or guardian or third party, with the consent of that other person, subject to the supervision of the agency; or

(e) terminate the order for permanent care and custody and order the return of the child to the care and custody of a parent or guardian or other person.

**(11)** Where the court makes a supervision order pursuant to clause (10)(c) or (d), subsections 56(1), (2) and (3) and 60(1) apply.

**(12)** Before making an order pursuant to subsection (10), the court shall consider

(a) whether the circumstances have changed since the making of the order for permanent care and custody; and

(b) the child's best interests.

**(13)** Where

(a) a child is and has been throughout the immediately preceding year in the permanent care and custody of an agency;

(b) no application to terminate has been heard during that time; and

(c) subsection (4) does not apply,

the agency shall at least once during each calendar year thereafter submit a written report to the Minister concerning the circumstances of the child and the agency's plan for the child's care and placement and the Minister shall review the report and make such further inquiries as are considered necessary. 1990, c. 5, s. 48; 1996, c. 10, s. 7; 2005, c. 15, s. 2; 2015, c. 37, s. 39.

**Appeal and stay**

**64 (1)** An order of the court pursuant to any of Sections 36 to 63 may be appealed by a party to the Nova Scotia Court of Appeal by filing a notice of appeal with the Registrar of the Court within 25 days of the order.

**(2)** A party may apply to the court at the time of the order for an order staying the execution of the order, or any part of the order, for a period not to exceed 10 days.

**(3)** Where a notice of appeal is filed pursuant to this Section, a party may apply to the Court of Appeal for an order staying the execution of the order, or any part of the order, appealed.

**(4)** Where a notice of appeal is filed pursuant to this Section, the Minister is responsible for the timely preparation of the transcript and the appeal must be heard by the Court of Appeal within 90 days of the filing of the notice of appeal or such longer period of time, not to exceed 60 days, as the Court considers appropriate.

**(5)** On an appeal pursuant to this Section, the Court of Appeal may in its discretion receive further evidence relating to events after the appealed order.

**(6)** The Court of Appeal shall

(a) confirm the order appealed;

(b) rescind or vary the order; or

(c) make any order the court could have made. R.S., c. 240, s. 9; 1990, c. 5, s. 49; 1992, c. 16, s. 38; 1996, c. 10, s. 8; 2015, c. 37, s. 40.

**Determination of religion and maintenance**

**65 (1)** Where an application is made to determine whether a child is in need of protective services, the court shall, after the court has determined whether

the child is in need of protective services and made a disposition order pursuant to Section 55, determine the child's religion, if any, and maintenance issues.

**(2)** For the purpose of the determination pursuant to subsection (1), a child has the religious faith agreed upon by the child's parents or guardians, subject to the child's views and wishes if they can be reasonably ascertained, but where there is no agreement or the court cannot readily determine what the religious faith agreed upon is or whether any religious faith is agreed upon, the court may determine what the child's religious faith is, if any. 1990, c. 5, s. 50; 1994-95, c. 7, s. 11.

**Maintenance order for support of child**

**66 (1)** Upon the application of the agency or the Minister, the court shall inquire into the ability of a parent or guardian or other person liable under the law for the maintenance of a child to support the child.

**(2)** Where the court is satisfied that the parent or guardian or other person has sufficient means to enable the parent or guardian or other person to contribute towards the maintenance of the child, the court may order the parent or guardian or other person to pay to

(a) the Minister; or

(b) the court for payment to the agency,

a sum not exceeding the maintenance amount, as prescribed by the regulations, payable for maintaining a child in care until the child reaches 19 years of age, is adopted, marries or the court terminates the order for permanent care and custody.

**(3)** Upon the application of the agency, the Minister or the person against whom an order is made, the court shall review the ability to pay of the person against whom the order is made, and upon such a review the court may vary the order as the court considers proper. 1990, c. 5, s. 52; 1994-95, c. 7, s. 13; 2015, c. 37, s. 41.

**Effect of maintenance order**

**67** Where a maintenance order is made, pursuant to Section 66, the order may be appealed or enforced as an order made pursuant to the *Parenting and Support Act*. 1990, c. 5, s. 53; 2015, c. 37, s. 42; 2015, c. 44, s. 49.

**Information relating to birth family**

**68 (1)** A person over 19 years of age who was the subject of an order for permanent care and custody pursuant to clause 55(1)(g) and who was not adopted may apply to the Minister for the disclosure of

(a) information relating to the person or the person's birth family; and

(b) the reasons why the person was removed from the person's birth family.

**(2)** The Minister shall disclose all information, including personal information, requested under subsection (1) in the Minister's possession, except information that, in the opinion of the Minister, poses a risk to the health, safety or well-being of any person to whom the information relates. 2015, c. 37, s. 43.

**Interpretation of Sections 70 to 75**

**69** In Sections 70 to 75,

"legal-aid office" means an office providing legal aid pursuant to the *Legal Aid Act*;

"secure treatment facility" means a facility or part of a facility approved or licensed by the Minister as a secure treatment facility. 1990, c. 5, s. 54.

**Secure-treatment certificate**

**70 (1)** Upon the request of an agency, the Minister may issue a secure-treatment certificate for a period of not more than five days in respect of a child in care, if the Minister has reasonable and probable grounds to believe that

(a) the child is suffering from an emotional or behavioural disorder; and

(b) it is necessary to confine the child in order to remedy or alleviate the disorder.

**(2)** A secure-treatment certificate must be in the form prescribed by the regulations and must include

(a) the reason for the confinement;

(b) the duration of the certificate;

(c) the date, place and time of the hearing pursuant to subsection (4); and

(d) a statement that the child may be represented by counsel at any hearing, including the address and telephone number of the nearest legal-aid office.

**(3)** A secure-treatment certificate must be served upon the child who is the subject of the certificate and upon the nearest legal-aid office not more than one day after it is issued.

**(4)** Where a secure-treatment certificate has been issued pursuant to this Section, the Minister or the agency shall appear before the court before the certificate expires, to satisfy the court that this Section has been complied with and, where an application is made pursuant to Section 71, for the application to be heard pursuant to that Section. 1990, c. 5, s. 55; 2015, c. 37, s. 44.

**Secure-treatment order**

**71 (1)** The Minister or an agency with the consent of the Minister may make an application to the court for a secure-treatment order in respect of a child in care.

**(2)** The Minister shall serve the application upon the child and upon the nearest legal-aid office.

**(3)** Where the child who is the subject of an application is not a child in permanent care and custody, the Minister shall notify the child's parent or guardian of the proceeding.

**(4)** Where the child who is the subject of an application is not a child in permanent care and custody, the court may, upon application by the parent or guardian of the child, add the parent or guardian as a party to the proceeding.

**(5)** After a hearing, the court may make a secure-treatment order in respect of the child for a period of not more than 45 days if the court is satisfied that

(a) the child is suffering from an emotional or behavioural disorder; and

(b) it is necessary to confine the child in order to remedy or alleviate the disorder.

**(6)** Upon the application of the Minister or the agency and after a hearing before the expiry of a secure-treatment order, a secure-treatment order may be renewed in respect of the child, for a period of not more than 90 days in the case of a first or subsequent renewal, if the court is satisfied that

(a) the child is suffering from an emotional or behavioural disorder;

(b) it is necessary to confine the child in order to remedy or alleviate the disorder; and

(c) there is an appropriate plan of treatment for the child. 1990, c. 5, s. 56; 2015, c. 37, s. 45.

**Review of secure-treatment order**

**72 (1)** An application for review of a secure-treatment order may be made by the Minister, the agency, the child who is the subject of the order or a parent or guardian of a child, if the parent or guardian was a party to the application for the order.

**(2)** Every party to an application for a secure-treatment order is a party to an application for review.

**(3)** Where the child who is the subject of an application for review is not a child in permanent care and custody, the applicant shall notify the child's parent or guardian of the proceeding if the parent or guardian is not already a party to the application for review.

**(4)** Where the child who is the subject of an application for review is not a child in permanent care and custody, the court may, upon application by a parent or guardian of the child, add the parent or guardian as a party to the proceeding.

**(5)** An application for review may be made at any time by the Minister or the agency but, except with leave of the court, an application for review may otherwise be made only once during the period of any secure-treatment order or during the period of any renewal of a secure-treatment order.

**(6)** An application for review must be filed and served no fewer than four working days before the hearing.

**(7)** After hearing an application for review and after considering clauses 71(6)(a) to (c), the court may make an order confirming, varying or terminating the secure-treatment order, but in no case may the period of the secure-treatment order be extended. 1990, c. 5, s. 57; 2015, c. 37, s. 46.

**Duty of court and appeal**

**73 (1)** Upon making, renewing or reviewing a secure-treatment order, the court shall give reasons for its decision and shall inform the child and the parent or guardian, if the parent or guardian was a party to the application respecting the order, of the review, renewal and appeal provisions pursuant to Sections 71 and 72 and subsection (2).

**(2)** An order pursuant to Section 71 or 72 may be appealed in accordance with Section 64 by the Minister, the agency, the child or the parent or guardian, if the parent or guardian was a party to the application for the order. 1990, c. 5, s. 58; 2015, c. 37, s. 47.

**Effect of secure-treatment certificate or order**

**74 (1)** A secure-treatment certificate or order is sufficient authority for a peace officer or representative to apprehend and convey the child named in the certificate or order to a secure treatment facility and to detain the child while being conveyed to a secure treatment facility.

**(2)** Upon a secure-treatment certificate or order being issued, the person in charge of a secure treatment facility shall admit the child to the facility, if the child is not already resident in the facility, and is responsible for ensuring that the child is provided with the diagnostic and treatment services in accordance with the terms of the certificate or order and the needs of the child.

**(3)** Where the child who is the subject of a secure-treatment certificate or order leaves a secure treatment facility when a leave of absence has not been granted or fails to return to a facility in accordance with the terms of a leave of absence, a peace officer, representative or person designated by the Minister in accordance with the regulations may apprehend the child and return the child to the secure treatment facility. 1990, c. 5, s. 59; 2015, c. 37, s. 48.

**Leave of absence or transfer from secure-treatment facility**

**75 (1)** During the period of a secure-treatment certificate or order, the person in charge of the secure treatment facility may grant the child a leave of absence from the facility to attend legal proceedings or for medical, humanitarian or rehabilitative reasons on any terms or conditions that the person in charge considers necessary.

**(2)** Where the child named in the secure-treatment certificate or order is in a secure treatment facility, the child may, with the approval of the Minister, be transferred to another secure treatment facility and subsection 74(1) applies while the child is being transferred. 1990, c. 5, s. 60; 2015, c. 37, s. 49.

**Authority of secure-treatment certificate or order**

**76 (1)** Where a child named in a secure-treatment certificate or order is required to appear at a court in the Province, the secure-treatment certificate or

order is sufficient authority for a peace officer, upon the request of the Minister or a representative, to convey the child to and from the court and to detain the child while conveying the child.

**(2)** Where a leave of absence is granted to a child named in a secure-treatment certificate or order and the leave of absence includes a condition that the child remain under the custody and control of a peace officer for the duration of the leave of absence, the secure-treatment certificate or order is sufficient authority for a peace officer, upon the request of the Minister or a representative, to convey the child to and from any place in the Province and to detain the child while conveying the child. 2008, c. 12, s. 1; 2015, c. 37, s. 74.

**Refusal to consent to medical treatment**

**77** **(1)** Where a child is in the care or custody of a parent or guardian who refuses to consent to the provision of proper medical or other recognized remedial care or treatment that is considered essential by two duly qualified medical practitioners for the preservation of life, limb or vital organs of a child and the Minister is notified thereof, the Minister shall apply to the court forthwith for a hearing.

**(2)** Where an application is made pursuant to subsection (1), the court shall hear the matter as soon as possible upon such notice to the parent or guardian as is practical.

**(3)** The parties to the proceeding are the Minister, the parent or guardian and such other persons as the court may order.

**(4)** Upon hearing the matter, the court may make an order

(a) dismissing the matter;

(b) authorizing the provision of proper medical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner for the preservation of life, limb or vital organs or the prevention of unnecessary suffering of the child;

(c) prohibiting the parent or guardian or any other person from obstructing the provision of the care or treatment ordered pursuant to clause (b);

(d) requiring the parent or guardian to deliver the child to the place where the care or treatment will be provided;

(e) including any other terms, including the duration of the order, that the court considers necessary.

**(5)** The court may confirm, vary, rescind or terminate an order made pursuant to subsection (4) upon the application of a party. 1990, c. 5, s. 61.

**Interpretation of Sections 79 to 82**

**78** In Sections 79 to 82, "abuse" of a child by a person means that the child

(a) has suffered physical harm, inflicted by the person or caused by the person's failure to supervise and protect the child adequately;

(b) has been sexually abused by the person or by another person where the person, having the care of the child, knows or should know of the possibility of sexual abuse and fails to protect the child; or

(c) has suffered serious emotional harm caused by the intentional conduct of the person. 1990, c. 5, s. 62; 2015, c. 37, s. 50.

**Child Abuse Register**

**79 (1)** The Minister shall establish and maintain a Child Abuse Register.

**(2)** The Minister shall enter the name of a person and such information as is prescribed by the regulations in the Child Abuse Register if

(a) the court finds that a child is in need of protective services in respect of the person within the meaning of clause 24(2)(a) or (c);

(b) the person is convicted of an offence against or involving a child pursuant to the *Criminal Code* (Canada) as prescribed in the regulations; or

(c) the court makes a finding pursuant to subsection (3).

**(3)** The Minister or an agency may apply to the court, upon notice to the person whose name is intended to be entered in the Child Abuse Register, for a finding that, on the balance of probabilities, the person has abused a child.

**(4)** A hearing pursuant to subsection (3) must be held in camera except that the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 63; 2015, c. 37, s. 51.

**Notice of entry in and application to remove name from Child Abuse Register**

**80 (1)** A person whose name is entered in the Child Abuse Register must be given written notice of registration in the form prescribed by the regulations.

**(2)** A person whose name is entered on the Child Abuse Register may, upon providing written notice to the Minister, apply to the court at any time to have the person's name removed from the Register and, where the court is satisfied by the person that the person does not pose a risk to children, the court shall order that the person's name be removed from the Register. 1990, c. 5, s. 64; 2015, c. 37, s. 52.

**Appeal respecting Child Abuse Register**

**81** A decision of the court pursuant to subsection 79(3) or 80(2) may, within 30 days of the decision, be appealed to the Nova Scotia Court of Appeal and subsection 79(4) applies with necessary changes to the hearing of an appeal. 1990, c. 5, s. 65.

**Confidentiality of information in Child Abuse Register**

**82 (1)** The information in the Child Abuse Register is confidential and is available only as provided in this Section.

**(2)** A person whose name is entered in the Child Abuse Register is entitled to inspect the information relating to that person entered in the Register.

**(3)** With the approval of the Minister, the information in the Child Abuse Register may be

(a) disclosed to an agency, including any corporation, society, federal, provincial, municipal or foreign state, government department, board or agency authorized or mandated to investigate whether a child is in need of protective services;

(b) disclosed to the police by an agency if the police and the agency are conducting a joint child abuse investigation;

(c) used for the purposes of research as prescribed by the regulations.

**(4)** Upon receiving a request in writing from a person, the Minister may disclose to the person

(a) whether the person's name is entered in the Child Abuse Register; and

(b) where the person's name is entered in the Child Abuse Register, any information respecting the person entered in the Child Abuse Registry pursuant to subsection 79(2). 1990, c. 5, s. 66; 1996, c. 10, s. 9; 2015, c. 37, s. 53.

**Interpretation of Sections 83 to 107**

**83** **(1)** In this Section and Sections 84 to 107,

"adopting parent" means a person who has filed a notice of proposed adoption or has commenced an application for adoption;

"adoptive parent" means a person who has acquired the legal status of parent of a child by virtue of an order for adoption;

"child in care" means a child in respect of whom there exists an order for permanent care and custody or a child in respect of whom there exists an adoption agreement;

"court" means the Supreme Court of Nova Scotia;

"father" of a child means the biological father of the child except where the child is adopted and in such case means, subject to subsection 90(4), the father by adoption;

"mother" means the biological mother of the child except where the child is adopted and in such case means, subject to subsection 90(4), the mother by adoption;

"parent" of a child means

(a) the mother of the child;

(b) the father of the child if the father was, at the time of the child's birth, married to or in a common-law relationship with the mother of the child;

(c) an individual having custody of the child;

(d) an individual who, during the 12 months before proceedings for adoption are commenced, has stood *in loco parentis* to the child;

(e) an individual who, under a written agreement or a court order, is required to provide support for the child or has a right of access to the child and has, at any time during the two years before proceedings for adoption are commenced, provided support for the child or exercised a right of access;

(f) an individual who has acknowledged parentage of the child and who

(i) has an application before a court respecting custody, support or access for the child at the time proceedings for adoption are commenced, or

(ii) has provided support for or has exercised access to the child at any time during the two years before proceedings for adoption are commenced,

but does not include a foster parent.

**(2)** Proceedings for adoption are commenced within the meaning of this Section on the day when

(a) a notice of proposed adoption is filed with the Minister pursuant to this Act; or

(b) in the case of a child 16 years of age or more for whom no notice of proposed adoption has been given, an application for adoption is commenced. 1990, c. 5, s. 67; 2015, c. 37, s. 54.

**Adoption agreement**

**84** **(1)** A parent of a child may enter into an adoption agreement with an agency whereby the child is voluntarily given up to the agency for the purpose of adoption.

**(2)** The term of an adoption agreement is for a period not to exceed one year and, in the case of a newborn child, is not be effective until 15 days after the birth of the child.

**(3)** A child may not be placed in a home for the purpose of adoption pursuant to an adoption agreement unless and until every parent of the child has entered into such an agreement.

**(4)** Subject to subsection (5), where the child has not been placed in a home for the purpose of adoption, a parent who entered into the adoption agreement may, in writing, at any time during the term of the agreement, notify the agency that the parent wishes to terminate the agreement and have the child returned to the parent.

**(5)** Where a child has been placed in a home for the purpose of adoption as a result of an adoption agreement, and the persons with whom the child is placed have filed a notice of proposed adoption with the Minister prior to the

expiration of the term of the agreement, then, notwithstanding subsection (2), the adoption agreement continues in force and may not be terminated by the parent who entered into the agreement, unless and until the application for adoption is dismissed, discontinued or unduly delayed.

**(6)** On receipt of a notice pursuant to subsection (4) from, or the expiry of the adoption agreement with, the parent from whom the child was received, the agency shall return the child to that parent unless the child is taken into care as permitted by and in accordance with Section 37.

**(7)** On receipt of a notice pursuant to subsection (4) from, or the expiry of the adoption agreement with, a parent who is not the parent from whom the child was received, the agency shall

(a) declare in writing that all adoption agreements respecting the child are terminated, notifying where possible the other parties to such adoption agreements, and return the child to the parent from whom the child was received; or

(b) take appropriate steps to have the child taken into care as permitted by and in accordance with Section 37, in which case all adoption agreements are terminated as and when the child is taken into care.

**(8)** Where a parent has entered into an adoption agreement, the agency shall, where the parent's whereabouts are known to the agency, advise the parent when the child has been placed in a home for the purpose of adoption or provide such information upon request by a parent.

**(9)** An adoption agreement must be in the form prescribed by the regulations.

**(10)** Where a parent has entered into an agreement pursuant to subsection (1), the agency has all the rights, powers and responsibilities of that parent while the adoption agreement continues in force.

**(11)** Where an agency other than the Mi'kmaw Family and Children's Services of Nova Scotia has reason to believe that a child who is to be the subject of an adoption agreement is or is entitled to be a Mi'kmaw child, the agency may not enter into an adoption agreement respecting the child until 15 days after the agency has notified the Mi'kmaw Family and Children's Services of Nova Scotia.

**(12)** Where, subsequent to the execution of an adoption agreement and prior to the placement for adoption of the child who is the subject of the adoption agreement, the agency determines that the child is or is entitled to be a Mi'kmaw child, the agency shall, as soon as possible, notify the Mi'kmaw Family and Children's Services of Nova Scotia and may not place the child for adoption until 15 days have elapsed from the date of such notification. 1990, c. 5, s. 68; 1996, c. 10, s. 10; 2015, c. 37, s. 55.

**Placement with specified person**

**85 (1)** Where every parent of a child has entered into an adoption agreement pursuant to Section 84 and all such parents have also requested, in writ-

ing, that the child be placed with a specified person, the agency may place the child for the purpose of adoption with the specified person if

(a) the specified person has been approved by the agency as an approved adoption home; and

(b) the agency is satisfied that adoption of the child by the specified person is in the best interests of the child.

**(2)** An adoption agreement entered into for the purpose of permitting a child to be placed with a specified person in accordance with subsection (1) is subject to Section 84.

**(3)** Where a child is in the care of an agency pending placement with a specified person and the agency determines that placement of the child with the specified person cannot occur for either of the following reasons:

(a) the specified person cannot be approved as an approved adoption home by an agency;

(b) the specified person cannot meet the requirements necessary for approval by an agency within a period of time that serves the best interest of the child respecting the child's need to be placed for adoption in a timely manner,

the agency shall advise the parents that placement of the child with the specified person cannot be effected.

**(4)** Upon being advised pursuant to subsection (3) that placement with a specified person cannot occur, a parent may

(a) direct the agency, in writing, to place the child with a suitable adopting family approved by the agency; or

(b) terminate the parent's adoption agreement in accordance with subsection 84(4).

**(5)** Where an agency has determined that placement of the child with the specified person cannot occur and the agency is unable, within three weeks, to contact a parent to advise the parent pursuant to subsection (3) that placement of the child with a specified person cannot be effected, the agency shall consider the child to be abandoned within the meaning of Section 32 and accordingly advise a representative.

**(6)** A parent, who enters into an adoption agreement and requests in writing pursuant to subsection (1) that the child be placed with a specified person, may also request that, in the event that the agency determines that placement of the child with a specified person cannot occur, the agency may place the child for adoption with any other person or persons approved by the agency. 1996, c. 10, s. 11; 2015, c. 37, ss. 56, 74.

**Notice to Minister of placement for adoption**

**86** **(1)** Every person who receives a child from another person for the purpose of adoption shall within 10 days of such reception inform the Minister.

**(2)** Subsection (1) does not apply where the person who receives the child is the father or mother of the child.

**(3)** Any person who gives or receives, or agrees to give or to receive, any payment or reward, directly or indirectly,

(a) in consideration of the placement for adoption of a child; or

(b) to procure a child for the purpose of adoption,

is guilty of an offence and upon summary conviction is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than two years, or to both. 1990, c. 5, s. 69.

**Restriction on placement**

**87 (1)** A child shall not be placed or received for the purpose of adoption except where

(a) the child is a child in the care of an agency;

(b) the child is placed by the father or mother with a relative of the father or mother;

(c) one of the applicants for adoption is the father or mother of the child; or

(d) the child is placed in accordance with the laws of another jurisdiction.

**(2)** A person who places or receives a child for the purpose of adoption where subsection (1) has not been complied with is guilty of an offence and upon summary conviction is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than two years or to both.

**(3)** Where a child has been placed for the purpose of adoption contrary to subsection (1), adoption proceedings may not be commenced within the meaning of clause 83(2)(a) until the conditions referred to in Section 88 exist, notwithstanding that any action has been taken to prosecute a violation of subsection (2). 1990, c. 5, s. 70; 1996, c. 10, s. 12; 2005, c. 15, s. 3; 2015, c. 37, s. 57.

**Right to commence adoption proceedings**

**88 (1)** A person who has had the physical care and control of a child for more than 24 consecutive months may, during the further continuance of that period of physical care and control, commence proceedings for adoption within the meaning of clause 83(2)(a) only if,

(a) all necessary consents for adoption have been obtained or have been ordered dispensed with pursuant to Section 93;

(b) a parent whose consent to the adoption has been obtained has, before giving the consent, received professional counselling by a person or a member of a class of persons approved for that purpose by the Minister;

(c) a social and medical history respecting the biological father and the biological mother has been prepared, if the biological father and the biological mother, or either of them, are known and available to a person or a member of a class of persons approved for that purpose by the Minister; and

(d) the person has been approved by an agency for the adoption of the child.

**(2)** A person who has care and custody of a child pursuant to an order made under the *Parenting and Support Act* or an enactment of another jurisdiction respecting the custody of children may, while the order is in effect, commence proceedings for adoption within the meaning of clause 83(2)(a) only if,

(a) all necessary consents for adoption have been obtained or have been ordered dispensed with pursuant to Section 93;

(b) a parent whose consent to the adoption has been obtained has, before giving the consent, received professional counselling by a person or a member of a class of persons approved for that purpose by the Minister;

(c) a social and medical history respecting the biological father and the biological mother has been prepared, if the biological father and the biological mother, or either of them, are known and available to a person or a member of a class of persons approved for that purpose by the Minister; and

(d) the person has been approved by an agency for the adoption of the child.

**(3)** Subsection (1) does not apply if

(a) the child is a child in the care of an agency;

(b) the child is placed by the father or mother with a relative of the father or mother; or

(c) one of the applicants for adoption is the father or mother of the child. 1996, c. 10, s. 13; 2015, c. 37, s. 58.

**Certificate to take child outside Province**

**89** **(1)** No person shall take or attempt to take any child under 12 years of age, who is a resident of or was born in the Province, out of the Province for the purpose of being adopted or brought up outside of the Province unless the person is in possession of a certificate issued by the Minister pursuant to this Section except if a child is being taken by

(a) the father or mother of the child; or

(b) a relative of the father or mother of the child to be adopted by or to reside with that relative.

**(2)** There is an appeal to the court from the refusal of the Minister to grant a certificate pursuant to subsection (1).

**(3)** Notice of the appeal must be given to the Minister within 30 days of the refusal or within such further period as the court may allow.

**(4)** Upon such notice the Minister shall forward to the court the Minister's complete record of the case and either party to the appeal may give evidence and call witnesses.

**(5)** The court shall conduct a hearing into the matter and cause to be made such further inquiries as it considers necessary, and may confirm the refusal of the Minister or direct the Minister to issue a certificate.

**(6)** Every person who violates subsection (1) is guilty of an offence and upon summary conviction is liable to a fine of not more than $10,000 or to imprisonment for a period not exceeding two years or to both. 1990, c. 5, s. 71.

**Right to adopt**

**90 (1)** A person of the age of majority may, in the manner herein provided, adopt as that person's child another person younger than that person if

(a) the applicant resides or is domiciled in the Province; or

(b) the person proposed to be adopted was born, resides or is domiciled in the Province or is a child in care.

**(2)** Subject to this Section, where the applicant has a spouse, by marriage or common-law relationship, who is over the age of majority and is of sound mind, the spouse, by marriage or common-law relationship shall join in the application.

**(3)** Where the spouse, by marriage or common-law relationship, of the applicant is the parent of the person proposed to be adopted, although not over the age of majority, the spouse may join in the application.

**(4)** The spouse, by marriage or common-law relationship, of the applicant who is also the parent of the person proposed to be adopted, need not join in the application, and in that case the relationship of such spouse or of the spouse's kindred with the person proposed to be adopted continues and is in no way altered by any order for adoption made in favour of the applicant, who becomes the other parent of the person proposed to be adopted by such an order.

**(5)** Where one of the applicants for an adoption dies after notice of the proposed adoption has been given to the Minister, the surviving applicant may proceed with the application and an order for adoption by the surviving applicant alone may be made.

**(6)** A person whose consent to an adoption is required by this Act is not prohibited from becoming a parent by adoption of the person in respect of whom the person has given consent to adopt. 1990, c. 5, s. 72; 2015, c. 37, s. 59.

**Application for adoption**

**91 (1)** An application for adoption must be made to the court.

**(2)** Subsection (1) comes into force on such day as the Governor in Council orders and declares by proclamation. 1990, c. 5, ss. 73, 109.

**Consent to adopt**

**92 (1)** Where the person proposed to be adopted is 12 years of age or more and of sound mind, no order for the person's adoption may be made without the person's written consent.

**(2)** Where the person proposed to be adopted is married, no order for the person's adoption may be made without the written consent of the person's spouse.

**(3)** Where the person proposed to be adopted is under the age of majority and is not a child in care, no order for the child's adoption may be made, except as herein provided, without the written consent to adoption of the child's parents, which consent may not be revoked unless the court is satisfied that the revocation is in the best interests of the child.

**(4)** A written consent to adoption referred to in subsection (3) has no force and effect unless it is given not less than 15 clear days after the birth of the child.

**(5)** Subsection (4) does not apply

(a) if the child is placed for the purpose of adoption by an agency;

(b) if the child is placed for the purpose of adoption by a father or mother of the child with a relative of the father or mother;

(c) if one of the applicants for adoption is the father or mother of the child; or

(d) to an adoption agreement made pursuant to Section 84.

**(6)** No action may be taken and no damages may be awarded against a person who does not give a consent for adoption, notwithstanding any representation by the person that the consent would be given.

**(7)** No order for the adoption of a child in care of the Minister may be made without the written consent of the Minister and no order for the adoption of a child in care of an agency may be made without the written consent of the agency or the Minister.

**(8)** Subject to subsection (1) and pursuant to subsection (7), where a child proposed to be adopted is a child in care, the written consent of the agency or the Minister is the only consent required.

**(9)** Where the person proposed to be adopted is under the age of majority and either does not reside in the Province or was brought to the Province for the purpose of adoption, the written consent referred to in subsection (3) may be given by the officer or person who under the law of the province, state or country in which the child resides or from which the child was brought may consent to the child's adoption.

**(10)** Where the parent of a child is under the age of majority, the parent may, notwithstanding the parent's age,

(a) consent to the adoption of the child; or

(b) enter into an agreement pursuant to Section 84.

**(11)** Notwithstanding Sections 58 and 59 of the *Parenting and Support Act*, the marriage of the biological father to the mother of a person subse-

quent to the granting of an adoption order respecting that person does not invalidate or affect the adoption. 1990, c. 5, s. 74; 2015, c. 37, s. 60; 2015, c. 44, s. 50.

**Dispensing with consent to adoption**

**93 (1)** Where the applicant seeks to dispense with the consent of any living person, the applicant shall give that person notice of the time and place of the adoption hearing together with a copy of the application and all material proposed to be used in support of it not later than one month before the hearing of the application.

**(2)** Notice must be given by personal service or, where the person cannot be so served, by substituted service as directed by the court.

**(3)** Any person served pursuant to subsections (1) and (2) who does not appear at the hearing of the application and object to the adoption is deemed to have consented to the adoption.

**(4)** Where the court is satisfied that a person, whose consent is required pursuant to subsection 92(2) or (3),

(a) is dead;

(b) is unable to consent by reason of disability;

(c) is missing or cannot be found;

(d) has had no contact with the child for the two years immediately preceding the adoption placement;

(e) has failed, where able, to provide financial support for the child for the two years immediately preceding the adoption placement; or

(f) is a person whose consent in all the circumstances of the case ought to be dispensed with,

the court may order that the person's consent be dispensed with if it is in the best interests of the person to be adopted to do so. 1990, c. 5, s. 75.

**Prerequisites to adoption**

**94 (1)** Except as herein provided, where the person sought to be adopted is under 16 years of age, the court shall not make an order for the child's adoption unless

(a) notice of the proposed adoption has been given to the Minister not later than six months before the application to the court for an order for adoption or, where one of the applicants for adoption is a parent or relative of the child, not later than one month before the application to the court for an order for adoption;

(b) notice of the hearing of the application and a copy of the application and all material to be used in support of it with respect to a child in permanent care and custody or a child that is the subject of an adoption agreement have been filed with the Minister not later than one month before the date of the application;

(c) the child sought to be adopted has for a period of not less than six months immediately prior to the application lived with the applicant under conditions that, in the opinion of the court, justify the making of the order; and

(d) where the child is or is entitled to be a Mi'kmaw child, a cultural connection plan has been developed.

**(2)** The Minister may, by certificate in writing, shorten the length of any notice or the period of residence required by subsection (1) or dispense with any notice or period of residence.

**(3)** In the case of a child who is a child in permanent care and custody, the notice of the proposed adoption may not be given until any appeal from an order for permanent care and custody of the child or from a decision granting or refusing an application to terminate an order for permanent care and custody is heard and finally determined or until the time for taking an appeal has expired. 1990, c. 5, s. 76; 1996, c. 10, s. 14; 2005, c. 15, s. 4; 2015, c. 37, s. 61.

**Adoption hearing**

**95 (1)** Every hearing of an application for adoption pursuant to this Act must be held in camera except that the court may permit any person to be present if the court considers it appropriate.

**(2)** Where the application is for the adoption of a child in permanent care and custody or a child that is the subject of an adoption agreement, the Minister may submit a written recommendation to the court respecting the adoption.

**(3)** The Minister may appear at the hearing and may assist the applicant or a party with respect to the application.

**(4)** The applicant shall, where possible, identify the person to be adopted by the birth registration number assigned by the proper authority of the person's place of birth and not by the person's name, in the title of the application and in the adoption order, and, in any such case, the applicant shall provide the court with a certificate of registration of the birth containing the fullest particulars of the birth available. 1990, c. 5, s. 77; 2005, c. 15, s. 4.

**Adoption order**

**96 (1)** Where the court is satisfied

(a) as to the ages and identities of the parties;

(b) that every person whose consent is necessary and has not been dispensed with has given consent freely, understanding its nature and effect and, in the case of a parent, understanding that its effect is to deprive the parent permanently of all parental rights; and

(c) that the adoption is proper and in the best interests of the person to be adopted,

the court shall make an order granting the application to adopt.

**(2)** The court, by an order for adoption, may order such change of name of the person adopted as the applicant requests, or may order that the name of the person adopted may not be changed by the adoption.

**(3)** Unless the court otherwise orders, the surname of an adopted person is the surname of the person who adopts that person.

**(4)** Where an adoption order is granted in respect to a child who is or may be an Indian child, the Minister must be so advised by the court and the Minister shall forward notification of the adoption of the Indian child in such form as may be prescribed, to Crown-Indigenous Relations and Northern Affairs Canada and, where the child is or is entitled to be a Mi'kmaw child, to the Mi'kmaw Family and Children's Services of Nova Scotia.

**(5)** Subject to subsection (6), where an order for adoption is made in respect of a child, any order for access to the child ceases to exist.

**(6)** Where an order for adoption is made in respect of a child, the court may, where it is in the best interests of the child, continue or vary an order for access or an access provision of an agreement that is registered as an order under the *Parenting and Support Act* in respect of that child. 1990, c. 5, s. 78; 2005, c. 15, s. 6; 2015, c. 37, s. 62; 2015, c. 44, s. 51.

**Customary adoption**

**97 (1)** Upon application, the court may recognize that an adoption of a person in accordance with the custom of a band or an aboriginal community has the effect of an adoption under this Act.

**(2)** Subsections 96(2) to (6) apply with necessary changes to an adoption recognized by the court pursuant to subsection (1). 2015, c. 37, s. 63.

**Openness agreement**

**98 (1)** In this Section, "openness agreement" means an agreement for the purpose of facilitating communication with or maintaining a relationship with a child between an adopting parent or an adoptive parent and

(a) a relative of the child;

(b) an adopting parent or adoptive parent of a sibling of the child; or

(c) a person who has established a relationship with the child.

**(2)** An openness agreement may

(a) be made only if consent to the adoption is given by

(i) the parent, or

(ii) the guardian who placed the child for adoption; and

(b) include a process to resolve disputes arising under the agreement.

**(3)** Where a child that is the subject of an openness agreement is

(a) 12 years of age or older, the child's views must be taken into account before an agreement is made; and

(b) less than 12 years of age, the child's views must, where it is appropriate, be taken into account before an agreement is made.

**(4)** An openness agreement does not affect the legal status of an order for adoption. 2005, c. 15, s. 7; 2015, c. 37, s. 63.

**Joint custody order in lieu of adoption**

**99** **(1)** Where a step-parent and the father or mother with custody of the child make application for the adoption of a child, the court may in lieu thereof, in the best interests of the child, grant an order for joint custody by the step-parent and the father or mother rather than an order for adoption.

**(2)** A step-parent and the father or mother with custody of a child may make application to the court for an order granting them joint custody of the child.

**(3)** Where the court makes an order pursuant to subsection (1) or (2), other than where subsection (4) applies, the order may be enforced, varied or rescinded in accordance with the *Parenting and Support Act*.

**(4)** Where the father or mother pursuant to subsection (1) or (2) has custody of the child pursuant to the *Divorce Act* (Canada), an application must be made and the matter determined in accordance with that Act and the *Civil Procedure Rules*. 1990, c. 5, s. 79; 2015, c. 37, s. 64; 2015, c. 44, s. 52.

**Effect of adoption order**

**100** **(1)** For all purposes, upon the adoption order being made,

(a) the adopted person becomes the child of the adopting parents and the adopting parents become the parents of the adopted person as if the adopted person had been born to the adopting parents; and

(b) except as provided in subsection 90(4), the adopted person ceases to be the child of the persons who were the adopted person's father and mother before the adoption order was made and those persons cease to be the parents of the adopted person, and any care and custody or right of custody of the adopted person ceases.

**(2)** The relationship of all persons to the adopted person must be determined in accordance with subsection (1).

**(3)** Subsections (1) and (2) do not apply for the purpose of the laws relating to incest and prohibited degrees of kindred for marriage to remove any person from a relationship in consanguinity that, but for this Section, would have existed.

**(4)** An adoption order does not affect any right the adopted person may have to exercise the existing aboriginal and treaty rights of the aboriginal peo-

ples of Canada that are recognized and affirmed in section 35 of the *Constitution Act, 1982*.

**(5)** In any enactment, conveyance, trust, settlement, devise, bequest or other instrument, "child" or "issue" or the equivalent of either includes an adopted child unless the contrary plainly appears by the terms of the enactment or instrument. 1990, c. 5, s. 80; 2015, c. 37, s. 65.

**Effect of subsequent adoptions**

**101** Subject to subsection 90(4), all the legal consequences of the previous adoption order terminate upon a subsequent adoption, except so far as any interest in any property that has vested. 1990, c. 5, s. 81.

**Application of Sections 100 and 101**

**102** Sections 100 and 101 apply to all orders for adoption made in the Province, whether before, on or after August 1, 1967, but not so as to divest any interest in property that has vested on or before August 1, 1967. 1990, c. 5, s. 82.

**Appeal from or application to set aside adoption order**

**103 (1)** A person aggrieved by an order for adoption made by the court may appeal therefrom to the Nova Scotia Court of Appeal within 30 days of the order.

**(2)** A person aggrieved by an order for adoption made without notice to the person hereunder may within one year after the date of the order apply to the court to set aside the order and, where, upon such application, the court is satisfied that

(a) the written consent of such person for the adoption was obtained by fraud, duress or oppressive or unfair means of any kind;

(b) the person is a person whose written consent was required pursuant to subsection 92(3) and was not obtained, dispensed with or deemed to have been given pursuant to subsection 93(3); or

(c) the person is a parent who was entitled to enter into an adoption agreement pursuant to Section 84 and who did not enter into such an agreement,

and the court considers it appropriate to set aside its order, the order may be set aside and, where the order is set aside, the court may make an order for custody or access in the best interests of the child.

**(3)** A person under the age of majority whose adoption is sought may appeal by the person's guardian *ad litem* but no bond is required or costs awarded against a person who acts as a guardian *ad litem*. 1990, c. 5, s. 83; R.S., c. 240, s. 9; 1992, c. 16, s. 38.

**Limitation period**

**104** Where one year has elapsed from the date of an order for adoption, the order is not thereafter, in any direct or collateral proceeding, subject to attack or to be set aside. 1990, c. 5, s. 84.

**Copies of documents, sealed packet and certificate of adoption**

**105 (1)** The court shall, within 10 days after an order for an adoption is made by the court, forward a copy of such order, certified to be a true copy, to the Registrar General and to the Minister and, where the original name of the person to be adopted does not appear in the adoption order, a copy of the birth registration certificate must be attached to each copy so forwarded.

**(2)** The order for adoption, the application, the material filed and the record of the proceedings, and any other written information in the possession of the court, must be kept in a sealed packet and must not be open to inspection except upon leave of the court or in accordance with subsection (4).

**(3)** Upon the expiry of the appeal period, or at such time as an appeal is concluded, the sealed packet containing all written documentation pursuant to an adoption must be forwarded by the court to the Minister by, subject to the regulations, appropriate means having regard to the confidential nature of the material.

**(4)** The Minister may open the sealed packet kept by the Minister for the purpose of obtaining any information as may be disclosed pursuant to the *Adoption Records Act*, and regulations made under that Act.

**(5)** The Minister shall reseal the packet after information has been obtained from the sealed packet under subsection (4).

**(6)** Any agency or employee thereof or servant of the Crown in right of the Province who discloses any information, except pursuant to subsection (4) or upon a court order, is guilty of an offence and is liable upon summary conviction to a fine not exceeding $5,000 or, in default thereof, to a term of imprisonment not exceeding six months. 1990, c. 5, s. 85; 1996, c. 3, s. 37; 2021, c. 1, s. 48.

**Effect of out-of-province adoption**

**106** Where a person has been adopted in another province, state or country according to the law of that place while domiciled or resident there or having been born there, or while the person's adoptive parent was domiciled or resident there, the person and the person's adoptive parent have for all purposes in the Province the same status, rights and duties as if the adoption had been done pursuant to this Act. 1990, c. 5, s. 86.

**Adoption subsidy**

**107** The Minister may grant a subsidy to a person who has filed a notice of proposed adoption pursuant to this Act or who has adopted a child pursuant to this Act, if

(a) the child is residing with the person or the adoptive parent;

(b) the child is under the age of 19 years or, where the child is pursuing an education program, the child is under the age of 21 years; and

(c) the child has been placed in the adoptive home by an agency pursuant to this Act. 2002, c. 5, s. 2; 2015, c. 37, s. 66.

**Transfer of subsidy**

**108** Where a person receiving a subsidy granted pursuant to Section 107 has died or become unable to care for the child in respect of whom the subsidy was granted, the Minister may grant a subsidy to another person, if

(a) the child is residing with the person;

(b) the child is under the age of 19 years or, where the child is pursuing an education program, the child is under the age of 21 years; and

(c) an agency determines that the placement of the child with the person is in the child's best interests. 2015, c. 37, s. 67.

**Review of Act**

**109 (1)** The Minister shall periodically appoint a committee to conduct a review of this Act or those provisions of it specified by the Minister.

**(2)** The Minister shall inform the public when a review under this Section begins and of the provisions of the Act included in the review.

**(3)** The committee shall prepare a written report respecting the review for the Minister.

**(4)** The Minister shall make the report available to the public.

**(5)** The first review must be completed and the report made available to the public within four years after March 1, 2017.

**(6)** Each subsequent review must be completed and the report made available to the public within four years after the day the report on the previous review has been made available to the public. 2015, c. 37, s. 67.

**Order to bring child**

**110** Where an application respecting a child is pending before the court, the court may order that the child be brought before the court at any time, and for this purpose may make such order as the court considers proper. 1990, c. 5, s. 89.

**Enforcement of order**

**111** Where a person, who is required by an order of the court pursuant to this Act to do an act or to abstain from doing an act in relation to the custody, care, or care and custody of a child or access to a child, disobeys the order, the court may enforce the order or punish for contempt of court in the same manner and following the same procedure as provided for such a case in the Supreme Court of Nova Scotia. 1990, c. 5, s. 90.

**Assistance by peace officers**

**112 (1)** It is the duty of all peace officers to assist representatives in carrying out the provisions of this Act.

**(2)** It is the duty of peace officers to serve any process issued out of any court.

**(3)** Where a court certifies that a peace officer has performed services pursuant to this Section, that peace officer is entitled to receive fees for services on the scale prescribed for an indictable offence from the municipality that would be liable to pay such fees if the proceeding had been such a prosecution. 1990, c. 5, s. 91; 2015, c. 37, s. 74.

**Offences and penalties**

**113 (1)** Where a child is the subject of a temporary-care agreement pursuant to Section 18, an interim order pursuant to Section 44, a disposition order pursuant to Section 55, a secure-treatment certificate or a secure-treatment order a person who

(a) induces or attempts to induce the child to leave the care or care and custody of a person with whom the child is placed by the court or an agency, as the case may be;

(b) detains or harbours the child after the person or agency referred to in clause (a) requires that the child be returned;

(c) interferes with the child or removes or attempts to remove the child from any place; or

(d) for the purpose of interfering with the child, visits or communicates with the person referred to in clause (a),

is guilty of an offence and upon summary conviction is liable to a fine or not more than $2,000 or to imprisonment for a period not exceeding six months, or to both.

**(2)** A person who induces or attempts to induce a child to leave a child-caring facility is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a period not exceeding six months, or to both.

**(3)** A person who obstructs, interferes with or attempts to obstruct or interfere with a representative or agency employee in the discharge of duties pursuant to this Act is guilty of an offence and upon summary conviction is liable to a fine of not more than $2,000 or to imprisonment for six months, or to both. 1990, c. 5, s. 92; 1996, c. 10, s. 15; 2015, c. 37, ss. 68, 74.

**Hearings public**

**114** Except where this Act otherwise provides, a proceeding pursuant to this Act must be held in public except that where the court is satisfied that

(a) the presence of the public could cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding;

(b) it is necessary to exclude the public to obtain the full and candid testimony of a witness at the hearing; or

(c) it would otherwise be in the interest of the proper administration of justice to exclude any or all members of the public from the hearing,

the court may exclude any or all members of the public from all or any part of the hearing. 1990, c. 5, s. 93.

**Prohibition on publication**

**115** **(1)** No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

**(2)** Where the court is satisfied that the publication of a report of a hearing or proceeding, or a part thereof, would cause emotional harm to a child who is a participant in or a witness at the hearing or is the subject of the proceeding, the court may make an order prohibiting the publication of a report of the hearing or proceeding, or the part thereof.

**(3)** Where the court makes an order pursuant to subsection (2), no person shall publish a report contrary to the order.

**(4)** A person who contravenes subsection (1) or (3), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and upon summary conviction is liable to a fine of not more than $10,000 or to imprisonment for two years, or to both. 1990, c. 5, s. 94.

**Jurisdiction of court**

**116** The Provincial Court has exclusive original jurisdiction over the prosecution of an offence against this Act. 1990, c. 5, s. 95; 2015, c. 37, s. 69.

**Evidence**

**117** **(1)** At a proceeding pursuant to this Act other than Sections 84 to 107, the court may, subject to subsection 45(2), admit as evidence

(a) evidence from proceedings, pursuant to this Act or any other similar legislation, respecting the child that is the subject of the hearing, or respecting another child that was in the care or custody of a parent or guardian of the child that is the subject of the hearing; or

(b) evidence taken by a commissioner appointed by the court to take the evidence of a witness,

upon such terms as the court directs.

**(2)** In a proceeding pursuant to this Act other than Sections 84 to 107, the privileges pursuant to Sections 59 and 69 of the *Evidence Act* do not apply.

**(3)** Upon consent of the parties or upon application by a party, the court may, having regard to the best interests of the child and the reliability of the statements of the child, make such order concerning the receipt of the child's evidence as the court considers appropriate and just, including

(a) the determination of the persons, including parties, who may be present while the child is giving *viva voce* evidence; and

(b) the admission into evidence of out-of-court statements made by the child. 1990, c. 5, s. 96.

**Effect of out-of-province order**

**118** Where an order has been made by a court of competent jurisdiction in another province of Canada pursuant to provisions similar in effect to this Act, the order has the same force and effect in the Province as an order made pursuant to this Act unless the court otherwise orders. 1990, c. 5, s. 97.

**No action lies**

**119** No action lies against a person in relation to the exercise or performance, in good faith and without negligence, of a power, duty or function conferred pursuant to this Act. 2015, c. 37, s. 70.

**Regulations**

**120** **(1)** The Governor in Council may make regulations

(a) respecting the functions and duties of agencies;

(b) respecting the procedures for revocation or suspension of the powers and functions of an agency;

(c) respecting the qualifications, appointment and duties of representatives;

(d) respecting services to promote the integrity of families;

(e) respecting the provision of services to persons 16 years of age or more but under 19 years of age;

(f) respecting standards and procedures for the licensing, approval, inspection, evaluation, and suspension or cancellation of licences or approvals of child-care services and child-caring facilities;

(g) providing for payments by the Minister to agencies, child-caring facilities and child-care services for services performed by them and prescribing the conditions and procedures under which payments are to be made;

(h) respecting the approval of foster homes and foster parents;

(i) respecting procedures and conditions for admission to a child-caring facility;

(j) respecting standards and procedures for the use in licensed child-caring facilities of therapeutic quiet rooms and physical restraints;

(k) respecting the functions and duties of advisory boards appointed pursuant to Section 17;

(l) prescribing the procedures for temporary-care agreements, special-needs agreements, services agreements, placement agreements, agreements with older adolescents and adoption agreements;

(m) respecting the qualifications, appointment and payment of mediators;

(n) respecting the reporting and investigation of reports of abuse by persons acting in the course of professional or official duties;

(o) respecting payment of the costs of taking a child into care and the maintenance of a child in care;

(p) respecting payment of the reasonable fees and disbursements of counsel appointed to represent the child;

(q) respecting payment of the reasonable fees and disbursements of a guardian *ad litem* appointed for a child;

(r) respecting the transfer between agencies of children in permanent care and custody;

(s) respecting procedures for the handling of complaints by agencies;

(t) providing for the charging of fees for services provided in relation to international adoptions;

(u) respecting the amount payable for maintaining a child in care;

(v) respecting the voluntary admission of children to secure treatment facilities;

(w) respecting the form and issuance of secure-treatment certificates;

(x) respecting the designation of a person by the Minister for the purpose of subsection 74(3);

(y) respecting leaves of absence from and transfers between secure treatment facilities;

(z) respecting the information to be entered in the Child Abuse Register;

(aa) respecting the offences contrary to the *Criminal Code* (Canada) in respect of which a person may be entered in the Child Abuse Register;

(ab) prescribing the procedures and notices for the registration of names and information in the Child Abuse Register;

(ac) respecting the use of the Child Abuse Register for the purposes of research;

(ad) providing for the charging of a fee for a search under the Child Abuse Register;

(ae) respecting procedures for the disclosure of information in the Child Abuse Register to persons requesting such information;

(af) further defining when proceedings for adoption are commenced;

(ag) respecting the forwarding and retention of all records and documents pertaining to adoption;

(ah) prescribing the form of agreements for the purpose of this Act;

(ai) prescribing forms for the purpose of this Act;

(aj) defining any word or expression used in this Act not defined herein;

(ak) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1990, c. 5, s. 99; 1994-95, c. 7, s. 15; 1996, c. 3, s. 38; 2001, c. 3, s. 4; 2002, c. 5, s. 3; 2015, c. 37, ss. 71, 74.

**Former Child Abuse Register**

**121 (1)** In this Section, "former Register" means the Child Abuse Register established and maintained pursuant to the former Act.

**(2)** Where a person's name appears on the former Register and the Minister is satisfied that the person has been convicted of an offence against a child contrary to the *Criminal Code* (Canada) as prescribed in the regulations, and that relates to the matter upon which registration on the former Register was based, the name of the person and such information as is prescribed by the regulations must be entered in the Child Abuse Register pursuant to this Act.

**(3)** Where a person's name appears in the former Register and an application was made by that person to the court to have the information struck from the former Register and the application was dismissed, the name of the person and such information as is prescribed by the regulations must be entered in the Child Abuse Register pursuant to this Act.

**(4)** Where a person's name is entered in the Child Abuse Register pursuant to subsection (2) or (3), the person must be given written notice of registration in the form prescribed by the regulations. 1990, c. 5, s. 104.

CHAPTER C-23

# An Act Respecting the Practice of Chiropractic

**Table of Contents**

(The table of contents is not part of the statute)

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**Short title**

**1** This Act may be cited as the *Chiropractic Act*. 1999 (2nd Sess.), c. 4, s. 1.

**Interpretation**

**2** In this Act,

"Association" means the Nova Scotia Chiropractic Association established pursuant to the former Act;

"Board" means the Board of the College;

"chiropractic" means professional services usually performed by or under the supervision of a chiropractor, and includes

(a) diagnosis, examination and treatment of persons principally by hand and without the use of drugs or surgery of the spinal column, pelvis, extremities and associated tissues; and

(b) such services as approved by the regulations;

"chiropractor" means a person who is licensed to practise chiropractic under this Act;

"College" means the Nova Scotia College of Chiropractors;

"committee" includes a committee of the Board, an investigation committee or a hearing committee, as the context requires;

"complaint" means any complaint, report or allegation in writing and signed by a person regarding the conduct, actions, competence, character, fitness, health or ability of a member, former member, professional corporation or the employees thereof, or any similar complaint, report or allegation initiated by the Registrar or referred pursuant to subsection 46(7);

"Council" means the Council of the College;

"court" means the Supreme Court of Nova Scotia;

"Credentials Committee" means the committee appointed by the Board that deals with the registration and licensing of members and applicants for registration and such other matters as provided by the regulations;

"disciplinary committee" means an investigation committee or a hearing committee;

"disciplinary matter" means any matter involving an allegation of professional misconduct, conduct unbecoming a chiropractor or professional incompetence, including incompetence arising out of physical or mental incapacity;

"former Act" means Chapter 69 of the Revised Statutes, 1989;

"hearing committee" means a hearing committee appointed pursuant to this Act;

"investigation committee" means an investigation committee appointed pursuant to this Act;

"licence" means a valid and subsisting licence issued pursuant to this Act;

"mediation" means any form of alternative dispute resolution;

"member" means a person who is registered in the Register and holds a licence;

"Peer Assessment Committee" means a committee appointed by the Board that deals with peer assessment;

"permit" means a permit issued to a professional corporation pursuant to this Act;

"prescribed" means prescribed by the regulations;

"professional corporation" means a company incorporated pursuant to the *Companies Act* and this Act for the purpose of carrying on the practice of chiropractic;

"Register" means the Register of the College kept pursuant to this Act;

"registered" means registered pursuant to this Act;

"Registrar" means the person holding the office of Registrar pursuant to this Act;

"spouse" means

(a) a person married to another person;

(b) a man and a woman who, not being married to each other, live together as husband and wife and have so lived for at least one year; or

(c) as otherwise defined by the regulations. 1999 (2nd Sess.), c. 4, s. 2.

PART I

**Use of "chiropractor" or like words**

**3** The word "chiropractor" or any like words or expressions implying a person recognized by law as a chiropractor in the Province, when used in any regulation, rule, order or bylaw made pursuant to an Act of the Legislature enacted or made before, on or after June 16, 2000, or when used in any public document, means a person registered in the Register who holds a licence. 1999 (2nd Sess.), c. 4, s. 3.

NOVA SCOTIA COLLEGE OF CHIROPRACTORS

**Objects and powers**

**4 (1)** The Nova Scotia College of Chiropractors is established as a body corporate and is composed of the members on the register created under the former Act.

**(2)** The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued.

**(3)** In order that the public interest may be served and protected, the objects of the College are to

(a) regulate the practice of chiropractic and govern its members in accordance with this Act and the regulations;

(b) establish, maintain and develop standards of knowledge and skill among its members;

(c) establish, maintain and develop standards of qualification and practice for the practice of chiropractic;

(d) establish, maintain and develop standards of professional ethics among its members; and

(e) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act.

**(4)** In addition to any other power conferred by this or any other Act, the College may do such things as it considers appropriate to advance the objects of the College and, without limiting the generality of the foregoing, may

(a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;

(b) draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;

(c) engage such agents and employees as it considers expedient;

(d) expend the money of the College in the advancement of its objects and the interests of the profession of chiropractic in such manner as it considers expedient;

(e) establish and maintain such offices and agencies as it considers expedient;

(f) invest and deal with any money and funds of the College that are not immediately required, in such manner as it considers expedient;

(g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the College;

(h) borrow money for the use of the College on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the College and pledge or sell such securities for such sums or at such prices as may be considered expedient;

(i) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (h). 1999 (2nd Sess.), c. 4, s. 4.

**Annual meetings**

**5 (1)** There shall be an annual meeting of the College at such time and place as prescribed.

**(2)** An annual report must be distributed at or before the annual meeting for review by the membership, and must include a report by an auditor.

**(3)** Auditors must be recommended by the Board but are subject to the approval of the College at the annual meeting. 1999 (2nd Sess.), c. 4, s. 5.

BOARD

**Powers**

**6 (1)** There is a Board of the College to be constituted as provided in Section 7.

**(2)** The Board shall, subject to this Act, govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make regulations

(a) providing for the management of the College, including the keeping of the registers to be kept pursuant to this Act;

(b) providing for the holding of meetings of the College or the Board, quorum requirements and the conduct of such meetings;

(c) fixing the time and place for regular meetings of the Board, determining by whom meetings may be called, regulating the conduct of meetings, providing for emergency meetings and regulating the notice required in respect of meetings;

(d) providing for the appointment of such committees as the Board considers expedient;

(e) respecting the composition, powers and duties of such committees as may be appointed by the Board, and providing for the holding and conduct of meetings of such committees;

(f) respecting the powers, duties and qualifications of the Registrar and the officers, agents and employees of the College;

(g) prescribing fees payable pursuant to this Act by applicants and members and, where the Board considers it advisable, designating different classes of applicants and members and prescribing different fees for different classes;

(h) prescribing the fees and allowances of members of the Board and committees and providing for the payment of necessary expenses of the Board and committees;

(i) respecting the recognition of schools and examinations as prerequisites to registration and licensing;

(j) respecting the educational qualifications of applicants for registration as members;

(k) prescribing the seal of the College;

(l) providing for the execution of documents by the College;

(m) prescribing examinations to be written by applicants for registration;

(n) respecting residential qualifications of applicants for registration as members and associate members;

(o) prescribing forms and providing for their use;

(p) providing procedures not inconsistent with this Act for the making, amending and revoking of regulations;

(q) respecting the information to be included in the Register;

(r) prescribing a code of ethics, subject to approval by the College at an annual or special meeting;

(s) governing elections of members of the Board.

**(3)** The Board may, with the approval of the Governor in Council, make regulations

(a) respecting the registration and licensing of members;

(b) respecting continuing-competency requirements, including continuing-education requirements or practice-hour requirements of members for registration;

(c) respecting the limiting or qualifying of a member's licence, including procedures and interventions;

(d) respecting the evaluation of, and licensing requirements of, members and applicants for registration who have not practised chiropractic for at least one year;

(e) respecting a peer-assessment program in accordance with this Act and programs of continuing education, including requiring members to participate in any such programs and providing for any other matter that will facilitate or give effect to such programs;

(f) respecting supervised practice, monitoring supervised practice and the delegation of acts of chiropractic and any other ancillary matters, and providing for the establishment of a committee or committees to deal with such matters;

(g) respecting the disciplining of members and the revocation or suspension of licences issued pursuant to this Act;

(h) respecting the reporting and publication of decisions in disciplinary matters;

(i) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practice;

(j) prescribing the records and accounts to be kept by members and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;

(k) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a licence so suspended;

(l) notwithstanding subsection 7(1), changing the number and characteristics of appointments to the Board;

(m) determining the procedure to be followed at hearings by a disciplinary committee;

(n) prescribing the type of professional liability insurance or other form of malpractice coverage a member shall hold;

(o) respecting supervised practice and the delegation of acts of chiropractic and any other ancillary matters;

(p) prescribing the manner of proof as to matters required to be proven by applicants for permits;

(q) fixing reasonable fees payable for the issuance and renewal of permits;

(r) providing that the permit of a professional corporation is suspended without notice or investigation upon contravention of any regulation that requires the corporation to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a permit so suspended;

(s) prescribing the grounds upon which the Board may review a decision of the Registrar pursuant to subsection 79(7) and the procedures to be followed in reviewing any such decision;

(t) providing for the reinstatement or reissuance of any permit suspended or revoked pursuant to this Act and prescribing the terms and conditions upon which reinstatement or reissuance of a permit may be granted;

(u) providing for the creation and maintenance of a register of professional corporations;

(v) providing for the filing of periodic returns by professional corporations;

(w) providing for the annual renewal of permits and prescribing the terms and conditions upon which renewals may be granted;

(x) prescribing the types of names and business names by which

(i) a member as a sole proprietor,

(ii) a professional corporation,

(iii) a partnership with one or more chiropractors,

(iv) a partnership of two or more professional corporations, or

(v) a partnership of one or more professional corporations and one or more individual chiropractors,

may be known;

(y) prescribing the nature of communications with the public, including advertising, that may be undertaken by a member as a sole proprietor, a partnership or a professional corporation;

(z) prescribing access to the minute book records of a professional corporation by the Registrar;

(aa) defining any word or expression used but not defined in this Act;

(ab) further defining any word or expression defined in this Act;

(ac) respecting and governing such other subjects, matters and things as may be required to give effect to the objects of the College and this Act.

**(4)** All the regulations of the College must be available for inspection by any person, free of charge, at the head office of the College at all reasonable times during business hours.

**(5)** A certificate purporting to be signed by the Registrar stating that a certain regulation of the College was, on a specified day or during a specified period, a duly enacted regulation of the College in full force and effect constitutes prima facie evidence in any court of that fact without proof that the person who signed it is the Registrar or that it is the Registrar's signature.

**(6)** A resolution in writing, or counterparts of a resolution, signed by two-thirds of all members entitled to vote thereon at a meeting of the College is as valid and effective as if duly passed at a meeting of the members of the College.

**(7)** A member of the Board, or of a committee of the Board or of the College, may participate in any meeting of the Board or committee of the Board or of the College, with the exception of the hearing committee when it is conducting a hearing, as the case may be, by telephone or other communications facilities that permit all persons participating in a meeting to communicate with each other, and a member participating in a meeting by such means is deemed to be present at the meeting.

**(8)** A meeting of the Board, or of a committee of the Board, with the exception of the hearing committee when it is conducting a hearing, or of the College, may be held by conference telephone call or other communications facilities that permit all persons participating in the meeting to communicate with each other, and all members participating in the meeting by such means are deemed to have been present at the meeting.

**(9)** Where 10% of the membership of the College request in writing, whether by petition or otherwise, that a special general meeting be held, the

Board shall hold such meeting within 15 working days of determining that 10% of the members have requested such a meeting. 1999 (2nd Sess.), c. 4, s. 6.

**Constitution of Board and terms of office**

**7** **(1)** The Board consists of

(a) six members of the College elected in the manner provided by this Act;

(b) the Registrar elected in the manner provided by this Act;

(c) the immediate past Chair of the Board; and

(d) two persons appointed by the Governor in Council, both of whom are persons who

(i) are not members of the College, and

(ii) have shown an interest in serving on the Board.

**(2)** Members of the Board are elected or appointed to office for a term of two years.

**(3)** Notwithstanding subsections (2) and (3), persons appointed by the Governor in Council hold office until such time as they are reappointed, or until their successors are appointed, even if such appointment or reappointment does not occur until after their specified term of office has expired.

**(4)** Only members of the College who practise chiropractic in the Province are eligible to vote in an election of the Board. 1999 (2nd Sess.), c. 4, s. 7.

**Selection of Board members**

**8** **(1)** Every member in good standing who is not a member of the Council is eligible to be nominated as and vote for a candidate for membership on the Board and for the Registrar.

**(2)** Elected members of the Board, the Registrar and members appointed by the Governor in Council to the Board shall not be members of the Board for more than four consecutive terms.

**(3)** In this Section, "consecutive" means that 12 months or less occurred between the end of one term and the commencement of the next. 1999 (2nd Sess.), c. 4, s. 8.

**Regulations of Board**

**9** The Board may make regulations governing elections of members of the Board and the Registrar and in those regulations may

(a) provide for the procedure for the nomination of candidates;

(b) provide for the appointment or designation of presiding officers for the election;

(c) prescribe the forms to be used;

(d) prescribe the procedure to be used for the holding of the elections and for determining the persons elected as members of the Board. 1999 (2nd Sess.), c. 4, s. 9.

**Secret ballot**

**10** Members of the Board and the Registrar must be elected by secret ballot. 1999 (2nd Sess.), c. 4, s. 10.

**Destruction of ballots**

**11** The ballots used at an election must not be destroyed until all petitions pursuant to Section 12 in respect of the election have been decided and, until that time, the ballots must be retained by the Registrar together with all other papers in connection with the election. 1999 (2nd Sess.), c. 4, s. 11.

**Petition against election**

**12 (1)** A person may petition the Board against the election of a person to the Board by filing a petition with the Registrar within 15 days after the election.

**(2)** The petitioner shall state in the petition the grounds on which the election is disputed.

**(3)** The petitioner shall serve a copy of the petition upon the person whose election is disputed.

**(4)** Where a petition is filed with the Registrar pursuant to subsection (1), the Board shall hold an inquiry and, where

(a) the election is found to be illegal; or

(b) the person is found not to be eligible to be nominated as a candidate for membership on the Board,

shall order that a new election be held. 1999 (2nd Sess.), c. 4, s. 12.

**Elections**

**13 (1)** The Registrar

(a) in case of failure in an election to elect the required number of duly qualified members of the Board; or

(b) in case of a vacancy occurring from the death or resignation of a member of the Board or from any other cause,

shall cause an election to be held within 60 days for the purpose of filling the vacancy.

**(2)** Notwithstanding subsection (1), where a vacancy occurs for any reason within six months before the date of an election of members of the Board, the vacancy must be filled at such election.

**(3)** Where an election is held pursuant to subsection (1) to fill a vacant Board position, the term of office for the vacant Board position is the remainder of the unexpired term of such position. 1999 (2nd Sess.), c. 4, s. 13.

**End of term of office**

**14** An elected member of the Board ceases to hold office where

(a) the member resigns by notice in writing delivered to the Registrar;

(b) the member ceases to be a member in good standing of the College, as defined in the regulations; or

(c) the member is absent from three consecutive meetings of the Board, unless excused by the Board. 1999 (2nd Sess.), c. 4, s. 14.

**Executive Committee and officers**

**15 (1)** The Board shall elect annually from its members a Chair, a Vice-chair, a Secretary and a Treasurer and those persons along with the Registrar and the immediate Past-chair constitute the Executive Committee.

**(2)** The Executive Committee

(a) may exercise all of the powers; and

(b) shall perform all the duties,

of the Board with respect to any matters that the Board may delegate to it or that, in the opinion of the Executive Committee, require immediate attention.

**(3)** The College shall elect a Registrar, who must be a chiropractor as defined by the regulations and who is elected or re-elected, as the case may be, for a term of two years and shall not serve as Registrar for more than four consecutive terms.

**(4)** The Board may appoint an Acting Registrar who shall exercise the powers and duties of the Registrar in the event of the death or incapacity of the Registrar or the Registrar's absence from the Province until the election of a new Registrar can be held.

**(5)** The Board may appoint such other officers, agents or employees at such salary or other remuneration, and for such term of office, as the Board considers necessary to assist it in carrying out its duties pursuant to this Act.

**(6)** The Board shall meet at least three times in each calendar year. 1999 (2nd Sess.), c. 4, s. 15.

**Committees**

**16** The Board may appoint annually such committees from among members of the Board or the College as the Board considers necessary to assist it in carrying out its duties pursuant to this Act. 1999 (2nd Sess.), c. 4, s. 16.

**Chair of meetings**

**17 (1)** Subject to subsection (2), the Chair shall preside at all meetings of the Board and of the College.

**(2)** Where the Chair is absent from a meeting, the Vice-chair or, in the Vice-chair's absence, some other member chosen by the members present shall preside at the meeting.

**(3)** Except in the event of an equal number of votes being given for and against a resolution at any meeting, the Chair or other presiding officer shall not vote. 1999 (2nd Sess.), c. 4, s. 17.

## REGISTER OF THE NOVA SCOTIA COLLEGE OF CHIROPRACTORS

**Registration**

**18** The Board shall keep a Register in which is entered the name, address and qualifications of all persons who are entitled pursuant to this Act to be registered in the Register. 1999 (2nd Sess.), c. 4, s. 18.

**Entries to be made in Register**

**19 (1)** The Board shall direct the Registrar to enter in the Register the name, address and qualifications of any person who

(a) has successfully completed the certification exam if prescribed by the regulations;

(b) has successfully completed a chiropractic program prescribed by the regulations;

(c) satisfies the Board that the person possesses the qualifications required in the regulations for registration in the Register;

(d) complies with this Act and the regulations and any conditions imposed by the Registrar and the Board; and

(e) complies with Section 25.

**(2)** Upon receiving a direction from the Board pursuant to subsection (1), the Registrar shall

(a) enter the name, address and qualifications of the person named in the direction in the Register; and

(b) issue a licence to the person. 1999 (2nd Sess.), c. 4, s. 19.

## PROVISIONAL REGISTRATION

**Effect of provisional registration**

**20 (1)** Notwithstanding anything contained in this Act, where a person applies to be registered pursuant to this Act and the Registrar is satisfied that the person

(a) meets

(i) in a manner that would be satisfactory to the Board, the requirements for registration in the relevant register with such exceptions as may be required by regulations, and

(ii) the requirements of Section 25; and

(b) has paid the prescribed fees,

the Registrar may, before the matter is brought to the Credentials Committee for its direction,

(c) enter the name, address and qualifications of the person in the relevant register; and

(d) issue a licence to the person, subject to such terms and conditions as may be prescribed by the regulations, including the maximum period of validity of the registration and the licence.

**(2)** Every registration made and every licence issued pursuant to this Section is valid and remains in full force and effect until ratified, varied or vacated by the Credentials Committee at a meeting requested by such person or the Registrar, or held at the instigation of the Credentials Committee itself.

**(3)** Subject to subsection (7), where the registration or licence of a person is varied or vacated pursuant to subsection (2), the Registrar shall give notice to such person forthwith in accordance with Section 70, and the registration or licence of that person is deemed to be varied or vacated as of the date on which service was made or deemed to have been made on the person.

**(4)** Where the registration or licence of a person is varied or vacated pursuant to subsection (2), the person may request the opportunity to appear before the next scheduled meeting of the Board, with or without legal counsel, where the Board shall consider the application in accordance with this Act.

**(5)** No member of the Board who considered the application pursuant to subsection (2) may participate in the Board's consideration of the application.

**(6)** After hearing the applicant and the Registrar, the Board may

(a) direct the Registrar to issue to the applicant a licence;

(b) direct the Registrar to issue to the applicant a licence subject to such conditions, limitations or restrictions as the Board considers appropriate;

(c) adjourn further consideration of the application, pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Board may designate; or

(d) direct the Registrar to refuse the application where the Board is not satisfied that the applicant meets the criteria set out in subsection (1).

**(7)** Where a hearing is requested pursuant to subsection (4), the registration or licence of the person requesting the hearing must not be varied or vacated until the Board has completed its consideration of the application. 1999 (2nd Sess.), c. 4, s. 20.

**Referral to Credentials Committee**

**21 (1)** Where the Registrar is not satisfied with the evidence presented by a person applying for registration, the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall,

refer the matter to the Credentials Committee.

**(2)** Upon a referral pursuant to subsection (1), the Credentials Committee, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

**(3)** Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted within 30 days of the receipt of the request and the person may appear with legal counsel. 1999 (2nd Sess.), c. 4, s. 21.

DEFINED REGISTER

**Method of maintaining Defined Register**

**22 (1)** The Board may keep a register, called the Defined Register, in which is entered the name, address, qualifications and terms and conditions of registration of all persons who may be entitled pursuant to this Act and the regulations to be registered therein.

**(2)** The Board may make regulations, which take effect upon approval by a general meeting of the College and by the Governor in Council,

(a) governing the persons or classes of persons who may be registered in the Defined Register;

(b) dividing the Defined Register into parts representing the classes of persons who may be registered;

(c) prescribing the qualifications required for registration in the Defined Register;

(d) prescribing the extent to which and terms and conditions under which persons registered in the Defined Register may engage in the practice of chiropractic; and

(e) prescribing by whom applications may be made pursuant to this Section, and the procedure on such applications.

**(3)** The Board may direct the Registrar to register in the Defined Register the name, address and qualifications and terms and conditions of registration of any person who

(a) satisfies the Board that that person possesses the qualifications required for registration in the Defined Register; and

(b) complies with Section 25. 1999 (2nd Sess.), c. 4, s. 22.

**Consequences of direction**

**23** Upon receiving a direction from the Board pursuant to subsection 22(3), the Registrar shall enter in the Defined Register the name, address and qualifications and any terms and conditions of registration of the person named therein, and issue a licence to the person. 1999 (2nd Sess.), c. 4, s. 23.

**Consequences of certain convictions**

**24** Notwithstanding anything contained in this Act, where a person has been convicted or found to be guilty by a court in or out of Canada of any offence that is inconsistent with the proper professional behaviour of a chiropractor, including a conviction under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada), and such person applies for registration, the Registrar and the Board may refuse to register the person, but the Board may, at any time, permit such person to be registered or to remain registered upon such terms and conditions as the Board may direct. 1999 (2nd Sess.), c. 4, s. 24.

**Prerequisites for application**

**25** Any person who applies for registration pursuant to this Act shall

(a) apply in the prescribed manner;

(b) satisfy the Board that that person is the person named in any diploma or documentation submitted in support of the application;

(c) satisfy the Board that that person is of good character;

(d) provide such information as the Board may require; and

(e) pay the prescribed fee. 1999 (2nd Sess.), c. 4, s. 25.

**Change of address**

**26** A member of the College who changes address shall promptly inform the Registrar who shall enter the change in the Register. 1999 (2nd Sess.), c. 4, s. 26.

ANNUAL FEES

**Manner of payment and consequences of non-payment**

**27** **(1)** Every member shall pay to the Registrar, or such person as the Registrar may designate

(a) at the time that the member is registered; and

(b) on or before a date or dates prescribed by the Board in each year thereafter,

the prescribed annual registration or licence fee.

**(2)** The licence of any member who fails to pay the prescribed annual fees as required by subsection (1) or who fails to comply within the prescribed period with any continuing competence requirements established in the regulations must be suspended in accordance with the procedure prescribed by the regulations.

**(3)** The Registrar shall forthwith notify in writing any person whose licence has been suspended pursuant to this Section.

**(4)** The prescribed annual licence fees payable by members of the College pursuant to subsection (1) must be determined by the College at the annual meeting of the College. 1999 (2nd Sess.), c. 4, s. 27.

**Relicensing**

**28** **(1)** Where the licence of a member has been suspended pursuant to subsection 27(2) or where there has been non-compliance with continuing competency requirements, or in any other case where the licence of a registered person has expired or lapsed pursuant to this Act or the former Act for non-payment of fees, such person may apply to the Registrar for relicensing.

**(2)** Where a person referred to in subsection (1) satisfies the Registrar

(a) of the person's intention to practise chiropractic in the Province;

(b) as to the person's activities since the date of the suspension or expiry or lapsing of the person's licence;

(c) that the person has maintained and possesses an appropriate level of skill and knowledge in chiropractic;

(d) as to the person's good standing in all jurisdictions in which the person has practised chiropractic since the date of the suspension or expiry or lapsing of the person's licence;

(e) that the person has paid all fees or any other amount owing to the College and such administrative fees as may be prescribed; and

(f) that the person has complied with continuing competency requirements,

the Registrar may issue a licence to such person.

**(3)** Where the Registrar is not satisfied with the evidence presented pursuant to subsection (2), the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall,

refer the matter to the Credentials Committee.

**(4)** Upon a referral pursuant to subsection (3), the Credentials Committee, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

**(5)** Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted within 30 days of receipt of the request and the person may appear with legal counsel.

**(6)** Where the registration or licensing of a person is refused pursuant to subsection (4), the person may request the opportunity to appear before the

next scheduled meeting of the Board, with or without legal counsel, where the Board shall consider the application in accordance with this Act.

**(7)** No member of the Board who considered the application pursuant to subsection (4) may participate in the Boards consideration of the application.

**(8)** After hearing the applicant and the Registrar, the Board may

(a) direct the Registrar to issue to the applicant a licence;

(b) direct the Registrar to issue to the applicant a licence subject to such conditions, limitations or restrictions as the Board considers appropriate;

(c) adjourn further consideration of the application, pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Board may designate; or

(d) direct the Registrar to refuse the application if the Board is not satisfied that the applicant meets the criteria set out in subsection (2). 1999 (2nd Sess.), c. 4, s. 28.

**Restrictions on licences**

**29** Every licence issued pursuant to Section 28 is subject to any conditions, limitations or restrictions contained in the licence that had expired, lapsed or been suspended pursuant to subsection 27(2), unless the Board orders otherwise. 1999 (2nd Sess.), c. 4, s. 29.

ANNUAL LIST

**Publication of annual list**

**30** The Registrar shall, in each year, cause to be published in the manner prescribed, an annual list that includes

(a) the names of those persons who hold a licence; and

(b) the names of those persons listed in the Defined Register. 1999 (2nd Sess.), c. 4, s. 30.

PRIVILEGES

**Surrender and preservation of jurisdiction**

**31 (1)** The licence of a member may be surrendered by the member only after notice in writing to the Board and with the consent of the Board.

**(2)** Where a member ceases to be a member for any reason or where a person ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any disciplinary matter arising out of the person's conduct while a member or while registered. 1999 (2nd Sess.), c. 4, s. 31.

PROHIBITIONS

**Violation of condition or limitation in licence**

**32** **(1)** A person licensed pursuant to this Act who practises chiropractic in violation of any condition or limitation contained in the person's licence is guilty of an offence.

**(2)** A person who practises chiropractic

(a) while the person's licence is suspended or revoked; or

(b) without a licence,

is guilty of an offence. 1999 (2nd Sess.), c. 4, s. 32.

**Offence**

**33** **(1)** A member of the College who leaves the Province and upon the member's return practises chiropractic before providing the Registrar with a certificate of good standing from all jurisdictions in which the member had practised during such absence is guilty of an offence.

**(2)** The Board may waive the requirements of subsection (1) and may make regulations exempting members from the requirements of subsection (1) where members have been absent from the Province for a period shorter than the maximum period prescribed in the regulations. 1999 (2nd Sess.), c. 4, s. 33.

**Prohibition**

**34** **(1)** Except as provided in this Act or the regulations, no person, other than a chiropractor who holds a licence, shall

(a) publicly or privately, for hire, gain or hope of reward, practise or offer to practise chiropractic;

(b) purport to be in any way entitled to practise chiropractic; or

(c) assume any title or description implying or designed to lead the public to believe that that person is entitled to practise chiropractic.

**(2)** No person is entitled to receive a fee, reward or remuneration for

(a) professional services rendered to any person in the practice of chiropractic; or

(b) chiropractic appliances supplied to any person in the practice of chiropractic,

unless registered and licensed at the time the services were provided or the appliances were rendered. 1999 (2nd Sess.), c. 4, s. 34.

**Offence**

**35** A person who knowingly furnishes false information in an application pursuant to this Act, or in any statement or return required to be furnished pursuant to this Act or the regulations, is guilty of an offence. 1999 (2nd Sess.), c. 4, s. 35.

**Onus and continuing offence**

**36** **(1)** In a prosecution for an offence contrary to this Act or the regulations, the onus of proof that a person accused of an offence has the right to practise chiropractic, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

**(2)** Where a violation of this Act or the regulations by a person who does not have the right to practise chiropractic continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

**(3)** For the purpose of this Act, proof of the performance of one act in the practice of chiropractic on one occasion is sufficient to establish that a person has engaged in the practice of chiropractic. 1999 (2nd Sess.), c. 4, s. 36.

**Offences and penalties**

**37** **(1)** A person who violates

(a) this Act, except for Sections 75 to 87;

(b) a regulation made pursuant to clause 6(3)(i) or (j); or

(c) a regulation made pursuant to clause 22(2)(d),

is guilty of an offence, and the *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

**(2)** All fines and penalties payable under this Act as a result of a prosecution by or on behalf of the College belong to the College.

**(3)** Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the College authorized by the Board, with the consent of the Minister of Health and Wellness. 1999 (2nd Sess.), c. 4, s. 37.

EXEMPTIONS

**Restrictions on application of Act**

**38** Nothing in this Act applies to or prevents

(a) the practice of the religious tenets or general beliefs of any religious organization;

(b) the furnishing of first aid or emergency assistance in the case of emergency, if such aid or assistance is given without hire, gain or hope of reward;

(c) the practice of dentistry or dental surgery by a person who is registered pursuant to the *Dental Act*;

(d) the practice of dental technology by a person registered pursuant to *Dental Technicians Act*;

(e) the practice of denturology by a person who is licensed pursuant to the *Denturists Act*;

(f) the practice of dietetics by a person who is registered pursuant to the *Dietitians Act*;

(g) the practice of dispensing optician by a person who is registered pursuant to the *Dispensing Opticians Act*;

(h) the practice of medicine by a person who is registered pursuant to the *Medical Act*;

(i) the practice of radiological technology by a person registered pursuant to the *Medical Imaging and Radiation Therapy Professionals Act*;

(j) the practice of nursing by a person who is registered pursuant to the *Nursing Act*;

(k) the practice of occupational therapy by a person who is registered pursuant to the *Occupational Therapists Act*;

(l) the practice of optometry by a person who is licensed pursuant to the *Optometry Act*;

(m) the practice of pharmacy by a person who is registered pursuant to the *Pharmacy Act*;

(n) the practice of physiotherapy by a person registered pursuant to the *Physiotherapy Act*;

(o) the practice of psychology by a person who is licensed pursuant to the *Psychologists Act*. 1999 (2nd Sess.), c. 4, s. 38.

PATIENT RECORDS

**Custodian**

**39** **(1)** In this Section, "patient records", includes all documents, charts, X-rays, photographic film or any other form of record relating to the patients of a member.

**(2)** Where

(a) a member

(i) dies, disappears, is imprisoned, leaves the Province or surrenders the member's licence,

(ii) is struck off a register or is the subject of suspension of licence,

(iii) has been found to be an incapacitated or unfit member, or

(iv) neglects the practice of chiropractic; and

(b) adequate provision has not been made for the protection of the member's patients' interests,

the College may, with or without notice as the court directs, request the court to appoint a custodian who is a chiropractor to take possession of the patient records of the member.

**(3)** A custodian appointed pursuant to subsection (2) shall

(a) hold and protect all patient records taken into custody; and

(b) distribute copies of the patient records, as may be appropriate, to the chiropractors of the patients concerned, including the member referred to in subsection (2), and to the duly appointed representatives of the patients, or the patients themselves unless there are reasonable grounds to believe it would not be in the best interest of the patient to make that information available, subject to such fees as the court may direct or the regulations may prescribe.

**(4)** In an order made pursuant to subsection (2), or in a subsequent order made on the application of the College or the custodian, with or without notice as the court directs, the court may

(a) authorize the custodian to employ professional assistance to carry out the custodian's duties;

(b) direct any sheriff to seize, remove and place in the possession of the custodian, patient records;

(c) where there are reasonable grounds to believe that any patient records may be found in any premises, safety deposit box or other receptacle, direct the sheriff to enter the premises or open the safety deposit box or other receptacle;

(d) direct the owner of any premises, or person in possession of any premises, or any bank or other depository of patient records to deal with, hold, deliver or dispose of such patient records as the court directs;

(e) give directions to the custodian as to the disposition of patient records;

(f) make provision for the remuneration, disbursements and indemnification of the custodian in the course of the custodian's duties;

(g) make provision for the discharge of a custodian either before or after completion of the responsibilities imposed upon the custodian by any order made pursuant to this Section; and

(h) give such further directions as the court considers are required in the circumstances.

**(5)** Unless the court otherwise directs, it is sufficient for the custodian to give notice by newspaper advertisement, to patients, chiropractors or the general public, that the custodian has possession of the patient records of a member.

**(6)** Subject to any order of the court, where one year has passed from the date of the court order appointing the custodian, the custodian shall report to the Board, which may discharge the custodian or make any order it considers appropriate regarding any patient records remaining in the hands of the custodian, and the custodian's compliance with the order of the Board discharges the custodian in respect of those patient records affected.

**(7)** Unless otherwise ordered pursuant to subsection (6), upon discharge of a custodian pursuant to subsections (6) and (9), the College shall take into permanent custody patient records and assume the responsibilities of a custodian as provided in subsection (3).

**(8)** The College may destroy records after the passage of a minimum period of time as ordered by the court or as set by regulations.

**(9)** The court may, upon the application of the College made either *ex parte* or on such notice as the court directs, remove a custodian from office and, where the court considers it expedient, appoint another custodian in the custodian's place, and may include in such order such further directions as are required in the circumstances.

**(10)** A member in respect of whom an order has been made pursuant to this Section may, after giving notice to the College and to the custodian, apply to the court to vary or set aside an order made pursuant to this Section and to direct the custodian to place all or part of the patient records back into the possession of the member upon such terms as may be just.

**(11)** The court may give directions as to service of any notice required or order made pursuant to this Section.

**(12)** No action for damages lies against the College, the Board or any committee, member, officer or employee of the College for anything done or omitted to be done in good faith pursuant to this Section, or against a custodian or any other person acting in good faith pursuant to this Section or an order issued pursuant to this Section.

**(13)** This Section applies with necessary changes to former members of the College. 1999 (2nd Sess.), c. 4, s. 39.

## INJUNCTION

**Circumstances for order**

**40 (1)** Where a member, whose licence to practise has been suspended pursuant to this Act or the regulations, does or attempts to do anything contrary to this Act or the regulations, the doing of such thing may be restrained by an injunction of the court at the instance of the Board.

**(2)** Where a person other than a member does or attempts to do anything contrary to this Act, the doing of such thing may be restrained by an injunction of the court at the instance of the Board. 1999 (2nd Sess.), c. 4, s. 40.

## DISCIPLINE

**Method of initiating complaint**

**41** Complaints may be initiated by

(a) any official body corporate or association;

(b) the Registrar; or

(c) any other person. 1999 (2nd Sess.), c. 4, s. 41.

**Power to employ assistance**

**42** The College or a disciplinary committee may employ, at the expense of the College, such legal or other assistance as it considers necessary for the purpose of the investigation of any disciplinary matter. 1999 (2nd Sess.), c. 4, s. 42.

**Duty to maintain confidentiality**

**43** Every person involved in the administration of this Act and any member of the Board, or a committee of the Board or the College, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding patients, and with respect to all matters that come to that person's knowledge relating to a peer assessment, except

(a) in connection with the administration of Sections 41 to 64 and the regulations or proceedings thereunder;

(b) to one's own legal counsel;

(c) as otherwise required by law; or

(d) with the consent of the person to whom the information relates. 1999 (2nd Sess.), c. 4, s. 43.

**Power to investigate other matters**

**44** A person or disciplinary committee investigating a disciplinary matter concerning a member may investigate any other disciplinary matter concerning the member that arises in the course of the investigation. 1999 (2nd Sess.), c. 4, s. 44.

**Prerequisite for action**

**45** **(1)** Where a disciplinary committee

(a) learns that the registration or licence of a member has been suspended or revoked for reasons of professional misconduct, conduct unbecoming or incompetence by another licensing or regulatory authority;

(b) has provided the member with such notice as it may prescribe, of a hearing, together with a copy of the relevant decision of the other licensing or regulatory authority; and

(c) has heard such evidence as is offered by the member, if any, at the hearing as to why the member should not be subject to disciplinary action,

the disciplinary committee may take any of the actions contemplated by clause 60(2)(e).

**(2)** Where a member has been convicted of an offence pursuant to the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or has been convicted of an offence as referred to in Section 24, the disciplinary committee may, by such notice as it prescribes, require the member to attend a hearing to establish why the member should not be subject to disciplinary action.

**(3)** For the purpose of subsection (2), a certificate of conviction of a member is conclusive evidence that a person has committed the offence stated

therein unless it is shown by the member that the conviction has been quashed or set aside.

**(4)** When a disciplinary committee is conducting a hearing pursuant to this Section, it may, if it considers proper, take any of the actions contemplated by clause 60(2)(e).

**(5)** The Registrar shall not be a member of any disciplinary committee, investigation committee or hearing committee. 1999 (2nd Sess.), c. 4, s. 45.

INVESTIGATION COMMITTEE

**Duties and powers of committee**

**46 (1)** The Board shall appoint a committee or committees, each to be known as an investigation committee.

**(2)** An investigation committee must be composed of at least three persons.

**(3)** A committee must

(a) have a chair appointed by the Board who is a member or former member of the Board;

(b) have as a member, at least one person who is a member or former member of the Board and a member of the College; and

(c) have as a member, at least one person who does not hold a degree of chiropractic or equivalent, who may be a member or former member of the Board.

**(4)** Notwithstanding subsection (3),

(a) any two members of the committee constitute a quorum; and

(b) no member of the Council may be a member of the committee.

**(5)** The Board may appoint additional members to the committee who are members of the College but who need not be members or former members of the Board.

**(6)** The committee shall

(a) investigate complaints regarding a disciplinary matter concerning any member of the College;

(b) investigate any matter referred to the committee by the Registrar; and

(c) perform such other duties as may be assigned to it by the Board.

**(7)** The Registrar may refer a matter to the committee notwithstanding that a written complaint has not been filed with the Registrar.

**(8)** Without receipt of a written complaint, the committee may

(a) do all things necessary to provide a full and proper investigation;

(b) appoint a person or persons to conduct an investigation or practice audit, or both.

**(9)** The investigation committee and each member of the investigation committee or a person or persons appointed by the investigation committee to conduct an investigation or a practice audit has all of the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act,* with the exception of the powers of contempt, arrest and imprisonment.

**(10)** Upon receipt of a written complaint and upon giving to the member a copy of the complaint, the committee may require the member to

(a) submit to physical or mental examinations by such qualified persons as the committee designates;

(b) submit to an inspection or audit of the practice of the member by such qualified persons as the committee designates;

(c) submit to such examinations as the committee directs to determine whether the member is competent to practise chiropractic;

(d) produce records and accounts kept with respect to the member's practice.

**(11)** Where the member fails to comply with subsection (10), the committee may suspend or restrict the registration or licence, or both, of the member until the member complies.

**(12)** Where the committee has, pursuant to clause (10)(a), (b) or (c), required a member to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the committee, the committee shall deliver to the member any report it receives from the designated qualified person.

**(13)** The committee or person appointed to conduct an investigation pursuant to clause (8)(b) may

(a) employ such other experts as the committee or person considers necessary;

(b) require the member or any other member of the College, who may have information relevant to the investigation, to attend before the committee or the person conducting the investigation to be interviewed;

(c) investigate any other matter relevant to the conduct, capacity or fitness of a member to practise chiropractic that arises in the course of the investigation.

**(14)** The committee may

(a) dismiss the complaint;

(b) attempt to resolve the matter informally;

(c) with the consent of both parties, refer the matter, in whole or in part, for mediation;

(d) refer the matter, in whole or in part, to a hearing committee;

(e) counsel the member;

(f) caution the member;

(g) counsel and caution the member;

(h) reprimand the member with the member's consent; or

(i) with the consent of the member, require the member to undergo such treatment or re-education as the committee considers necessary.

**(15)** Where the committee is considering a decision to counsel, caution or counsel and caution a member pursuant to clause (14)(e), (f) or (g), the committee shall give notice to the member and the member must be given the opportunity to appear, with or without legal counsel, before the committee prior to the committee making a decision.

**(16)** A member who has consented to a requirement for treatment or re-education pursuant to clause (14)(i) may consent to such requirement in principle, while reserving the right to appeal the actual content of the requirement for treatment or re-education to a hearing committee within 15 days of receiving notice thereof.

**(17)** A member who appeals pursuant to subsection (16) shall bear the member's costs of the appeal and the hearing committee may order costs in the manner prescribed in Section 62.

**(18)** An appeal pursuant to subsection (15) must be conducted without oral testimony and a hearing committee shall review an agreed statement of facts supplied by the legal counsel for the College and signed by the member.

**(19)** Where an agreed statement of facts is not filed within 30 days of filing the notice of appeal, the consent of the member is deemed to have been withdrawn and the matter referred back to the investigation committee, which may consider other actions or dispositions as authorized by this Act.

**(20)** When making findings pursuant to clause (14)(e), (f), (g), (h) or (i), a committee may make any combination of the dispositions that are set out in those clauses, or the committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

**(21)** The member and the complainant must be advised in writing of the disposition of the committee. 1999 (2nd Sess.), c. 4, s. 46; 2012, c. 48, s. 28.

**Further duties and powers**

**47** **(1)** Notwithstanding anything contained in this Act, where

(a) an investigation committee receives information that indicates that a member may be incompetent or guilty of professional misconduct or conduct unbecoming; and

(b) the investigation committee concludes that it is in the public interest to suspend from practice or restrict the practice of the member,

the investigation committee may, without a hearing,

(c) immediately suspend the registration or licence of the member on a temporary basis; or

(d) immediately impose restrictions on the registration or licence, or both, of the member on a temporary basis.

**(2)** The member must receive, forthwith, notice in writing, with reasons, of a decision made pursuant to subsection (1).

**(3)** Subject to a determination pursuant to subsection (5), a decision pursuant to subsection (1) continues in force until final resolution by a hearing committee, which must occur without undue delay.

**(4)** The member who receives written notice pursuant to subsection (2) may request, in writing, an opportunity to meet with the investigation committee.

**(5)** Where a request is received pursuant to subsection (4), the investigation committee shall

(a) provide an opportunity for the member to meet with the committee within 10 days of the written request; and

(b) after meeting with the member, may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1). 1999 (2nd Sess.), c. 4, s. 47.

**Hearing committee**

**48** Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 47(1), subject to any disposition made pursuant to subsection 47(5), a hearing committee must be appointed pursuant to subsection 52(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter. 1999 (2nd Sess.), c. 4, s. 48.

**Continuation of powers of former member**

**49** Notwithstanding that a member or members of an investigation committee or a hearing committee have ceased to hold office by reason of the lapse of their appointments, such member or members are seized with the jurisdiction to complete any matter the committees have commenced if necessary to retain a quorum and, for this purpose, such member or members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the regulations. 1999 (2nd Sess.), c. 4, s. 49.

SETTLEMENT AGREEMENT

**Method of dealing with proposed agreement**

**50 (1)** After an investigation committee refers a matter to a hearing committee pursuant to clause 46(14)(d), the member complained of may, at any time before the commencement of the hearing, tender to the investigation committee a proposed settlement agreement, in writing, consented to by legal counsel for the College, that includes an admission of a disciplinary matter violation or violations and the member's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing committee.

**(2)** The investigation committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by the hearing committee.

**(3)** Where the investigation committee recommends the acceptance of the proposed settlement agreement, it shall instruct legal counsel for the College to advise the hearing committee hearing the complaint of its recommendation.

**(4)** Where the investigation committee refuses to recommend the proposed settlement agreement, the hearing must proceed without reference to the proposed settlement agreement.

**(5)** Where the hearing committee appointed to hear the complaint accepts the recommendation of the investigation committee, it shall confirm such acceptance by written decision that incorporates the settlement agreement.

**(6)** Where the hearing committee appointed to hear the complaint rejects the recommendation of the investigation committee,

(a) it shall advise the Registrar of its decision;

(b) it shall proceed no further with the hearing of the complaint;

(c) a new hearing committee must be appointed to hear the complaint and no member of the committee that considered the proposed settlement agreement may be a member of the new committee; and

(d) the investigation committee retains jurisdiction over a complaint until the commencement of the hearing by a hearing committee. 1999 (2nd Sess.), c. 4, s. 50.

INVESTIGATION COMMITTEE AND NON-MEMBERS

**Investigation of non-member**

**51** The Registrar may request the committee to investigate the activities of a non-member but the committee has no compulsory powers in relation to the investigation of the non-member, except that the committee may require a member who may have information relevant to the investigation to attend before the committee or the person conducting the investigation to be interviewed. 1999 (2nd Sess.), c. 4, s. 51.

HEARING COMMITTEE

**Composition and functions**

**52** **(1)** A hearing committee must be appointed for the purpose of hearing any charges relating to a disciplinary matter against a member when a disciplinary matter is referred, in whole or in part, to a hearing committee.

**(2)** A hearing committee must be composed of at least three persons who are not members of the investigative committee.

**(3)** The committee must have as members

(a) at least one person who does not hold a degree in chiropractic or equivalent, who is a member of the Board; and

(b) at least two members of the Board.

**(4)** Notwithstanding subsection (3),

(a) any two members of the committee constitute a quorum; and

(b) no member of the Council may be a member of the committee.

**(5)** Subject to the regulations, the hearing committee may do all things necessary to provide a full and proper inquiry.

**(6)** In a matter over which a hearing committee has jurisdiction, the hearing committee and each member of the committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

**(7)** Upon the application of

(a) any party to the hearing;

(b) the chair of the hearing committee; or

(c) legal counsel for the College or hearing committee,

the Registrar of the College shall sign and issue a summons to witness for the purpose of procuring the attendance and evidence of witnesses before the hearing committee.

**(8)** It is the duty of the member who is charged in a disciplinary matter to appear at the hearing, but in the event of non-attendance by such member, the hearing committee, upon proof by affidavit, statutory declaration or other evidence acceptable to the hearing committee of service of the notice, pursuant to subsection (9), may proceed with the hearing and, without further notice to such member, render its decision and take such other action as it is authorized to take pursuant to this Act.

**(9)** Unless the member has agreed to a shorter notice period, a notice of hearing must be served at least 30 days before the holding of the hearing upon the member whose disciplinary matter is being heard.

**(10)** A notice of a hearing must state the details of the charges and the time and place of the holding of the hearing, and must be signed by the Registrar.

**(11)** The College shall place the notice as provided for in subsection (10) in such publications as it considers necessary in order to inform the public. 1999 (2nd Sess.), c. 4, s. 52.

**Inadmissible evidence**

**53 (1)** The following evidence is not admissible before a hearing committee unless the opposing party has been given, at least 10 days before the hearing:

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; or

(c) in the case of evidence of a witness, the identity of the witness.

**(2)** Notwithstanding subsection (1), a hearing committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (1) and may make directions it considers necessary to ensure that a party is not prejudiced. 1999 (2nd Sess.), c. 4, s. 53.

**Prohibition of communication**

**54** No member of a hearing committee holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication, with the exclusion of communications where the sole purpose is to make administrative arrangements. 1999 (2nd Sess.), c. 4, s. 54.

**Expert opinions**

**55** Where a hearing committee obtains expert opinion regarding chiropractic with respect to a hearing, it shall make the nature of the opinion known to the parties and the parties may make submissions with respect to the opinion. 1999 (2nd Sess.), c. 4, s. 55.

**Access of public to hearings**

**56 (1)** Subject to subsection (2), a hearing must be open to the public.

**(2)** The hearing committee may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the hearing committee is satisfied that

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public

disclosure of those matters is in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) the safety of a person may be jeopardized.

**(3)** Where it thinks fit, the hearing committee may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

**(4)** No order may be made under subsection (3) that prevents the publication of anything that is contained in the Register and available to the public.

**(5)** The hearing committee may make an order that the public be excluded from the part of a hearing dealing with a motion of an order pursuant to subsection (2).

**(6)** The hearing committee may make any order necessary to prevent the public disclosure of matters disclosed in the submission relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

**(7)** Subject to any orders pursuant to this Section, the hearing committee shall state, at the hearing, its reasons for any order made pursuant to this Section. 1999 (2nd Sess.), c. 4, s. 56.

**Right to attend**

**57** Where a hearing committee makes an order pursuant to subsection 56(2), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected

(a) the committee shall allow the parties, the complainant and their legal and personal representatives; and

(b) the committee may allow such other persons as the committee considers appropriate,

to attend the hearing. 1999 (2nd Sess.), c. 4, s. 57.

**Publication ban**

**58** A hearing committee shall, on the request of a witness, other than the member, whose testimony is in relation to allegations of misconduct of a sexual nature by a member involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness. 1999 (2nd Sess.), c. 4, s. 58.

**Treatment of evidentiary material**

**59** **(1)** The hearing committee holding a hearing shall ensure that

(a) the oral evidence is recorded;

(b) copies of the transcript of the hearing are available to a party at the party's request and expense, the complainant at the complainant's request and expense and other persons the hearing commit-

tee or the Registrar considers appropriate at those persons' request and expense; and

(c) copies of the transcript of any part of the hearing that is not closed nor the subject of an order prohibiting publication are available to any person at that person's expense.

**(2)** Where a transcript of a part of a hearing that is the subject of an order for a closed hearing or an order prohibiting publication is filed with a court in respect of proceedings, only the court, the parties to the proceedings and the complainant may examine it unless the court or the hearing committee orders otherwise. 1999 (2nd Sess.), c. 4, s. 59.

**Procedure at hearing**

**60 (1)** At a hearing of the hearing committee, a member is entitled to all the rights of natural justice, including the right to be represented by legal counsel, to know all the evidence considered by the hearing committee, to present evidence and to cross-examine witnesses.

**(2)** A hearing committee

(a) shall hear each case in such manner as it considers fit;

(b) may require the member to

(i) submit to physical or mental examinations by such qualified persons as the committee designates,

(ii) submit to an inspection or audit of the member's practice by such qualified persons as the committee designates,

(iii) undergo such examinations as the hearing committee directs to determine whether the member is competent to practise chiropractic, and

(iv) produce records and accounts kept with respect to the member's practice;

(c) where the member fails to comply with clause (b), may resolve that the registration or licence of the member be suspended until the member does;

(d) where the committee has, pursuant to subclause (b)(i), (ii) or (iii), required a member to submit to physical or mental examinations, or submit to inspection or audit of the practice by a qualified person designated by the committee, shall deliver to the member any report it receives from the designated qualified person;

(e) shall determine whether the member is guilty of charges relating to a disciplinary matter, and

(i) where there is a guilty finding, may determine that

(A) the registration or licence of the member be revoked and that member's name be stricken from the registers in which it is entered,

(B) the licence of the member be suspended

(I) for a fixed period, or

(II) for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the committee,

(C) conditions, limitations or restrictions be imposed on the licence of the member,

(D) the member undergo such treatment or re-education as the committee considers necessary,

(E) such fine as the committee considers appropriate to a maximum of $15,000 be paid by the member to the College for the purpose of funding chiropractic education and research and peer assessment as determined by the Board,

(F) the member be reprimanded,

(G) such other disposition as it considers appropriate be imposed, or

(ii) where there is a not guilty finding, the committee may dismiss the charges; and

(f) shall file its decision, including reasons, at the offices of the College.

**(3)** When making dispositions pursuant to clause (2)(e), the committee may impose one or more of the penalties that are set out therein, or the committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

**(4)** The Registrar shall provide the member, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the hearing committee except that, where there are references identifying patients or other persons other than the complainant, those references as well as other personal information about those persons must be deleted if, in the Registrar's opinion, it is appropriate.

**(5)** The decision of a hearing committee has effect immediately upon service on the member or from such time as the decision may direct.

**(6)** The hearing committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. 1999 (2nd Sess.), c. 4, s. 60.

**Inadmissibility of evidence in legal proceeding**

**61** **(1)** In this Section,

"civil proceeding" means any proceeding of a civil nature other than an arbitration proceeding or a proceeding before an adjudicative tribunal, board or commission or inquiry;

"legal proceeding" means any civil proceeding, discovery, inquiry, proceeding before a tribunal, board or commission or arbitration, in which evidence may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations.

**(2)** A witness in any legal proceeding, whether a party to the proceeding or not, is excused from answering any question as to any proceedings of an investigation committee or a hearing committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hearing processes of the College, including any information gathered in the course of an investigation or produced for an investigation committee, a hearing committee or staff members of the College.

**(3)** Subsection (2) does not apply to documents or records that have been made available to the public by the College.

**(4)** Unless otherwise determined by a court of competent jurisdiction, a decision of an investigation committee or a hearing committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 2.

COSTS

**Contents of order for costs**

**62 (1)** When a hearing committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the Board, in whole or in part.

**(2)** When a member is ordered to pay costs pursuant to subsection (1), the Board may make it a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Board may fix.

**(3)** For the purpose of this Section, "costs of the Board" include

(a) expenses incurred by the College, the Board, the investigation committee and the hearing committee;

(b) honoraria paid to members of the investigation committee and the hearing committee; and

(c) solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint. 1999 (2nd Sess.), c. 4, s. 61.

APPEAL

**Procedure on appeal**

**63 (1)** The member complained against may appeal on any point of law from the findings of the hearing committee to the Nova Scotia Court of Appeal.

**(2)** The notice of appeal must be served upon the Registrar and the complainant.

**(3)** The record on appeal from the findings of a hearing committee consists of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the hearing committee certified by the chair of the hearing committee.

**(4)** The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply with necessary changes to appeals to the Nova Scotia Court of Appeal pursuant to this Section.

**(5)** Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the Nova Scotia Court of Appeal has jurisdiction to, pending a decision by the Nova Scotia Court of Appeal, grant a stay of any order made pursuant to this Act where, in its discretion, it considers it fit. 1999 (2nd Sess.), c. 4, s. 62.

REINSTATEMENT

**Procedure for making application**

**64 (1)** A person whose licence has been revoked by a resolution of a hearing committee pursuant to subclause 60(2)(e)(i), may apply to the Board for

(a) the entering of the person's name, address and qualifications on the Register or Defined Register; and

(b) the issuance of a licence.

**(2)** An application pursuant to subsection (1) may not be made earlier than

(a) two years after the revocation; and

(b) six months after the previous application.

**(3)** The Board, upon

(a) being satisfied that the interest of the public has been adequately protected;

(b) being satisfied as to the intention of such person to practise chiropractic in the Province;

(c) being satisfied as to the activities of such person since the time of the resolution of the hearing committee;

(d) such person producing a letter of good standing from all jurisdictions in which the person had practised chiropractic since the date of such resolution of the hearing committee; and

(e) such person undergoing such clinical or other examinations as the Board may designate,

may direct the Registrar to

(f) enter the name, address and qualifications of such person in the Register or Defined Register; and

(g) issue a licence to such person,

upon such terms and conditions as the Board may direct. 1999 (2nd Sess.), c. 4, s. 63.

PEER ASSESSMENT

**Peer Assessment Committee**

**65** **(1)** In this Section and in Sections 66 and 74,

"assessment" means an assessment pursuant to a peer-assessment program established pursuant to this Section;

"assessors" means the assessors appointed by the Peer Assessment Committee pursuant to subsection (4).

**(2)** The Board shall establish a Peer Assessment Committee in accordance with the regulations.

**(3)** The Board may, by regulation or otherwise,

(a) authorize the Peer Assessment Committee to do or cause to be done, on behalf of the parties, any or all such things as the parties thereto are otherwise empowered to do and consider necessary for the development and administration of a peer-assessment program, subject to the approval of the Board;

(b) provide for the financing of the operations of the Peer Assessment Committee and for cost-sharing arrangements;

(c) provide for the preparation of an annual budget and its approval by the Board;

(d) provide for the incorporation of the Peer Assessment Committee if considered advisable to achieve the objectives of the Committee; and

(e) do such other things as may be necessary or desirable to provide for the administration of the Peer Assessment Committee and for its operations.

**(4)** The Peer Assessment Committee may appoint members of the College or persons licensed as chiropractors in other provinces as assessors for the purpose of the application of the peer-assessment program to members of the College.

**(5)** Subject to the approval of the Board, the Peer Assessment Committee shall develop and administer a peer-assessment program that includes

(a) the assessment of the standards of practice of members including

(i) standards for the clinical assessment and care of patients, and

(ii) standards for the maintenance of records of care administered to patients;

(b) the selection and education of assessors;

(c) communication with chiropractors;

(d) budgetary and expense arrangements;

(e) the preparation of assessment reports;

(f) the development of policy and procedures of the Peer Assessment Committee and their delegation to subcommittees, assessors or employees as the Committee considers appropriate; and

(g) such further activities, including the establishment of other committees or subcommittees, for the better administration of the peer-assessment program.

**(6)** Every member whose standards of practice are the subject of an assessment shall co-operate fully with the Peer Assessment Committee and assessors.

**(7)** Without limiting the generality of the co-operation required by subsection (6), a member shall

(a) permit assessors to enter and inspect the premises where the member engages in the practice of chiropractic;

(b) permit the assessors to inspect the member's records of care administered to patients;

(c) provide to the Peer Assessment Committee and assessors, in the form required, information requested by the Committee or assessors, as the case may be, in respect of the clinical assessment and care of patients by the member or the member's records of care administered to patients;

(d) confer with the Peer Assessment Committee or assessors when required to do so by the Committee or assessors;

(e) permit the reassessments the Peer Assessment Committee or assessors consider necessary for the proper administration of a peer-assessment program; and

(f) comply with the remedial recommendations of the Peer Assessment Committee.

**(8)** Upon completion of an assessment, an assessor shall report to the Peer Assessment Committee, which may

(a) receive the report of the assessor and make no recommendations to the member assessed; or

(b) confer with the member assessed and make any remedial recommendations to the member as the Committee considers appropriate, and direct the member to comply with the recommendations.

**(9)** Costs incurred by the member in implementing the remedial recommendations made by the Peer Assessment Committee are payable by the member and are not the responsibility of the Committee, the Board or the College.

**(10)** Where an assessor or a member of the Peer Assessment Committee learns, in the course of an assessment, that a member of the College may be guilty of a disciplinary matter, the assessment must be terminated, the member must be advised and the matter must be referred to the College to be dealt with as a complaint.

**(11)** The assessor or a member of the Peer Assessment Committee shall not provide any information to the College, except the information necessary to identify the nature of the complaint with sufficient particularity to enable an investigation committee to identify the matter it is required to investigate.

**(12)** Nothing in this Section prevents any other person from providing evidence of a disciplinary matter relating to a member.

**(13)** Each year the Peer Assessment Committee shall prepare and publish a report on its activities for the preceding year. 1999 (2nd Sess.), c. 4, s. 64.

**Witnesses**

**66** **(1)** In this Section,

"legal proceeding" means

(a) a proceeding in any court, including a proceeding for the imposition of punishment by fine, penalty or imprisonment to enforce an Act of the Legislature or a regulation made under that Act, or any civil proceeding; and

(b) a disciplinary proceeding pursuant to this Act;

"witness" means any member or officer or employee of the College, any assessor or former assessor and any other person who, in connection with, or in the course of, a legal proceeding is called upon to provide information, to answer, orally or in writing, a question or to produce a document, whether under oath or not.

**(2)** A witness in a legal proceeding, whether a party or not, is excused from

(a) providing any information obtained by the witness in the course of or in relation to an assessment; and

(b) producing any document made by the Peer Assessment Committee, an assessor appointed under this Act or any other document that was prepared pursuant to or in relation to an assessment.

**(3)** Subsection (2) does not apply to

(a) records maintained by hospitals as required by the *Hospitals Act* or regulations made pursuant to that Act; or

(b) medical records maintained by attending physicians pertaining to a patient.

**(4)** Notwithstanding that a witness

(a) is or has been an assessor or a member of a subcommittee of;

(b) has participated in the activities of; or

(c) has prepared a document for or has provided information to,

the Peer Assessment Committee, the witness is not, subject to subsection (2), excused from answering any question or producing any document that the witness is otherwise bound to answer or produce.

**(5)** An assessor or a member of the Peer Assessment Committee shall not provide evidence against a member in a disciplinary matter with respect to information given by the member to the assessor or a member of the Peer Assessment Committee in the course of an assessment of the member unless the member has knowingly given false information during the assessment or the disciplinary matter.

**(6)** Nothing in subsection (5) prevents any other person from providing evidence against a member in a disciplinary matter with respect to the information given by the member in the course of the member's assessment. 1999 (2nd Sess.), c. 4, s. 65.

**Application of certain Sections and regulations**

**67** Sections 41 to 64, 68 to 89 and 95 and all regulations pursuant to this Act that are applicable to members of the College apply with all necessary modifications to former members, unless otherwise expressly provided by this Act or the regulations. 1999 (2nd Sess.), c. 4, s. 66.

EVIDENCE

**Certificate as evidence**

**68** A certificate purporting to be signed by the Registrar stating that any person named therein was or was not, on a specified day or during a specified period, registered and licensed, is prima facie evidence in any court of that fact without proof, that the person signing it is the Registrar or that it is the Registrar's signature. 1999 (2nd Sess.), c. 4, s. 67.

**Effect of presence of name in document**

**69** The presence of the name of any person in a document purporting for any year to be an annual list published by the Registrar pursuant to Section 30 is prima facie evidence in any court of the fact that a person whose name so appears is or was registered and licensed at the time of publication of such annual list. 1999 (2nd Sess.), c. 4, s. 68.

NOTICES

**Service**

**70** Service of any notice, order, resolution or other document pursuant to this Act or the regulations may be made upon

(a) a member by registered letter addressed to such person at the member's address as set forth in the Register; and

(b) any other person by registered letter. 1999 (2nd Sess.), c. 4, s. 69.

**Deemed day of service**

**71** Where service is made by registered letter, service is deemed to be made on the third day after the notice, order, resolution or other document is mailed, and proof that the notice, order, resolution or other document was addressed and posted in accordance with Section 70 is proof of service. 1999 (2nd Sess.), c. 4, s. 70.

**Service on College**

**72** Service of any document on the College may be made by service on the Registrar. 1999 (2nd Sess.), c. 4, s. 71.

LIMITATIONS OF ACTIONS

**Exemption from liability**

**73** Where a chiropractor entitled to practise chiropractic in the Province, or any other province or country, voluntarily renders first aid or emergency treatment without the expectation of monetary compensation, to a person outside of a hospital or chiropractor's office, or in any other place not having proper and necessary medical facilities, that chiropractor is not liable for the death of such person, or damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such first aid or emergency treatment, unless it is established that such injuries were, or such death was caused by, conduct on the part of such chiropractor that, if committed by a person of ordinary experience, learning and skill, would constitute negligence. 1999 (2nd Sess.), c. 4, s. 72.

**Further exemption from liability**

**74 (1)** No action for damages lies against the Peer Assessment Committee, the College, the Board, the Registrar, an officer or employee of the Peer Assessment Committee or College or Board, an assessor, a member of a committee or subcommittee of the Peer Assessment Committee or the College or the Board, or a member of the Board or committee of the Board, or a member of the College

(a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out their duties or obligations as an officer, employee or member under this Act; or

(b) for any decision, order or resolution made or enforced in good faith under this Act.

**(2)** No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

**(3)** Without limiting the generality of subsection (2), no action for damages lies against a member or other person for disclosing any books, records, papers and other documents in their possession or control when done pursuant to this Act, including clause 46(10)(d). 1999 (2nd Sess.), c. 4, s. 73.

INCORPORATION

**Professional corporation**

**75** Subject to this Act and the regulations, a professional corporation may engage in the practice of chiropractic and chiropractors may be employed by a

professional corporation for the purpose of engaging in the practice of chiropractic. 1999 (2nd Sess.), c. 4, s. 74.

**Shareholding in professional corporation**

**76 (1)** A majority of the issued shares of a professional corporation must be legally and beneficially owned by one or more chiropractors.

**(2)** A majority of the issued voting shares of a professional corporation must be legally and beneficially owned by one or more chiropractors.

**(3)** Subject to subsections (1) and (2), the spouse or child of a chiropractor or any other person may own, beneficially or legally, shares of a professional corporation.

**(4)** Notwithstanding subsection (2), a person resident in Canada may hold legal title to issued shares of a professional corporation solely as trustee for the exclusive benefit of a chiropractor, or the spouse or child of a chiropractor, or a group of such individuals so long as no one other than a chiropractor, or the spouse or child of a chiropractor, acts as such a trustee without the written consent of the Registrar. 1999 (2nd Sess.), c. 4, s. 75.

**Qualifications for directors and president**

**77 (1)** A majority of the directors of a professional corporation must be chiropractors.

**(2)** The president of a professional corporation must be a chiropractor. 1999 (2nd Sess.), c. 4, s. 76.

**Permit for professional corporation**

**78** A professional corporation shall not engage in the practice of chiropractic unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations. 1999 (2nd Sess.), c. 4, s. 77.

**Restriction on professional corporations**

**79 (1)** Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued pursuant to this Section may practise chiropractic in its own name.

**(2)** Notwithstanding subsection (1), no professional corporation may be registered as a chiropractor under this Act.

**(3)** The Registrar shall issue a permit to any professional corporation that fulfills the following conditions:

(a) files all required applications in the form prescribed by the regulations;

(b) pays all fees prescribed by the regulation;

(c) satisfies the Registrar that it is a professional corporation limited by shares that is in good standing with the Registrar of Joint Stock Companies under the *Companies Act* and the *Corpora-*

*tions Registration Act* and that it is a private company as defined by the *Securities Act*;

(d) satisfies the Registrar that the name of the professional corporation is not objectionable and is in accordance with the regulations;

(e) satisfies the Registrar that the requirements of Sections 76 and 77 have been met;

(f) satisfies the Registrar that the professional corporation holds such liability insurance as may be prescribed by the regulations;

(g) satisfies the Registrar that the persons who will carry on the practice of chiropractic for or on behalf of the professional corporation are chiropractors; and

(h) satisfies the Registrar that the professional corporation is in compliance with this Act and the regulations.

**(4)** A permit issued pursuant to subsection (3), or any renewal of a permit pursuant to subsection (5), expires on December 31st of the year for which it was issued or renewed.

**(5)** The Registrar may renew a permit upon such application and payment of such fee as may be required by the regulations where the Registrar determines that the requirements of subsection (3) are satisfied by the professional corporation.

**(6)** A permit issued pursuant to subsection (3), or renewed pursuant to subsection (5), may be suspended or revoked at any time by the Registrar if a professional corporation fails to satisfy any of the requirements prescribed in subsection (3).

**(7)** The Board may, in its discretion, review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (6).

**(8)** For the purpose of this Act, the practice of chiropractic must not be carried on by or be deemed to be carried on by clerks, secretaries and other persons employed by the professional corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by a chiropractor. 1999 (2nd Sess.), c. 4, s. 78.

**Deemed revocation of permit**

**80 (1)** Where a professional corporation practises chiropractic only through the services of one chiropractor and that chiropractor dies, retires, becomes incompetent or is no longer licensed pursuant to this Act, or is suspended under this Act, the permit of such professional corporation is deemed to be revoked and such professional corporation shall cease to practise chiropractic.

**(2)** Where a professional corporation practises chiropractic through the services of more than one chiropractor and such professional corporation ceases to fulfill any requirement prescribed in subsection 79(3) by reason of

(a) the death of a chiropractor;

(b) the incompetency of a chiropractor;

(c) the revocation of the licence of a chiropractor pursuant to this Act;

(d) the suspension of the licence of a chiropractor pursuant to this Act; or

(e) the retirement from practice by a chiropractor,

such professional corporation shall forthwith notify the Registrar and shall fulfill the requirements in question within 120 days from the date of death, incompetency, revocation, retirement or other removal or the suspension, as the case may be, of the chiropractor, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise chiropractic effective upon the expiration of the 120-day period.

**(3)** Where the permit of a professional corporation is deemed to be revoked under this Section and thereafter the professional corporation is able to demonstrate that it is in compliance with subsection 79(3), the professional corporation may apply to the Registrar to have its permit reinstated and the Registrar may, in the Registrar's discretion, reinstate the permit subject to such conditions as the Registrar may direct. 1999 (2nd Sess.), c. 4, s. 79.

**Notification of change in professional corporation**

**81** Where the shares of a professional corporation engaged in the practice of chiropractic are transferred or where there is a change in the shareholders, directors or officers of the professional corporation, or any change in the location where the professional corporation carries on business, the professional corporation shall, within 15 calendar days, notify the Registrar of such change. 1999 (2nd Sess.), c. 4, s. 80.

**Effect of relationship to corporation**

**82** The relationship of a chiropractor to a professional corporation whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application of this Act and the regulations to the chiropractor. 1999 (2nd Sess.), c. 4, s. 81.

**Liability and restriction on transfer**

**83 (1)** All persons who carry on the practice of chiropractic by, through or on behalf of a professional corporation are liable in respect of acts or omissions done or omitted to be done by them in the course of the practice of chiropractic to the same extent and in the same manner as if such practice were carried on by them as an individual or a partnership, as the case may be, carrying on the practice of chiropractic.

**(2)** No owner of voting shares of a professional corporation shall pledge, hypothecate, enter into a voting trust, proxy or any other type of agreement vesting in any other person who is not a chiropractor the authority to exercise the voting rights attached to any or all of the owner's shares. 1999 (2nd Sess.), c. 4, s. 82.

**Status of relationships**

**84** **(1)** Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between a chiropractor and a patient.

**(2)** The relationship between a professional corporation and a patient of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between a chiropractor and a patient.

**(3)** All rights and obligations pertaining to communications made to or information received by a chiropractor apply to the shareholders, directors, officers and employees of a professional corporation. 1999 (2nd Sess.), c. 4, s. 83.

**Compellable witnesses**

**85** All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 1999 (2nd Sess.), c. 4, s. 84.

**Certificate as evidence**

**86** A certificate purporting to be signed by the Registrar stating that a named professional corporation was or was not, on a specified day or during a specified period, a professional corporation entitled to practise chiropractic according to the records of the Registrar, must be admitted in evidence as prima facie proof of the facts stated therein without proof of the Registrar's appointment or signature. 1999 (2nd Sess.), c. 4, s. 85.

**Liability of directors and officers**

**87** Where a professional corporation commits an offence contrary to this Act or the regulations, every person who, at the time of the commission of the offence, was a director or officer of the corporation is guilty of the same offence and subject to the same penalties unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence. 1999 (2nd Sess.), c. 4, s. 86.

**Offences and penalties**

**88** **(1)** Every person who contravenes Sections 75 to 87 or the associated regulations is guilty of an offence and liable, on summary conviction, for a first offence to a fine not exceeding $500 and for a second or any subsequent offence to a fine not exceeding $1,000.

**(2)** Where a professional corporation is convicted of an offence contrary to Sections 75 to 87 or the associated regulations, the permit of the corporation is suspended in default of paying any fine ordered to be paid until such time as the fine is paid.

**(3)** Where a professional corporation is convicted of a second or subsequent offence, the permit of the corporation may be revoked. 1999 (2nd Sess.), c. 4, s. 87.

**Publication of decision**

**89** **(1)** Subject to any publication bans, the College shall publish a hearing committee's decision or summary of the decision in its annual report and may publish the decision or summary in any other publication.

**(2)** Where the registration or licence of a member has been revoked or suspended or where conditions, limitations or restrictions are imposed on the licence of a member, the College shall place a notice in such publications as it considers necessary in order to inform the public. 1999 (2nd Sess.), c. 4, s. 88.

PART II

**Council of the College**

**90** **(1)** There is a Council of the College composed of

(a) the President, the Vice-president, the Treasurer, the Secretary and two members-at-large elected at the annual meeting of the College in the manner provided by this Act;

(b) the immediate past President of the Council; and

(c) a member of the Board, other than the Chair of the Board, who is chosen by the Board and who sits as a non-voting member of the Council.

**(2)** Members of the Council are elected or appointed to office for a term of two years.

**(3)** Elected members of the Council shall not be members of the Council for more than four consecutive terms.

**(4)** In subsection (3), "consecutive" means that 12 months or less occurred between the end of one term and the commencement of the next term. 1999 (2nd Sess.), c. 4, s. 89.

**Objects of Council**

**91** The objects of the Council are to

(a) promote and improve proficiency of chiropractors in all matters relating to the practice of chiropractic;

(b) maintain the integrity and honour of the chiropractic profession;

(c) improve chiropractic service, however rendered; and

(d) perform such other lawful things as are incidental or conducive to chiropractic. 1999 (2nd Sess.), c. 4, s. 90.

**Election of Council**

**92** **(1)** Only members of the College who practise chiropractic in the Province are eligible to vote in an election for members of the Council.

**(2)** Every member in good standing who is not a member of the Board is eligible to be nominated as and vote for a candidate for membership on the Council.

**(3)** The Council may make bylaws governing elections of members of the Council and those bylaws may

(a) provide for the procedure for the nomination of candidates;

(b) provide for the appointment or designation of presiding officers for the election;

(c) prescribe the forms to be used;

(d) prescribe the procedure to be used for the holding of the elections and for determining the persons elected as members of the Council.

**(4)** Members of the Council must be elected by secret ballot. 1999 (2nd Sess.), c. 4, s. 91.

**Meeting of Council**

**93 (1)** The Council shall meet twice yearly, except as required by a special meeting, at a time and place to be determined by the Council and shall report annually to the College at the time of the annual meeting of the College.

**(2)** The Council may call additional meetings of the College to consider matters relating to the objects of the Council. 1999 (2nd Sess.), c. 4, s. 92.

**Power of Council to make bylaws**

**94 (1)** The Council may make bylaws consistent with this Act that are necessary or desirable for the attainment of its objects or for the proper implementation of its powers.

**(2)** A bylaw or an amendment or revocation of a bylaw may be made by the Council if

(a) notice of the bylaw, amendment or revocation is given in writing, at least one month prior to the vote, to every member eligible to vote; and

(b) it is in compliance with the procedures prescribed in the bylaws. 1999 (2nd Sess.), c. 4, s. 93.

PART III

GENERAL

**Regulations Act**

**95** All regulations made pursuant to this Act, with the exception of those regulations made pursuant to subsection 6(2), are regulations within the meaning of the *Regulations Act*. 1999 (2nd Sess.), c. 4, s. 94.

CHAPTER C-24

# An Act to Provide for Civil Constables

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Civil Constables Act*. R.S., c. 349, s. 1.

**Interpretation**

**2** In this Act, "Minister" means the Minister of Justice.

**Provincial civil constable**

**3** **(1)** The Minister may appoint a person as a provincial civil constable.

**(2)** No person may be appointed as a provincial civil constable who

(a) is under the age of 19 years or over the age of 65 years; or

(b) is not a British subject or Canadian citizen.

**(3)** A provincial civil constable holds office for a period of two years and may be reappointed by the Minister. R.S., c. 349, s. 3; 1992, c. 28, s. 28.

**Power to execute process**

**4** A provincial civil constable may execute anywhere in the Province process of a civil nature, including any notice, order, warrant, summons other than a notice, order, warrant, summons or other process required to be executed or served by a sheriff or a functionary appointed under another enactment or by another officer, person or body. R.S., c. 349, s. 4.

**Oath and bond**

**5** The appointment of a provincial civil constable is not effective until the provincial civil constable has filed with the Minister

(a) a statement prescribed by the Minister, sworn before a person authorized to take oaths, to the effect that the provincial civil constable will act only in matters of a civil nature; and

(b) a security bond for the due and faithful performance of the provincial civil constable's duties in such amount and in such form as the Governor in Council may determine under the Part III of the *Public Offices and Officers Act*, as it read on March 31, 1997.

**Complaint and revocation**

**6 (1)** Any person who has a complaint against a provincial civil constable may notify the Minister by signing a complaint in writing and the Minister shall require the provincial civil constable to appear before the Minister and answer the complaint.

**(2)** Where the provincial civil constable fails to appear before the Minister or where, after inquiry, the Minister is satisfied that the complaint is justified and of a serious nature, the Minister may suspend or revoke the appointment.

**(3)** Where the appointment of a provincial civil constable has been revoked pursuant to subsection (2), the provincial civil constable may not be appointed again unless the Governor in Council approves the appointment. R.S., c. 349, s. 5; 1992, c. 28, s. 28.

**Municipal civil constable**

**7 (1)** A council of a regional municipality, town or other municipality may appoint a person who is over the age of 19 years and a British subject or Canadian citizen as a municipal civil constable for the regional municipality, town or other municipality.

**(2)** Before appointing a person as a municipal civil constable, a council shall require the person to furnish a security bond for the due and faithful performance of the person's duties in such amount and in such form as the Governor in Council may determine under the *Court Officials Act*.

**(3)** No appointment made pursuant to subsection (1) is effective unless the clerk or some other officer of the regional municipality, town or other municipality files with the Minister a copy of the security bond and a record of the appointment containing the date of the appointment and the full name and address of the person appointed.

**(4)** A municipal civil constable may execute within the municipality for which the municipal civil constable is appointed process of a civil nature, including any notice, order, warrant, summons other than a notice, order, warrant, summons or other process required to be executed or served by a sheriff or a functionary appointed under another enactment or by another officer, person or body.

**(5)** Any person who has a complaint against a municipal civil constable may notify the Minister by signing a complaint in writing and the Minister shall require the municipal civil constable to appear before the Minister and answer the complaint.

**(6)** Where the municipal civil constable fails to appear before the Minister or where, after inquiry, the Minister is satisfied that the complaint is justified and of a serious nature, the Minister may suspend or revoke the appointment without reference to the municipal council.

**(7)** Where the appointment of a municipal civil constable has been revoked pursuant to subsection (6), the municipal civil constable may not be appointed again unless the Governor in Council approves the appointment. R.S., c. 349, s. 6; 1992, c. 28, s. 28.

CHAPTER C-25

# An Act Respecting Civil Forfeiture of Property

**Table of Contents**



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**Short title**

**1** This Act may be cited as the *Civil Forfeiture Act*. 2007, c. 27, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to provide civil remedies that will assist in

(a) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activity; and

(b) preventing property from being used to engage in unlawful activity. 2007, c. 27, s. 2.

**Interpretation**

**3** **(1)** In this Act,

"court" means the Supreme Court of Nova Scotia;

"forfeiture order" means an order made under subsection 7(1) or (2);

"instrument of unlawful activity" means property that

(a) has been used to engage in unlawful activity that, in turn,

(i) resulted in the acquisition of property or an interest in property, or

(ii) caused serious bodily harm to a person; or

(b) is likely to be used to engage in unlawful activity that is intended to

(i) result in the acquisition of property or an interest in property, or

(ii) cause serious bodily harm to a person;

"interest in property" or "interest in the property" means a right, title, interest, estate or claim to or in property;

"interim preservation order" means an order made under subsection 10(3);

"Manager" means the person who is designated as the Manager of Assets under subsection 2(1) of the *Assets Management and Disposition Act*;

"personal property registry" means the personal property registry established under the *Personal Property Security Act*;

"proceeds of unlawful activity" means any of the following:

(a) the whole or a portion of an interest in property if the whole or the portion of the interest, as the case may be, is acquired directly or indirectly as a result of unlawful activity;

(b) the whole or a portion of an interest in property that is equivalent in value to the amount of an increase in value of the whole or the portion of the interest in property if the increase in value results directly or indirectly from unlawful activity;

(c) the whole or a portion of an interest in property that is equivalent in value to the amount of a decrease in a debt obligation secured against the interest or the portion of the interest in property if the decrease in debt obligation results directly or indirectly from unlawful activity;

"property" means real property or tangible or intangible personal property and, for greater certainty, includes cash;

"protection order" means an order made by a court under subsection 15(1);

"receiver manager" means a person who is appointed as a receiver manager under clause 10(3)(c);

"security interest" means a security interest as defined in the *Personal Property Security Act*;

"unlawful activity" means an act or omission described in one of the following clauses:

(a) where an act or omission occurs in the Province, the act or omission, at the time of occurrence, is an offence under an Act of the Parliament of Canada or of the Province;

(b) where an act or omission occurs in another province of Canada, the act or omission, at the time of occurrence,

(i) is an offence under an Act of the Parliament of Canada or of the other province, as applicable, and

(ii) would be an offence in the Province if the act or omission had occurred in the Province;

(c) where an act or omission occurs in a jurisdiction outside of Canada, the act or omission, at the time of occurrence,

(i) is an offence under an Act of that jurisdiction, and

(ii) would be an offence in the Province if the act or omission had occurred in the Province,

but does not include an act or omission that is an offence under an enactment of any jurisdiction if the enactment or the jurisdiction is prescribed under this Act.

**(2)** For the purpose of the definition of "proceeds of unlawful activity", "equivalent in value" means equivalent in value as determined or established by the regulations. 2007, c. 27, s. 3.

**Application of Act**

**4 (1)** This Act applies to an unlawful activity occurring before, on or after the date this Act comes into force.

**(2)** This Act applies to proceeds of unlawful activity whether or not

(a) the acquisition of the whole or the portion of an interest in property;

(b) the increase in the value of the whole or the portion of an interest in property; or

(c) the decrease in the debt obligation as referred to in the definition of "proceeds of unlawful activity",

occurred before, on or after April 29, 2011. 2007, c. 27, s. 4.

**Application for forfeiture order**

**5 (1)** The Manager may apply to the court for an order forfeiting to the Crown in right of the Province

(a) the whole of an interest in property that is proceeds of unlawful activity; or

(b) the portion of an interest in property that is proceeds of unlawful activity.

**(2)** The Manager may apply to the court for an order forfeiting to the Crown in right of the Province property that is an instrument of unlawful activity.

**(3)** An application for a forfeiture order under this Section applies only with respect to property or an interest in property located in the Province. 2007, c. 27, s. 5.

**Parties to proceedings**

**6 (1)** In proceedings commenced under subsection 5(1), the Manager shall name as a party

(a) in relation to real property,

(i) the registered owner within the meaning of the *Land Registration Act*, or

(ii) the person appearing from a search of the records at the registry of deeds to be the owner,

of the whole or the portion of the interest in property that is subject of the application for forfeiture; and

(b) in relation to personal property, a person who the Manager has reason to believe is an owner of the whole or the portion of the interest in property that is subject of the application for forfeiture.

**(2)** In proceedings commenced under subsection 5(2), the Manager shall name as a party

(a) in relation to real property,

(i) the registered owner within the meaning of the *Land Registration Act*, or

(ii) the person appearing from a search of the records at the registry of deeds to be the owner,

of the property that is the subject of the application for forfeiture; and

(b) in relation to personal property, a person who the Manager has reason to believe is an owner of the property that is the subject of the application for forfeiture.

**(3)** In proceedings commenced under subsection 5(1) or (2), the Manager shall

(a) notify a person if required to do so by the court or the regulations; and

(b) notify a person in the manner established by the regulations unless the court orders a different manner of notification. 2007, c. 27, s. 6.

**Forfeiture order**

**7** **(1)** Subject to Section 8, where proceedings are commenced under subsection 5(1), the court shall make an order forfeiting to the Crown in right of the Province the whole or the portion of an interest in property that the court finds is proceeds of unlawful activity.

**(2)** Subject to Section 8 and subsection 15(1), where proceedings are commenced under subsection 5(2), the court shall make an order forfeiting to the Crown in right of the Province property that the court finds is an instrument of unlawful activity. 2007, c. 27, s. 7.

**Powers of court respecting orders**

**8** Where the court determines that the forfeiture of property or the whole or a portion of an interest in property under this Act is not in the interests of justice, the court may

(a) refuse to issue a forfeiture order;

(b) limit the application of a forfeiture order; or

(c) put conditions on a forfeiture order. 2007, c. 27, s. 8.

**Time forfeiture order effective**

**9** A forfeiture order made with respect to property or the whole or a portion of an interest in property, as applicable, is effective,

(a) in the case of real property,

(i) at the time a notice is filed under subsection 24(1) with respect to the property or the whole or a portion of an interest in property, or

(ii) at the time the forfeiture order is filed in the registry of deeds with respect to the property or the whole or a portion of an interest in property if no notice is filed under subsection 24(1); and

(b) in the case of personal property or the whole or a portion of an interest in personal property,

(i) at the time a notice is registered under subsection 24(2) with respect to the property or the whole or a portion of an interest in the property, or

(ii) where the court determines that registration in the personal property registry is not required, on the date the court makes the forfeiture order. 2007, c. 27, s. 9.

**Interim preservation orders**

**10** **(1)** As part of a proceeding under subsection 5(1) for forfeiture of the whole or a portion of an interest in property, the Manager may make an application to court for one or more interim preservation orders in relation to

(a) the whole or the portion of the interest in property; or

(b) the property in which the whole or the portion of interest in property is held.

**(2)** As part of a proceeding under subsection 5(2) for forfeiture of property, the Manager may make an application to court for one or more interim preservation orders in relation to the property.

**(3)** On an application under subsection (1) or (2), the court may make one or more of the following orders for preservation of property or the whole or a portion of an interest in property:

(a) an order restraining the disposition or transmission of the property or the whole or the portion of the interest in property;

(b) an order for the possession, delivery to the Manager or safekeeping of property;

(c) an order appointing a person to act as a receiver manager for property or the whole or a portion of an interest in property;

(d) an order for the disposition of the property or the whole or the portion of the interest in property in order to better preserve the value of the property or the whole or the portion of the interest in property;

(e) for the purpose of securing performance of an obligation imposed by an order made under this Act, an order granting to the Manager a lien for an amount set by the court on property or the whole or the portion of an interest in property;

(f) any other order that the court considers just for the preservation of

(i) the property or the whole or the portion of an interest in the property,

(ii) the value of the property or of the whole or the portion of an interest in the property, or

(iii) the rights of creditors and other interest holders;

(g) any other order that the court considers appropriate in the circumstances.

**(4)** The amount set out by the court under clause (3)(e) is deemed for the purpose of the *Personal Property Security Act* to

(a) be the full value of the property or the whole or portion of the interest in property that is the subject of the proceedings, unless the court orders otherwise; and

(b) include the expenses referred to in clause 71(3)(a) of the *Personal Property Security Act*.

**(5)** Unless it is not in the interests of justice, the court shall make an interim preservation order applied for under this Section if the court is satisfied that there are reasonable grounds to believe that

(a) the whole or the portion of the interest in property that is the basis of the application under subsection (1) is proceeds of unlawful activity; or

(b) the property that is the basis of the application under subsection (2) is an instrument of unlawful activity.

**(6)** An application with respect to an interim preservation order applies only with respect to property or an interest in property located in the Province.

**(7)** The Manager may file a release of lien referred to in clause (3)(e) in the registry of deeds without court order. 2007, c. 27, s. 10.

**Orders made without notice**

**11 (1)** Subject to subsection (2), a court may make an interim preservation order under Section 10 without notice to any person.

**(2)** An order made without notice under subsection (1) may not be made for a period greater than 30 days.

**(3)** The court may grant one or more extensions to an order referred to in subsection (2) only if notice of the application to extend the order is given to every person who is required by the court to be given notice of the application other than a person who, in the opinion of the court,

(a) has been evading service;

(b) is unable to be located in spite of the Manager's reasonable efforts; or

(c) need not be served because of exceptional circumstances. 2007, c. 27, s. 11; 2011, c. 53, s. 1.

**Receiver managers**

**12 (1)** A person appointed to act as a receiver manager under clause 10(3)(c) is the receiver manager of the property or the whole or a portion of the interest in property specified by the court.

**(2)** Where directed by the court, a receiver manager

(a) may receive and hold property or the whole or a portion of an interest in property and dispose of property or the whole or a portion of an interest in property in the ordinary course of business;

(b) has the authority to manage the business and affairs conducted in relation to the property or the whole or a portion of the interest in property of the person named; and

(c) has all the incidental powers necessary to hold and manage the property or the whole or a portion of the interest in property. 2007, c. 27, s. 12.

**Application of Personal Property Security Act**

**13 (1)** Subject to this Section, the *Personal Property Security Act* applies with respect to a lien granted under this Act and the enforcement of a lien granted under this Act on personal property or the whole or a portion of an interest in property that is personal property.

**(2)** Section 76 of the *Personal Property Security Act* does not apply to a receiver manager appointed under Section 10 of this Act.

**(3)** Where an order under Section 10 gives the Manager a lien on personal property or the whole or a portion of an interest in property that is personal property,

(a) the lien is deemed to be a security interest taken in the personal property or the whole or a portion of the interest in property, as applicable, to secure the payment of the amount of the lien granted by a court under Section 10; and

(b) the lien is deemed to continue until it is discharged by the Manager.

**(4)** The Manager, by registration of the lien under the *Personal Property Security Act*, perfects the lien as if the lien were a security interest perfected under that Act.

**(5)** Subsections 70(3) to (7) and Section 74 of the *Personal Property Security Act* do not apply to this Act. 2007, c. 27, s. 13.

**Uninvolved interest holder defined**

**14** In Sections 15 and 16, "uninvolved interest holder" means a person who

(a) owns, at the time of application for an order under Section 5, the whole or a portion of an interest in property that is an instrument of unlawful activity; and

(b) did not directly or indirectly engage in the unlawful activity that is the basis of the application referred to in clause (a). 2007, c. 27, s. 14.

**Protection orders**

**15 (1)** Subject to subsection (3), where a court finds

(a) that property is an instrument of unlawful activity; and

(b) that a person is an uninvolved interest holder with respect to that property,

the court shall make the orders necessary to protect the interest in the property held by the uninvolved interest holder.

**(2)** A protection order issued with respect to property that is subject to a forfeiture order has effect from the date that the forfeiture order is effective unless the court orders otherwise.

**(3)** A court may refuse to issue a protection order if the issuance is not in the interests of justice. 2007, c. 27, s. 15.

**Power of court to make various orders**

**16** On application, a court may make, at the time of or subsequent to making a forfeiture order under Section 7, one or more of the following orders:

(a) an order requiring

(i) the disposition or transmission of property or the whole or the portion of the interest in property forfeited, or

(ii) the disposition or transmission of property that includes the whole or the portion of the interest in property forfeited;

(b) an order directing the manner of disposition of property or the whole or the portion of the interest in property referred to in subclause (a)(i) or (ii), including the appointment of a receiver manager to manage and dispose of the property or the whole or the portion of the interest in property;

(c) an order directing that the money arising from the disposition of property or the whole or the portion of the interest in property referred to in subclause (a)(i) or (ii) is applied in accordance with the direction of the court after taking into account all encumbrances;

(d) an order requiring the severing or partition of property, or the whole or a portion of an interest in property;

(e) an order requiring the cancellation of the whole or a portion of an interest in property;

(f) an order providing that, subject to the interest of an uninvolved interest holder or another person, the Crown in right of the Province, on forfeiture, may take possession of or seize

(i) the property forfeited or the property in which an interest in property or a portion of an interest in property is forfeited, or

(ii) the interest in property or a portion of an interest in property that is forfeited;

(g) any other order that the court considers appropriate in the circumstances. 2007, c. 27, s. 16.

**Findings of fact on balance of probability**

**17** Findings of fact in proceedings under this Act and the discharge of any presumption are to be made on the balance of probabilities. 2007, c. 27, s. 17.

**Proof of unlawful activity**

**18** In proceedings under this Act, proof that a person was convicted, found guilty or found not criminally responsible on account of a mental disorder in respect of an offence that constitutes an unlawful activity is proof that the person engaged in the unlawful activity. 2007, c. 27, s. 18.

**Proceedings without offence being charged or where withdrawn**

**19** In proceedings under this Act, an unlawful activity may be found to have occurred even if

(a) no person has been charged with an offence that constitutes the unlawful activity; or

(b) a person charged with an offence that constitutes the unlawful activity was acquitted of all charges in proceedings before a criminal court or the charges are withdrawn or stayed or otherwise do not proceed. 2007, c. 27, s. 19.

**Proof of participation in absence of contrary evidence**

**20** In an application for forfeiture made under subsection 5(1), proof that a person

(a) participated in an unlawful activity that resulted in or is likely to have resulted in the person receiving a financial benefit; and

(b) subsequently did one or more of the following:

(i) acquired the whole or the portion of an interest in property that is the subject of the application,

(ii) caused an increase in the value of the interest or the portion of the interest in property that is the subject of the application,

(iii) caused a decrease of a debt obligation secured against the interest or the portion of the interest in property that is the subject of the application,

is proof, in the absence of evidence to the contrary, that the whole or the portion of the interest in property that is the subject of the application is proceeds of unlawful activity as a result of the unlawful activity referred to in clause (a). 2007, c. 27, s. 20.

**Presumption of advancement does not apply**

**21** For the purpose of this Act, the presumption of advancement does not apply to a transfer of property or of an interest or a portion of an interest in property. 2007, c. 27, s. 21.

**Collection, use and disclosure of information**

**22** **(1)** In this Section, "public body" means public body as defined in the *Freedom of Information and Protection of Privacy Act*.

**(2)** The Manager is responsible for

(a) collecting and managing the use and disclosure of information and maintaining records for the purpose of this Act and, on the basis of information collected, determining if proceedings should be commenced under this Act; and

(b) commencing and conducting proceedings under this Act.

**(3)** The Manager may enter into information-sharing agreements that are reasonably required by the Manager in order to exercise the Manager's powers or perform the Manager's functions and duties under this Act with the following:

(a) the government of Canada, a province of Canada or another jurisdiction in or outside of Canada;

(b) a public body; or

(c) a law enforcement agency.

**(4)** For the purpose of exercising the Manager's powers or to perform the Manager's functions and duties under this Act, the Manager is entitled to information

(a) in the custody or control of a public body or law enforcement agency; and

(b) from any other source about the ownership of property or the whole or the portion of the interest in property in respect of which an application under this Act may be made.

**(5)** A person or public body that has custody or control of information to which the Manager is entitled under subsection (4) must, on request, disclose that information to the Manager and give the Manager a copy of the document or record in which the information is contained, if applicable.

**(6)** This Section applies notwithstanding any other enactment but is subject to a claim of privilege based on a solicitor-client relationship.

**(7)** The Manager may disclose information obtained under this Section to a person, court, tribunal, government department, government agency, local government body or law enforcement agency. 2007, c. 27, s. 22.

**Delegation by Manager**

**23 (1)** The Manager may delegate any responsibility or power under this Act to a person or class of persons.

**(2)** The delegation under subsection (1) must be in writing and may include any terms or conditions the Manager considers advisable. 2007, c. 27, s. 23.

**Notices respecting real and personal property**

**24 (1)** After commencing proceedings under Section 5 that relate to real property or the whole or a portion of an interest in property that is real property, the Manager may file, in the prescribed manner in the registry of deeds, the prescribed form of notice setting out that the proceedings commenced may affect the real property or the whole or a portion of an interest in the property that is the real property referred to in the notice.

**(2)** After commencing proceedings under Section 5 that relate to personal property or the whole or a portion of an interest in property that is personal property, the Manager may register, in the prescribed manner in the personal property registry, the prescribed form of notice setting out that the proceedings commenced may affect the personal property or the whole or a portion of an interest in the property that is the personal property referred to in the notice.

**(3)** The Manager may amend, extend or cancel a notice referred to in subsection (1) or (2) by filing or registering, in the same manner as the notice was filed or registered, the amendment, extension or cancellation in the registry of deeds or the personal property registry, as applicable. 2007, c. 27, s. 24.

**Unlawful possession**

**25** For the purpose of a proceeding under this Act, a person may not claim to have an interest in property if, under the law of Canada or the Province, it is unlawful for that person to possess the property. 2007, c. 27, s. 25.

**Forfeited property free from other interests**

**26** Where property or the whole or a portion of an interest in property is forfeited under this Act, the Crown in right of the Province does not, as a result of the forfeiture, assume responsibility for any covenants, debts or other obligations under an encumbrance, a lien or another security interest to which the property or the whole or the portion of the interest in property is subject. 2007, c. 27, s. 26.

**Limitation period**

**27** The time limit for commencing an application under this Act is 10 years from the date on which the unlawful activity occurred. 2007, c. 27, s. 27.

**Proceedings under Act**

**28** **(1)** All proceedings under this Act are *in rem* and not *in personam*.

**(2)** Subsection (1) applies even though there are parties to the proceedings.

**(3)** Except as otherwise provided in this Act or the regulations, the *Civil Procedure Rules* apply to applications under this Act.

**(4)** The *Civil Procedure Rules* apply with necessary modifications to the court's jurisdiction to make an order in respect of any party or other person in any proceeding as if the proceeding were *in personam* and such party or person were a named party in the proceeding. 2007, c. 27, s. 28.

**Regulations**

**29** **(1)** The Governor in Council may make regulations

(a) governing the giving of notice of proceedings under this Act, including service of notice and deemed service of notice and setting out the persons or classes of persons who are to be notified;

(b) respecting the registration under the *Personal Property Security Act* of a notice under subsection 24(2) of this Act and the legal effect of that registration;

(c) respecting the disposition of

(i) a property forfeited or a property in which an interest in property or a portion of an interest in property is forfeited, or

(ii) an interest in property or a portion of an interest in property that is forfeited;

(d) respecting the forfeiture account and payments from that account;

(e) prescribing fees that are to be paid under this Act;

(f) prescribing forms for the purpose of this Act;

(g) establishing one or more methods or formulas for determining the interest or portion of an interest in property that is

equivalent in value for the purpose of the definition of "proceeds of unlawful activity";

(h) defining any word or expression used but not defined in this Act;

(i) respecting any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2007, c. 27, s. 29.

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CHAPTER C-26

# An Act Respecting the Civil Service and the Public Service Commission

**Table of Contents**

(The table of contents is not part of the statute)

**Short title**

**1** This Act may be cited as the *Civil Service Act*. R.S., c. 70, s. 1.

**Interpretation**

**2** In this Act,

"Civil Service" means the positions in the public service of the Province to which appointments may be made by the Commission and such other positions as may be designated as positions in the Civil Service by the Governor in Council;

"collective agreement" means a collective agreement as defined in the *Civil Service Collective Bargaining Act* or the *Highway Workers Collective Bargaining Act*;

"Commission" means the Public Service Commission;

"Commissioner" means the Public Service Commissioner;

"deputy head" means the deputy of the member of the Executive Council presiding over a department and all others whom the Governor in Council designates as having the status of deputy head;

"employee" means a person appointed to the Civil Service;

"head" means the member of the Executive Council presiding over a department;

"Minister" means the member of the Executive Council to whom the Commissioner reports. R.S., c. 70, s. 2; 1993, c. 38, s. 23; 2001, c. 4, ss. 2, 57; 2015, c. 14, s. 1.

**Application of Act**

**3** This Act applies to all employees whether appointed before or after March 25, 1981. R.S., c. 70, s. 3.

**Oath of office**

**4** The Commissioner, before entering upon the duties of the office, shall take and subscribe before the Attorney General or the Clerk of the Executive Council the oath in the Schedule. R.S., c. 70, s. 5; 1993, c. 38, s. 23; 2001, c. 4, s. 57; 2015, c. 14, s. 2.

**Duties of Commission**

**5** It is the duty of the Commission to

(a) administer this Act and the regulations;

(b) consult with, advise and assist departments in the conduct of departmental human resource activities;

(c) provide, upon the request of a department, the Treasury and Policy Board or the Minister, management advisory services in such areas as human resources and succession planning and organization studies or proposed reorganization of a department or departments;

(d) provide, assist in or co-ordinate staff training and development programs throughout the Civil Service;

(e) evaluate and classify each position in the Civil Service and determine the qualifications therefor;

(f) recruit qualified persons for the Civil Service and establish lists of persons eligible for appointment;

(g) assign and appoint persons to positions in the Civil Service and specify the status and the salary payable upon appointment;

(h) act as bargaining agent and bargain pursuant to the provisions of the *Civil Service Collective Bargaining Act* and the *Highway Workers Collective Bargaining Act*;

(i) engage competent persons to assist the Commission in the performance of its duties;

(j) present annually through the Minister to the House of Assembly a report upon the performance and operation of the Commission for the preceding fiscal year;

(k) keep and make such records as considered necessary for the proper administration of this Act or as directed by the Minister and prescribe the use of such forms as may be required for carrying out this Act and the regulations;

(l) administer and interpret collective agreements;

(m) develop human-resource management policies, programs, procedures, standards and practices for the Civil Service;

(n) perform such other duties as are assigned to the Commission by the Governor in Council. R.S., c. 70, s. 6; 1993, c. 38, ss. 22, 23; 2001, c. 4, ss. 3, 57; 2015, c. 14, s. 3.

**Salary ranges and benefits and work conditions**

**6 (1)** It is the duty of the Commission, subject to the approval of the Governor in Council, to determine

(a) salary ranges for all classifications; and

(b) the benefits and working conditions applicable to employees.

**(2)** Nothing in subsection (1) limits or is deemed to limit the authority of the Commission contained in the *Civil Service Collective Bargaining Act*. R.S., c. 70, s. 7; 2001, c. 4, s. 57.

**Delegation by Commission**

**7** The Commission may delegate in writing some of its duties and powers for such period as it may determine to a deputy head or employee, whereupon the duties and powers may be fully and effectively performed and exercised as if given to the deputy head or employee by this Act. R.S., c. 70, s. 8; 1993, c. 38, s. 23; 2001, c. 4, ss. 4, 57.

**Duty to provide access**

**8** All persons in the public service shall give the Commission such access to their respective departments and offices and such facilities, assistance and

information as the Commission may require for the performance of its duties. R.S., c. 70, s. 9; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Deputy head**

**9** **(1)** The Governor in Council may designate any person in the public service as being a deputy head within the meaning of this Act.

**(2)** Subject to the administration, supervision, direction and control of the head of the department, the deputy head of each department shall

(a) oversee and direct the attendance, conduct and work performance of the employees in the department; and

(b) organize the department in such manner as the deputy head considers best for the efficient administration of the department, its functions and duties. R.S., c. 70, s. 10; 2015, c. 14, s. 4.

**Delegation by deputy head**

**10** **(1)** Subject to subsection (2), the deputy head may delegate in writing any of the deputy head's powers and duties under this Act to any employee in the deputy head's department, including any of the duties and powers delegated to the deputy head by the Commission pursuant to Section 7.

**(2)** The deputy head may not delegate the deputy head's authority to dismiss an employee from employment. 2015, c. 14, s. 5.

**Absence of deputy head or vacancy**

**11** Where a deputy head is absent or where there is a vacancy in the office, the deputy head's powers and duties shall be exercised and performed by such employee as may be designated by the head of the department. R.S., c. 70, s. 12; 2015, c. 14, s. 6.

**Tabling of reasons for removal of deputy head**

**12** Whenever a deputy head is removed from office, a statement of the reasons must be tabled in the Assembly by the head of the department within the first 20 days of the next following session. R.S., c. 70, s. 13.

**Appointments and promotions**

**13** **(1)** Appointments and promotions to fill vacancies in the Civil Service must

(a) be made on the basis of merit; and

(b) be based on a competition or another selection process designed to establish the merit of candidates.

**(2)** The factors to be considered in determining merit may include education, skills, knowledge, experience, years of employment in the public service, personal attributes and any other matter considered by the Commission to be necessary or desirable having regard to the nature of the duties to be performed. 2015, c. 14, s. 7.

**Positions covered by collective agreement**

**14** Notwithstanding Section 13, appointments and promotions to fill vacancies in the Civil Service in positions that are covered by a collective agreement must be made in accordance with the collective agreement. 2001, c. 4, s. 5.

**Publicity respecting vacancy**

**15** The Commission shall determine the manner and extent to which vacancies in the Civil Service are given publicity. R.S., c. 70, s. 16; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Filling of vacancy**

**16** Vacancies must be filled by promotion or transfer in so far as is consistent with the best interests of the Civil Service. R.S., c. 70, s. 17.

**Appointment or promotion from eligibility list**

**17** The Commission shall make appointments and promotions to positions in the Civil Service from the list of eligible candidates meriting appointment or promotion. R.S., c. 70, s. 18; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Human Rights Act**

**18** Appointments to the Civil Service must be made in accordance with the *Human Rights Act*. 2015, c. 14, s. 8.

**Preference for military service**

**19 (1)** In this Section, "honourably released" means honourably released within the meaning of subparagraph 15.01(4)(d) of the *King's Regulations and Orders for the Canadian Forces* under the *National Defence Act* (Canada).

**(2)** Persons who are otherwise eligible for appointment to an excluded position in the Civil Service and who have qualifications equal to the qualifications of other applicants for a position and who have served in the Canadian Armed Forces and who were honourably released must be given preference for an appointment to the Civil Service. 2014, c. 44.

**False statement**

**20** Any person who makes a false statement of any material fact or omits to state a material fact in the person's application

(a) is not eligible for appointment in the Civil Service; or

(b) is, where appointed to a position in the Civil Service, liable to dismissal. R.S., c. 70, s. 24; 2015, c. 14, s. 10.

**Layoff or termination of services**

**21** Notwithstanding any other enactment, when the services of an employee are no longer required because of shortage of work or funds or because of the discontinuance of a function or program, the deputy head, in accordance with the regulations or in accordance with the terms of a collective agreement, may lay off the employee or terminate the employee's services. R.S., c. 70, s. 25; 2015, c. 14, s. 11.

**Suspension**

**22** A deputy head or any official authorized by the deputy head may for cause suspend an employee in the department and may reduce, extend or revoke the suspension. R.S., c. 70, s. 26; 2015, c. 14, s. 12.

**Dismissal**

**23** A deputy head may for cause dismiss an employee in the department from employment in accordance with the regulations or the terms of a collective agreement. R.S., c. 70, s. 27; 2015, c. 14, s. 13.

**Report**

**24** A deputy head or official who suspends an employee or who reduces, extends or revokes a suspension and a deputy head who dismisses an employee shall immediately report in writing the action with the reason therefor to the employee and shall forward a copy of the report to the head of the department and to the Commission. R.S., c. 70, s. 28; 1993, c. 38, s. 23; 2001, c. 4, s. 57; 2015, c. 14, s. 14.

**Classification of positions**

**25** The Commission after consultation with the deputy head or deputy heads shall classify the positions in the Civil Service according to the character and importance of the work and the duties and responsibilities of the position. R.S., c. 70, s. 29; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Variation of classes**

**26** The Commission may as it considers necessary establish, divide, combine, alter or abolish classes. R.S., c. 70, s. 30; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Effect of statement of duties**

**27** Where a statement of duties is made in defining a class, that statement does not affect the powers or duties of any employee under any Act or the power of a head or deputy head to control and direct the work of any employee under the head or deputy head. R.S., c. 70, s. 31; 2015, c. 14, s. 15.

**Recommendation of rates of compensation**

**28** Except where rates of compensation are established through collective bargaining, the Commission shall, as it considers necessary, recommend rates of compensation for classes that are established pursuant to this Act and may recommend changes in the rates of compensation for classes. R.S., c. 70, s. 32; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Approval of rates of compensation**

**29** Except where rates of compensation are established through collective bargaining, the rates of compensation recommended by the Commission become operative only upon their approval by the Governor in Council. R.S., c. 70, s. 33; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Rate of compensation of employee**

**30 (1)** The rate of compensation of a person upon appointment to a position in the Civil Service must be in accordance with the regulations.

**(2)** The rate of compensation of an employee upon promotion or demotion to a position in a new classification must be in accordance with the regulations or the terms of a collective agreement. R.S., c. 70, s. 34.

**Duty to act in impartial manner**

**31 (1)** Except as provided in this Act, a deputy head and a person appointed to the Civil Service shall not undertake activities, assume responsibilities or make public statements of a politically partisan nature or kind, in respect of a candidate at a federal or Provincial election or a federal or Provincial political party, that could give rise to the perception that the deputy head or the person appointed to the Civil Service may not be able to perform duties as a public servant in a politically impartial manner and, without restricting the generality of the foregoing, shall not

(a) be a candidate at a federal or Provincial election, whether publicly declared as such or officially nominated; or

(b) contribute or receive or in any way deal with money for a candidate at a federal or Provincial election or for a federal or Provincial political party.

**(2)** A deputy head or person appointed to the Civil Service who violates subsection (1) is subject to disciplinary action including dismissal. R.S., c. 70, s. 35.

**Interpretation of Sections 33 to 36**

**32** In Sections 33 to 36,

"candidate" means a person who has been officially nominated as a candidate, or who is declared to be a candidate by that person or by others with that person's consent, in a federal or Provincial election;

"employee" means a deputy head or person appointed to the Civil Service who is not a politically restricted employee;

"political party" means an organization that endorses candidates in a federal or Provincial election;

"politically restricted employee" means a deputy head or a person employed in the Civil Service in a managerial or confidential capacity as described in subsection 6(2) of the *Civil Service Collective Bargaining Act*. R.S., c. 70, s. 36.

**Right to vote**

**33** No deputy head or person appointed to the Civil Service is prevented from voting at any federal or Provincial election if pursuant to the laws governing the election that deputy head or person has a right to vote. R.S., c. 70, s. 37.

**Partisan activities**

**34 (1)** An employee who is not a politically restricted employee may

(a) be a candidate in a federal or Provincial election;

(b) engage in partisan work in connection with a federal or Provincial election; and

(c) contribute or deal with money for a candidate or political party,

but the employee, except during a leave of absence to be a candidate, shall not

(d) solicit funds for or on behalf of a candidate or political party;

(e) publish or broadcast media statements of a partisan character that would in any way support or oppose a candidate or political party;

(f) draft or speak, in a partisan context, on policies directly associated with the employee's work, or in any way to support or oppose a candidate or political party;

(g) canvass as or on behalf of a candidate or political party during working hours;

(h) display, exhibit, post, supply, distribute, wear or carry, at the employee's workplace or during the employee's working hours, anything that supports or opposes a candidate or political party, or distinguishes the employee as a supporter of or a person opposing a candidate or political party.

**(2)** An employee who violates a prohibition in subsection (1) is subject to disciplinary action including dismissal. R.S., c. 70, s. 38.

**Soliciting contributions**

**35 (1)** No person in a position of authority or influence with respect to the employment of a deputy head or a person appointed to the Civil Service shall knowingly

(a) solicit a contribution from the deputy head or person appointed to the Civil Service for a candidate or political party;

(b) coerce or attempt to coerce the deputy head or person appointed to the Civil Service to contribute funds to a candidate or political party; or

(c) coerce or attempt to coerce the deputy head or person appointed to the Civil Service to solicit funds on behalf of a candidate or political party.

**(2)** A deputy head or person appointed to the Civil Service who violates this Section is subject to disciplinary action including dismissal. R.S., c. 70, s. 39.

**Leave of absence**

**36 (1)** An employee who becomes a candidate shall take an unpaid leave of absence beginning not later than

(a) the date the writ of election is issued if the employee is then a candidate; or

(b) as soon after the writ of election is issued as the employee becomes a candidate.

**(2)** An employee who

(a) is required to take a leave of absence pursuant to subsection (1); or

(b) is a candidate and wishes to take a leave of absence beginning sooner than the required leave of absence,

shall apply to the Commission and to the deputy head of the department in which the employee is employed and the leave of absence must be granted.

**(3)** Where the employee withdraws as a candidate and, before the election, notifies the Commission and the deputy head of the department of the employee's intention to return to work, the employee is entitled to return, to the position the employee left, two weeks after the notice has been given to the Commission and the deputy head of the department, unless the Commission, the deputy head of the department and the employee all agree to the employee returning at another time.

**(4)** An employee's leave of absence to be a candidate terminates on the day the successful candidate in the election is declared elected unless, on or before the day immediately after ordinary polling day, the employee notifies the Commission and the deputy head of the department that the employee wishes the leave of absence to be extended for such number of days, not exceeding 90, as the employee states in the notice and in such case the leave of absence terminates as stated in the notice.

**(5)** An employee on a leave of absence who is an unsuccessful candidate is entitled to return to the position that the employee left.

**(6)** The leave of absence of an employee who is a successful candidate must be extended from ordinary polling day of the election at which the employee is elected until two weeks after

(a) the employee resigns from the position to which the employee was elected if that resignation occurs before the next election;

(b) where the Assembly is dissolved for the next election, the date the employee notifies the Commission and the deputy head of the department that the employee does not intend to be a candidate at that next election;

(c) the date nominations close for the next election if the employee has not been officially nominated as a candidate; or

(d) declaration day for the next election when it is official that the employee has not been re-elected,

whichever is latest.

**(7)** Where an employee is elected for the second time, the leave of absence for the employee to be a candidate terminates on the day the employee is declared elected for the second time and the employee ceases to be an employee for all purposes, including entitlement to all employee benefits, as of that day.

**(8)** An employee who is not re-elected at the second election during the leave of absence may return to the position that employee left or, where that

position has been filled or eliminated, to an equivalent position when the leave of absence expires pursuant to subsection (6).

**(9)** During an employee's leave of absence to be a candidate, the employee shall not be paid but the employee, upon application to the Commission at any time before the leave of absence, is entitled to pension credit for service as if the employee were not on a leave of absence and to medical and health benefits, long-term disability coverage and life insurance coverage, or any one or more of them, if the employee pays both the employee's and the employer's share of the cost. R.S., c. 70, s. 40; 1993, c. 38, s. 23; 2001, c. 4, s. 57; 2015, c. 14, s. 16.

**Municipal office**

**37** An employee, other than a deputy head or employee in a position or classification designated in the regulations, may be a candidate for election to any elective municipal office or the Conseil scolaire acadien provincial, or actively work in support of a candidate for such office if

(a) the candidacy, service or activity does not interfere with the performance of the employee's duties; or

(b) the candidacy, service or activity does not conflict with the interests of the Crown in right of the Province. R.S., c. 70, s. 41; 2018, c. 1, Sch. A, s. 103.

**Application of Act and regulations**

**38** Notwithstanding any other Act, the Governor in Council may order that this Act and the regulations, except with respect to tenure of office, shall apply in whole or in part to any employee or class of employees in the public service and to the employees of any board, commission or agency of the Crown in right of the Province. R.S., c. 70, s. 42.

**Positions excluded from Act**

**39 (1)** In any case where the Commission considers that it is not practicable or not in the public interest that this Act shall apply to any position or positions, the Commission, with the approval of the Governor in Council, may exclude such position or positions in whole or in part from the operation of the Act and make such special regulations as it considers advisable respecting such position or positions.

**(2)** The Commission shall make an annual report to the Governor in Council who shall cause such report to be presented to the Assembly, within the first 20 days of the next following session, setting forth the positions excluded under this Section in whole or in part from the operation of the Act and the regulations. R.S., c. 70, s. 43; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Improper influence prohibited**

**40 (1)** No person shall directly or indirectly attempt to influence improperly the Commission or any employee of the Commission with respect to the appointment of the person or any other person to the Civil Service or with respect to the promotion or change in salary of the person or any other employee.

**(2)** Every person who violates this Section is liable on summary conviction to a penalty not exceeding $500 and in default of payment to imprisonment for a term not exceeding 30 days.

**(3)** No prosecution under this Section may be instituted without the written consent of the Attorney General. R.S., c. 70, s. 44; 1993, c. 38, s. 23; 2001, c. 4, s. 57; 2015, c. 14, s. 17.

**Defence by Province and indemnification**

**41 (1)** The Crown in right of the Province shall defend, negotiate or settle a claim or charge made against a person appointed by the Governor in Council or a member of the Executive Council to any agency or board, including the board of directors of a corporation or commission, and indemnify the person from personal liability, if the selection of the person was at the sole discretion of the Governor in Council or a member of the Executive Council and the Governor in Council or a member of the Executive Council is satisfied the claim arises out of the person's activities in relation to the appointment and is not based on fraud or criminal activity.

**(2)** Where the Crown in right of the Province defends, negotiates or settles a claim or charge pursuant to subsection (1), the Crown has control of the conduct of the matter. 2002, c. 5, s. 4.

**Regulations**

**42 (1)** The Commission, with the approval of the Governor in Council, may make regulations relating to employment in the Civil Service, and persons employed by a deputy head, respecting

(a) methods of evaluating and classifying positions;

(b) an appeal procedure in respect of classifications;

(c) the standards and procedures to be followed in recruitment, selection, assignment, appointment and promotion;

(d) the status or change of status of a person on appointment to or promotion within the Civil Service;

(e) the nature and extent of examination of a person or persons seeking appointment to the Civil Service;

(f) group benefit plans;

(g) the conduct of civil servants;

(h) the suspension, removal from employment, demotion or otherwise of civil servants;

(i) payments on death or retirement due to age or mental or physical disability;

(j) arrangements, conditions and procedures for leave of absence for staff training and development;

(k) conditions and procedures for release from employment, layoff and subsequent reappointment;

(l) hours of work;

(m) the definition of overtime work and providing for compensation therefor;

(n) procedures for suspension or dismissal for cause;

(o) procedures for transfer or relocation of employees;

(p) holidays, vacation, sick leave, special leave and other absences;

(q) the use of forms for this Act or the regulations;

(r) appeal procedures for employees not covered by terms of a collective agreement if the employee is disciplined for cause pursuant to Sections 22 and 23;

(s) the designation of positions or classifications of employees for the purpose of Section 37;

(t) any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Commission of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act.* R.S., c. 70, s. 45; 1993, c. 38, s. 23; 2001, c. 4, s. 57; 2015, c. 14, s. 18.

**Conflict with collective agreement**

**43** A provision in a collective agreement that conflicts with a regulation affecting employees of a bargaining unit covered by a collective agreement prevails over the regulation. R.S., c. 70, s. 46.

**Designation of member of Executive Council**

**44** The Governor in Council shall designate the member of the Executive Council to whom the Commissioner reports. R.S., c. 70, s. 47; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

**Substituted reference**

**45** A reference in any Act of the Legislature or in any rule, order, regulation, by-law, ordinance or in any document or proceeding whatsoever to the Commissioner of the Civil Service Commission, whether such reference is by official name or otherwise, is to be, as regards any subsequent transaction, matter or thing relating to the affairs or matters or any of them assigned by this Act to the Commissioner, held and construed to be a reference to the Commissioner. R.S., c. 70, s. 48; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

SCHEDULE

OATH OF OFFICE AND SECRECY

I, *A.B.*, Public Service Commissioner, do swear that I will faithfully and honestly fulfill the duties that devolve upon me by reason of my office and that I will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such office. So help me God.

R.S., c. 70, Sch.; 1993, c. 38, s. 23; 2001, c. 4, s. 57.

CHAPTER C-27

# An Act Respecting Collective Bargaining in the Civil Service

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Civil Service Collective Bargaining Act*.
R.S., c. 71, s. 1.

**Interpretation**

**2** In this Act,

"adjudication" means a procedure to determine a rights dispute;

"arbitration" means a procedure to determine an interest dispute;

"arbitration board" means a one-person or three-person board established pursuant to this Act for the purpose of determining an interest dispute;

"bargaining unit" means those bargaining units listed in the Schedule, and includes any bargaining units established pursuant to Section 7;

"Board" means the Labour Board established by the *Labour Board Act*;

"collective agreement" means an agreement in writing between the Employer and the Union entered into pursuant to this Act;

"department" means any department, office, agency, board, commission, corporation or other entity where persons are employed pursuant to the *Civil Service Act*;

"employee" means a person appointed pursuant to the *Civil Service Act* and who is not excluded from collective bargaining as provided by Section 6;

"Employer" means the Crown in right of the Province through the agency of the Civil Service Commission;

"interest dispute" means a dispute to which Sections 8 to 27 apply and is a dispute arising between the employer and the employee as to the content of a collective agreement;

"lockout" includes the closing of a place of employment, a suspension of work or a refusal by the Civil Service Commission on behalf of the Government of the Province to continue to employ a number of its employees done to compel the employees, or to aid another employer to compel its employees, to agree to terms or conditions of employment;

"Minister", for the purpose of Sections 14, 15, 17 to 21, 23, 26, 29, 30 and 33, means the Minister of Labour Relations;

"rights dispute" means a dispute to which Sections 28 to 32 apply and is a dispute arising during the life of a collective agreement respecting the application, interpretation or alleged violation of the agreement;

"strike" includes a cessation of work or a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding for the purpose of compelling the Civil Service Commission to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

"student" means a person enrolled in and returning to a course of studies at an educational institution;

"Union" means the Nova Scotia Government Employees Union. R.S., c. 71, s. 2; 2007, c. 33, s. 1; 2010, c. 37, s. 26.

**Labour Board**

**3 (1)** The Board is constituted and shall act as a panel of the Board consisting of the Chair or a vice-chair, as chair of the panel, and two other members of the Board equally representative of employees and employers.

**(2)** Notwithstanding subsection (1), the Chair or a vice-chair of the Board may sit alone to hear a matter with respect to

(a) an uncontested application or question; or

(b) a complaint under subsection 85(3) of the *Trade Union Act*,

and, when doing so, may exercise all the powers of the Board. 2010, c. 37, s. 27.

**Orders and directives**

**4 (1)** The Board may, for the purpose of this Act, make or issue such orders, notices, directives, declarations or other decisions as it considers necessary, with or without conditions.

**(2)** Where any order, directive or decision is made by the Board pursuant to this Act and such order, directive or decision is not complied with, the Board may, on the request of the Union, an employee or the employer, file a copy of the order, directive or decision with a prothonotary, and upon such filing, the order, directive or decision becomes a decision of the Supreme Court of Nova Scotia and is enforceable as such. R.S., c. 71, s. 7.

**Powers of Board**

**5 (1)** The Board is empowered to decide for the purposes of this Act whether

(a) a person is an employee;

(b) the parties to a dispute have settled the terms and conditions to be included in a collective agreement;

(c) a collective agreement has been entered into;

(d) a person is bound by a collective agreement;

(e) a collective agreement is in effect;

(f) a person practises the person's profession as a condition of employment;

(g) there has been every reasonable effort to conclude a collective agreement;

(h) there has been a violation of Section 36 or 37,

and the Board's decision is final and binding.

**(2)** Where a question arises as to whether a person is or is not to be included in a bargaining unit or any other unit for collective bargaining that cannot be settled by the persons concerned, the question must be referred to the Board and its decision is final and binding. R.S., c. 71, s. 10.

**Restriction of term "employee"**

**6 (1)** Notwithstanding the definition of "employee" in Section 2, no person is an employee for the purpose of this Act who is

(a) appointed by Governor in Council;

(b) locally engaged outside the Province;

(c) employed on a casual basis unless employed continuously for more than 10 weeks or employed in the same department for more than a total of 10 weeks in a 12-month period;

(d) employed on a seasonal basis unless employed for more than a total of 10 weeks in a 12-month period;

(e) a student unless employed continuously in a bargaining-unit position for more than 10 weeks or employed in a bargaining-unit position in the same department for more than a total of 10 weeks in a 12-month period; or

(f) employed in a managerial or confidential capacity.

**(2)** For the purpose of this Act, a person is employed in a managerial or confidential capacity who

(a) has or exercises managerial duties and responsibilities in relation to the formulation, development and administration of policies and programs;

(b) spends a significant portion of the person's time in the supervision of employees;

(c) is primarily engaged in the administration of personnel policies or personnel programs;

(d) is required by reason of the person's duties to deal formally on behalf of the employer with a grievance presented in accordance with the grievance process;

(e) is employed in a position confidential to the Lieutenant Governor, a minister, the deputy head, chair or chief executive officer of a government board, department, commission or agency, or the Executive Council;

(f) is a person employed in the Civil Service Commission, Department of Economic Development, the Office of the Legislative Counsel or the Office of the Auditor General;

(g) is a member of the medical, dental or legal professions qualified to practise and employed in that capacity;

(h) is employed as an officer under the *Trade Union Act*;

(i) is a person employed in a position confidential to any person described in clause (c), (d) or (e);

(j) is not otherwise described but who, in the opinion of the Board, should not be included in a bargaining unit by reason of the person's duties and responsibilities to the employer. R.S., c. 71, s. 11; 2007, c. 33, s. 2; 2015, c. 6, s. 2.

**Determination of bargaining unit**

**7** **(1)** The Employer and the Union may determine by consultation which employees or classes of employees are in a bargaining unit.

**(2)** Such determination must be made by the employer and the Union within 30 days immediately following any notice given by the Employer to the Union or the Union to the employer for this purpose.

**(3)** Where the Union and the Employer are not able to agree upon the employees or classes of employees who are in a bargaining unit within 30 days from the date a notice is given pursuant to subsection (2), then such determination must be made by the Board.

**(4)** The Schedule to this Act may be added to, varied or restricted as agreed upon by the Employer and the Union where they are able to agree or as directed by the Board and evidenced by an order of the Governor in Council. R.S., c. 71, s. 12.

**Collective agreement**

**8** **(1)** The Employer and the Union may enter into negotiations to effect collective agreements on behalf of employees in a bargaining unit.

**(2)** Notwithstanding subsection (1), where there is a conflict between this Act and the *Civil Service Act*, the *Civil Service Act* prevails unless the conflict is between this Act and Sections 22 to 24, Sections 28 to 30 or clause 42(1)(d), (f), (h), (i), (k), (l), (m), (n) or (p) of the *Civil Service Act*, in which case the provisions of this Act prevail. R.S., c. 71, s. 13; 2010, c. 37, s. 28.

**Collective agreement binding**

**9** A collective agreement entered into by the Employer and the Union is, subject to and for the purpose of this Act, binding upon

(a) the Employer; and

(b) the Union and every employee represented by the Union on whose behalf the agreement has been entered into. R.S., c. 71, s. 14.

**Implementation**

**10** Subject to subsection 27(2), the provisions of a collective agreement must be implemented by the Employer and the Union,

(a) where a period within which the collective agreement is to be implemented is specified in the collective agreement, within that period; and

(b) where no period for the implementation is so specified, within a period of 90 days from the date of its execution. R.S., c. 71, s. 15.

**Effective date and term of agreement**

**11** **(1)** A collective agreement has effect in respect of the employees covered by it on and from

(a) where an effective date is specified, that day; and

(b) where no effective date is specified, the first day of the first full bi-weekly pay period next following the date on which the agreement is executed.

**(2)** The Employer and the Union may not enter into a collective agreement having a specified term of less than one year and may not amend an agreement so as to produce a term of less than one year.

**(3)** Where a collective agreement contains no provision as to its term it is deemed to be for a term of one year from the day on and from which it has effect pursuant to subsection (1). R.S., c. 71, s. 16.

**New agreement**

**12** Where the Employer and the Union are parties to a collective agreement, either one of them may, within a period of three months next preceding the date of the expiry of the term of or preceding termination of the agreement, by notice in writing require the other party to the agreement to commence collective bargaining. R.S., c. 71, s. 17.

**Notice to commence bargaining**

**13** Where a notice to commence collective bargaining has been given, either under this Act or in accordance with a collective agreement that provides for a revision of a provision of the agreement, the employer and the Union shall, without delay, and in any case within 20 clear days after notice has been given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude and sign a collective agreement. R.S., c. 71, s. 18.

**Conciliation officer**

**14** Where a notice to commence collective bargaining has been given and

(a) collective bargaining has not commenced within the time prescribed by this Act;

(b) where collective bargaining has commenced, either party thereto requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and the request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining; or

(c) in any other case in which, in the opinion of the Minister, it is advisable to do so,

the Minister may instruct a conciliation officer to confer with the Employer and the Union. R.S., c. 71, s. 19; 2010, c. 37, s. 29.

**Report to Minister**

**15 (1)** Where a conciliation officer has been instructed to confer with the Employer and the Union engaged in collective bargaining or in any dispute, the conciliation officer shall, within 14 days after being so instructed or within any longer period that the Minister may allow, make a report to the Minister setting out

(a) the matters, if any, upon which the Employer and the Union have agreed;

(b) the matters, if any, upon which the Employer and the Union cannot agree; and

(c) any other matter that in the conciliation officer's opinion is material or relevant or should be brought to the attention of the Minister.

**(2)** When a conciliation officer has made a report under subsection (1), the conciliation officer shall forthwith advise the Union and the employer to the dispute that the conciliation officer has made a report. R.S., c. 71, s. 20; 2010, c. 37, s. 30.

**Exemption from requirement to give evidence**

**16 (1)** Notwithstanding any other enactment or law, a conciliation officer may not be compelled or required to give in evidence before any court, body or person having authority to receive evidence any information of any kind obtained by the conciliation officer for the purpose of this Act or in the course of the conciliation officer's duties under this Act.

**(2)** Notwithstanding any other enactment or law, an adjudicator, mediator-adjudicator or member of a board of adjudication appointed pursuant to this Act or a collective agreement, whether selected with or without the consent of the parties involved, shall not be compelled or required to give in evidence before any court, body or person having authority to receive evidence, any information of any kind obtained by the adjudicator, mediator-adjudicator or member for the purpose of this Act or in the course of their duties under this Act. R.S., c. 71, s. 21; 2009, c. 29, s. 4.

**Request for arbitration board**

**17 (1)** Where the Employer and the Union have bargained collectively with a view to concluding a collective agreement but have failed to reach agreement, the employer or the bargaining agent, or both, shall refer those terms and conditions of employment that are in dispute to the Board and request that an arbitration board, composed of three persons unless the parties agree to submit the collective agreement to an arbitration board of one person, be established to resolve those terms and conditions.

**(2)** A request by either or both of the parties under subsection (1) must

(a) where it is made by the Employer, be accompanied by a list of the items it claims are in dispute and that the employer wishes to be referred to arbitration at that time;

(b) where it is made by the bargaining agent, be accompanied by a list of the items it claims are in dispute and that the bargaining agent wishes to be referred to arbitration at that time; or

(c) where it is made jointly, be accompanied by a list of the items that each party claims are in dispute and that each wish to be referred to arbitration at that time.

**(3)** Upon receipt of a request by either party under subsection (1), the Board shall, as soon as possible, send a copy of the request and the list of items that are claimed to be in dispute to the other party.

**(4)** The party receiving the copy of the request for the appointment of an arbitration board shall, within 10 days of receipt of the copy, send its list of items it wishes to be referred to arbitration to the Board and send a copy of the list to the other party to the dispute. R.S., c. 71, s. 22; 2010, c. 37, s. 31; 2011, c. 10, s. 2.

**Power to establish arbitration board**

**18 (1)** Where a request for the establishment of an arbitration board is made by either the employer or the bargaining agent, the Board may

(a) where it is satisfied that the parties to the dispute have failed to make reasonable efforts to conclude a collective agreement, direct the parties to continue collective bargaining; or

(b) establish an arbitration board, where it is satisfied that

(i) there are terms and conditions of employment that are in dispute,

(ii) the terms and conditions of employment in dispute can satisfactorily be considered together,

(iii) it is an appropriate time to refer the matter to an arbitration board, and

(iv) the dispute is a proper one to refer to an arbitration board.

**(2)** Where a request for the establishment of an arbitration board is made by the employer and the bargaining agent jointly, the Board may, where it is satisfied with respect to the matters referred to in clause (1)(b), establish an arbitration board. R.S., c. 71, s. 23; 2010, c. 37, s. 32; 2011, c. 10, s. 3.

**Appointment of members of arbitration board**

**19 (1)** Where the Board agrees to establish an arbitration board, it shall notify the parties to the dispute in writing accordingly and require each party, within 10 days, to

(a) where the arbitration board is to be composed of one person, attempt to agree upon a person satisfactory to both parties to be the arbitration board and, where agreement is reached, give the Board the name of the person; or

(b) where the arbitration board is to be composed of three persons, give the Board and the other party the name of a person to act as its nominee on the arbitration board.

**(2)** Where agreement is reached pursuant to clause (1)(a), the person agreed upon is appointed as the arbitration board and is the chair of the arbitration board.

**(3)** The two persons appointed pursuant to clause (1)(b) to act as members of an arbitration board shall appoint a third person to act as a member and

chair of the arbitration board within 10 days of the date the second person is appointed. R.S., c. 71, s. 24; 2010, c. 37, s. 33.

**Failure to appoint**

**20 (1)** Where the parties are unable to agree upon a person to be the arbitration board pursuant to clause 19(1)(a), either or both parties may apply to the Board to appoint a person to be the arbitration board and the Board shall appoint such a person and that person is the chair of the arbitration board.

**(2)** Where the Employer or the bargaining agent fails to appoint a person as a member of an arbitration board pursuant to clause 19(1)(b), the Board shall appoint a person to act as a member on its or their behalf.

**(3)** Where the two persons appointed as members of an arbitration board pursuant to clause 19(1)(b) fail to appoint a person to act as a member and chair of the arbitration board, the Board shall appoint a person to act as a member and chair of the arbitration board on their behalf. R.S., c. 71, s. 25; 2010, c. 37, s. 34.

**Establishment of arbitration board and arbitral items**

**21 (1)** Where a person or persons have been appointed to act as a member of an arbitration board, the Board, by notice in writing to the chair of the arbitration board, shall

(a) establish the member or members as an arbitration board; and

(b) list the items in dispute to be resolved by the arbitration board.

**(2)** An arbitration board remains constituted until it is dissolved by the Board by notice in writing to the chair of the arbitration board.

**(3)** No person may be appointed a member of a board who has any direct pecuniary interest in the matters coming before it or who is acting or has, within a period of six months immediately preceding the date of the person's appointment, acted as a solicitor, counsel or agent of either of the parties.

**(4)** Where a member appointed to a three-person arbitration board under Section 19 or 20 ceases to act by reason of resignation, death or otherwise before the board has completed its work, the party whose point of view the member represented shall, within 10 days of the member so ceasing to act, appoint a replacement and notify in writing the other party and the Board of the name and address of the replacement and, where the party fails to so appoint a replacement or to notify the Board, the Board shall appoint as a replacement such person as the Board considers suitable and the board of arbitration continues to function as if the replacement member were a member of the board from the beginning.

**(5)** Where the chair of an arbitration board is unable to enter on or to carry on the chair's duties so as to enable the board to render a decision within a reasonable time after its establishment, the Board shall appoint a person to act as chair of the arbitration board in the chair's place and the arbitration must begin *de novo*. R.S., c. 71, s. 26; 2010, c. 37, s. 35; 2011, c. 10, s. 4.

**Award**

**22 (1)** As soon as possible after making an inquiry into the items in dispute referred to it, the arbitration board shall make an award and in its award deal with each item in dispute.

**(2)** The award of the arbitration board may be retroactive in whole or in part. R.S., c. 71, s. 27; 2011, c. 10, s. 5.

**Notification of award**

**23 (1)** Upon making an award, the arbitration board shall

(a) file a copy of it with the Board; and

(b) serve a copy of it on the employer and the bargaining agent in person or by registered mail.

**(2)** The Board may in any manner publish an award of an arbitration board. R.S., c. 71, s. 28; 2011, c. 10, s. 6.

**Award binding**

**24 (1)** An award of an arbitration board is binding upon

(a) the bargaining agent and every employee in the unit on whose behalf it was bargaining collectively; and

(b) the employer,

and the Employer and the bargaining agent shall give effect to it.

**(2)** Subject to subsections 26(5) and (6), the terms of an award of an arbitration board relating to entering into, renewing or revising a collective agreement must be included in a collective agreement. R.S., c. 71, s. 29; 2011, c. 10, s. 7.

**Arbitration procedure**

**25 (1)** Arbitration must be conducted by an arbitration board appointed pursuant to this Act, which board shall determine its own procedure but shall give full opportunity to the Employer and the Union to present evidence and make submissions to it.

**(2)** An arbitration board established pursuant to this Act has, in relation to any proceedings before the arbitration board, the powers conferred on the Board, in relation to any proceedings before the Board, by the *Labour Board Act*, and the parties to the proceedings may

(a) appear and be heard and be represented by counsel; and

(b) call witnesses and examine or cross-examine all witnesses. R.S., c. 71, s. 30; 2010, c. 37, s. 36.

**Jurisdiction and remuneration of board**

**26 (1)** The arbitration board has the jurisdiction to determine and render a decision only in respect of those matters referred to it by the Board.

**(2)** In the conduct of proceedings before it and in rendering a decision, the arbitration board may consider any factor that to it appears to be relevant to the matter in dispute, including

(a) the needs of the Province and its agencies for qualified employees;

(b) where the employment is comparable or similar employment to that found in both the public and private sectors in the Province, the conditions of employment in the public and private sectors in the Province;

(c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications in the civil service;

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, work performed, the responsibility assumed and nature of services rendered; and

(e) the interests of the public.

**(3)** Where a one-person arbitration board has been appointed pursuant to this Act, the decision of the chair of the arbitration board is the decision of the arbitration board and, where a three-person arbitration board has been appointed pursuant to this Act, the decision of the majority of the members of the arbitration board is the decision of the board but, where there is no majority, the decision of the chair of the arbitration board is the decision of the board.

**(4)** Every award of the arbitration board must be signed by the chair of the arbitration board.

**(5)** The Board may, upon application by either party to an award of an arbitration board, within 10 days after the release of the award, give the parties an opportunity to make representations thereon to the Board and amend the award if it is shown to the satisfaction of the Board that the arbitration board has failed to deal with any matter in dispute referred to the arbitration board or that an error is apparent on the face of the award.

**(6)** Notwithstanding that an arbitration board has rendered an award, such award is of no force and effect if the employer and the Union enter into a collective agreement concerning the subject-matter of the award within seven days from the time the award was rendered.

**(7)** The cost of the arbitration board must be apportioned as follows:

(a) where a three-person arbitration board has been established,

(i) the Union shall pay the remuneration and expenses of the member appointed by it pursuant to Section 19,

(ii) the Employer shall pay the remuneration and expenses of the member appointed by it pursuant to Section 19, and

(iii) the Employer and the Union shall share equally the remuneration and expenses of the chair of the arbitration board appointed pursuant to Section 19 or 20, such remuneration and expenses to be determined by the Board; or

(b) where a one-person arbitration board has been established, the Employer and the Union shall each pay one half of the remuneration and expenses of the arbitration board. R.S., c. 71, s. 31; 2010, c. 37, s. 37; 2011, c. 10, s. 8.

**Restriction on collective agreement and award**

**27 (1)** No collective agreement or award of an arbitration board may contain any provision that would require, either directly or indirectly, for its implementation the enactment or amendment of legislation.

**(2)** The Governor in Council and the Civil Service Commission are not bound to implement any award of an arbitration board that would result in any department exceeding its appropriation, provided that the Minister of Finance and Treasury Board will include in the estimates for the next ending fiscal year an amount sufficient to implement the award retroactive to the date on which the award was to be effective. R.S., c. 71, s. 32; 2011, c. 10, s. 9.

**Final settlement provision and grievance referred to adjudication**

**28 (1)** Every collective agreement must contain a provision for final settlement without stoppage of work, by adjudication or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.

**(2)** Where a collective agreement does not contain a provision as required by this Section, it is deemed to contain the following provision:

> Where a difference arises between the parties relating to the interpretation or application of this agreement, including any question as to whether or not a matter is adjudicable within the meaning of subsection 28(4) of the *Civil Service Collective Bargaining Act*, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to adjudication.

**(3)** Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement.

**(4)** Where a collective agreement provides for a grievance procedure and the Employer, the Union or an employee entitled under the collective agreement to present a grievance has presented a grievance up to and including the final level in the grievance process with respect to

(a) the interpretation or application in respect of the Employer, the Union or an employee of a provision of a collective agreement; or

(b) disciplinary action resulting in discharge, suspension or a financial penalty,

and the grievance has not been dealt with to the satisfaction of the employer, the Union or an employee, then the Employer, the Union or an employee affected may, subject to subsection (5), refer the grievance to adjudication.

**(5)** Where a grievance within the meaning of subsection (4) is presented, the employee is not entitled to refer the grievance to adjudication unless the Union signifies in prescribed manner

(a) its approval of the reference of the grievance to adjudication; and

(b) its willingness to represent the employee in the adjudication proceedings. R.S., c. 71, s. 33.

**Method of adjudication**

**29 (1)** Where a grievance is referred to adjudication, it must be dealt with by either a single adjudicator or a board of adjudication.

**(2)** Where the employer and the Union are agreed that a matter should be referred to a single adjudicator and they are able to agree upon the adjudicator, then such adjudicator must be appointed by the Minister.

**(3)** Where the Employer and the Union are agreed that a matter should be referred to a single adjudicator but are unable to agree to the adjudicator within five days after a grievance is referred to adjudication, then the single adjudicator shall be appointed by the Minister.

**(4)** Where the Employer and the Union are unable to agree that a matter should be dealt with by a single adjudicator within five days after a grievance is referred to adjudication, it must be dealt with by a board of adjudication. R.S., c. 71, s. 34; 2010, c. 37, s. 38.

**Board of adjudication and remuneration and expenses**

**30 (1)** When a board of adjudication is required, the Minister shall appoint a board composed of

(a) one member nominated by the Employer; and

(b) one member nominated by the Union;

(c) a chair appointed pursuant to subsection (2) or (3),

all of whom hold office until the matter referred to the board is decided by it.

**(2)** The two members appointed pursuant to subsection (1) shall, within five days after the day on which they are appointed, nominate a third person who is willing and ready to act to be a member and chair of the board of adjudication and the Minister shall forthwith appoint that person to be a member and chair of the board.

**(3)** Where the two members appointed under subsection (1) fail or neglect to make a nomination within five days after their appointment, the Minister shall forthwith appoint the third member.

**(4)** When the board of adjudication has been appointed, the Minister shall forthwith notify the parties of the names of the members of the board.

**(5)** Where there is a board of adjudication, the decision of the majority of the board is the decision of the board but if there is no majority, the decision of the chair of the board is the decision of the board.

**(6)** Every decision of an adjudicator must be signed by the adjudicator and, in the case of a board of adjudication, signed by the chair of the board and must be transmitted to the Employer and the Union within 30 days of the last day of the hearing or such longer period as is agreed to by the parties.

**(7)** The costs of an adjudicator must be shared equally by the employer and the Union and the costs of a board of adjudication must be apportioned as follows:

(a) the Union shall pay the remuneration and expenses of the member appointed pursuant to clause (1)(a);

(b) the Employer shall pay the remuneration and expenses of the member appointed pursuant to clause (1)(b);

(c) the Employer and the Union shall share equally the remuneration and expenses of the chair appointed pursuant to clause (1)(c) or subsection (2), which remuneration and expenses must be determined by the Board. R.S., c. 71, s. 35; 2010, c. 37, s. 39.

**Restrictions on grievances**

**31 (1)** No grievance may be referred to adjudication and no adjudicator or board of adjudication shall hear or render a decision on a grievance until all procedures established for the presenting of the grievance up to and including the final level in the grievance process have been complied with.

**(2)** No adjudicator or board of adjudication shall, in respect of any grievance, render any decision thereof the effect of which would be to require the amendment of a collective agreement. R.S., c. 71, s. 36.

**Grievance referred to adjudication**

**32 (1)** Where a grievance is referred to adjudication, the adjudicator or board of adjudication shall give both parties to the grievance an opportunity to be heard.

**(2)** Where a decision on any grievance referred to adjudication requires any action by or on the part of the Employer, the Employer shall take such action.

**(3)** Where a decision on any grievance requires any action by or on the part of the employee or the Union, or both, the employee or the Union, or both, as the case may be, shall take such action.

**(4)** Where an adjudicator or a board of adjudication determines that an employee has been discharged or disciplined by the Employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject of the adjudication, the adjudicator or the board has power to substitute

for the discharge or discipline any other penalty that to the adjudicator or the board seems just and reasonable in the circumstances. R.S., c. 71, s. 37.

**Mediator-adjudicator**

**33 (1)** Notwithstanding any grievance or adjudication provision contained in a collective agreement or deemed to be contained in a collective agreement under subsection 28(2), the parties to a collective agreement may, at any time, agree to refer one or more grievances to a mediator-adjudicator for the purpose of resolving the grievances in an expeditious and informal manner.

**(2)** Where the parties to a collective agreement wish to make use of a mediator-adjudicator but are unable to agree upon one, the Minister shall appoint a mediator-adjudicator upon the request of the parties.

**(3)** A mediator-adjudicator appointed under this Section shall attempt to assist the parties to the collective agreement to settle the grievance by mediation.

**(4)** Where the parties to the collective agreement are not able to settle a grievance by mediation, the mediator-adjudicator shall attempt to assist the parties to agree upon the material facts in the dispute and shall then determine the grievance by adjudication.

**(5)** When determining a grievance by adjudication, a mediator-adjudicator may limit the nature and extent of evidence and submissions and may impose such conditions as the mediator-adjudicator considers appropriate.

**(6)** A mediator-adjudicator shall deliver a decision within 30 days after completing an adjudication of a grievance.

**(7)** Section 32 applies with necessary changes to a mediator-adjudicator and a settlement or decision under this Section. 2009, c. 29, s. 5; 2010, c. 37, s. 40.

**Lockout or strike**

**34 (1)** The Employer shall not cause a lockout and an employee shall not strike.

**(2)** Nothing in this Act may be interpreted to prohibit the suspension or discontinuance of operations in an Employer's establishment, in whole or in part, not constituting a lockout or strike. R.S., c. 71, s. 38.

**No sanction of strike**

**35** The Union shall not sanction, encourage or support, financially or otherwise, a strike by its members or any of them who are governed by this Act. R.S., c. 71, s. 39.

**Unfair labour practice by Employer**

**36** The Employer or a person acting on behalf of the Employer shall not

(a) refuse to employ or terminate the employment of any person or discriminate against any person in regard to employment or any term or condition of employment because the person

(i) is a member of the Union or is an applicant for membership in the Union,

(ii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,

(iii) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Act, or

(iv) has made an application or filed a complaint under this Act;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred upon the employee by this Act;

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of the Union. R.S., c. 71, s. 40.

**Unfair labour practice by Union**

**37** The Union or a person acting on behalf of the Union shall not

(a) except with the consent of the Employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of the Union;

(b) use coercion or intimidation of any kind with respect to any employee with a view to encouraging or discouraging membership or activity in the Union;

(c) discriminate against a person in regard to employment or membership in the Union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because the person

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding authorized or permitted under a collective agreement or a proceeding under this Act,

(ii) has made or is about to make a disclosure that the person may be required to make in a proceeding authorized or permitted under a collective agreement or a proceeding under this Act, or

(iii) has made an application or filed a complaint under this Act. R.S., c. 71, s. 41.

**Offences**

**38 (1)** An employee who contravenes this Act or fails to do anything required of an employee by this Act is guilty of an offence and liable upon summary

conviction to a fine of not more than $100 for each day during which the contravention or failure occurs or continues.

**(2)** Every person acting on behalf of the Employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding $300 for each day that the lockout exists.

**(3)** Where the Union declares or authorizes a strike contrary to this Act, it is liable upon summary conviction to a penalty not exceeding $300 for each day that the strike exists.

**(4)** Every officer or representative of the Union who declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding $300 for each day that the strike exists. R.S., c. 71, s. 42.

**Question of law**

**39 (1)** An arbitration board, an adjudicator or a board of adjudication may, of its own motion or upon application of the employer or the Union, state a case in writing for the opinion of the Nova Scotia Court of Appeal upon any question that is a question of law.

**(2)** A like reference to that contained in subsection (1) may also be made by the Board.

**(3)** The Nova Scotia Court of Appeal shall hear and determine questions of law arising as a result of a stated case taken pursuant to subsection (1) or (2) and remit the matter to the arbitration board, the adjudicator, the board of adjudication or the Board, whichever is appropriate under the circumstances, with the opinion of the Court thereon. R.S., c. 71, s. 44; 2010, c. 37, s. 42.

**Act binds Crown**

**40** This Act is binding upon the Crown. R.S., c. 71, s. 45.

SCHEDULE

BARGAINING UNITS

All the employees of the employer in the following Classification and Pay Plans:

| | | | |
|---|---|---|---|
| 1. | Educational Classification and Pay Plans | - | (EDC) |
| 2. | Clerical and Related Classification and Pay Plan | - | (CL) |
| 3. | Professional Bargaining Unit | - | (PR) |
| 4. | Technical and Services Bargaining Unit | - | (TS) |

R.S., c. 71, Sch. A.; O.I.C. 2007-80.

CHAPTER C-28

# An Act Respecting Class Proceedings

**Table of Contents**

(The table of contents is not part of the statute)

General



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**Short title**

**1** This Act may be cited as the *Class Proceedings Act*. 2007, c. 28, s. 1.

**Interpretation**

**2** In this Act,

"certification order" means an order certifying a proceeding as a class proceeding;

"class or subclass" means two or more persons with common issues respecting a cause of action or potential cause of action;

"class or subclass member" means a person who is or becomes a member of a class or subclass in accordance with a certification order, and who has not opted out of the class or subclass;

"class proceeding" means a proceeding under this Act, even if an application for certification of the proceeding as a class proceeding has not yet been determined by the court;

"common issues" means

(a) common but not necessarily identical issues of fact; or

(b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

"court" means the Supreme Court of Nova Scotia, and includes any judge of that court;

"decertification order" means an order decertifying a proceeding as a class proceeding;

"defendant" includes a respondent;

"party" means a representative plaintiff, a plaintiff, a representative defendant, a defendant or a person that the court adds as a party, but does not include any other individual class or subclass members;

"plaintiff" includes an applicant;

"representative defendant" means a person who is appointed under this Act as the representative defendant for a class or subclass in respect of a class proceeding and, where the context requires, includes a person who is seeking to be appointed as a representative defendant;

"representative party" means a representative plaintiff or representative defendant;

"representative plaintiff" means a person who is appointed under this Act as the representative plaintiff for a class or subclass in respect of a class

proceeding and, where the context requires, includes a person who is seeking to be appointed as a representative plaintiff;

"settlement class" means those persons who constitute a settlement class under Section 6. 2007, c. 28, s. 2.

**Application of Act**

**3** **(1)** Subject to the *Proceedings against the Crown Act*, this Act binds the Crown in right of the Province.

**(2)** For greater certainty,

(a) notice required to be given to the Crown under the *Proceedings against the Crown Act* must be given by the proposed representative plaintiff; and

(b) the notice referred to in clause (a) must clearly state that the action is a class proceeding and provide particulars regarding the intended class.

**(3)** Subject to subsection (4), this Act does not apply to

(a) a proceeding that may be brought in a representative capacity under another Act;

(b) a proceeding required by law to be brought by a plaintiff in a representative capacity; or

(c) a proceeding brought in a representative capacity that was commenced before June 3, 2008.

**(4)** Where a proceeding was commenced under Rule 5.09 of the *Civil Procedure Rules* (1972) before June 3, 2008, the court may, on the application of a party to the proceeding, order that the proceeding be continued under this Act, subject to the terms or conditions the court considers appropriate. 2007, c. 28, s. 3.

CERTIFICATION

**Application for certification of proceeding**

**4** **(1)** One member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

**(2)** In a proceeding referred to in subsection (1), the originating process must indicate that the proceeding is brought under this Act.

**(3)** The person who commences a proceeding under subsection (1) shall make an application to the court for an order certifying the proceeding as a class proceeding and, subject to subsection (5), appointing the person as representative plaintiff for the class.

**(4)** An application under subsection (3) must be made

(a) within 120 days of the date upon which the proceeding is commenced; or

(b) at any other time with leave of the court.

**(5)** The court may appoint a person who is not a member of the class as the representative plaintiff for the class only if, in the opinion of the court, it is necessary to do so in order to avoid a substantial injustice to the class.

**(6)** A defence to a class proceeding does not need to be filed until 45 days after a certification order is issued in respect to the proceeding. 2007, c. 28, s. 4.

**Application by defendant for certification**

**5 (1)** A defendant in two or more proceedings may, at any stage of one of the proceedings, make an application to the court for an order certifying some or all of the proceedings as a class proceeding and appointing a representative plaintiff for the class that will be involved in the class proceeding.

**(2)** Any party to a proceeding against two or more defendants may, at any stage of the proceedings, make an application to the court for an order certifying the proceeding as a class proceeding and appointing a representative defendant. 2007, c. 28, s. 5.

**Settlement class**

**6** Where, as a condition of settlement between a plaintiff and a defendant, certification of a proceeding as a class proceeding is being sought in order that the settlement will bind the class members, the class members constitute a settlement class. 2007, c. 28, s. 6.

**Certification by the court**

**7 (1)** The court shall certify a proceeding as a class proceeding on an application under Section 4, 5 or 6 if, in the opinion of the court,

(a) the pleadings disclose or the notice of application discloses a cause of action;

(b) there is an identifiable class of two or more persons that would be represented by a representative party;

(c) the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members;

(d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute; and

(e) there is a representative party who

(i) would fairly and adequately represent the interests of the class,

(ii) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying class members of the class proceeding, and

(iii) does not have, with respect to the common issues, an interest that is in conflict with the interests of other class members.

**(2)** In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute, the court shall consider

(a) whether questions of fact or law common to the class members predominate over any questions affecting only individual members;

(b) whether a significant number of the class members have a valid interest in individually controlling the prosecution of separate proceedings;

(c) whether the class proceeding would involve claims or defences that are or have been the subject of any other proceedings;

(d) whether other means of resolving the claims are less practical or less efficient;

(e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means; and

(f) any other matter the court considers relevant.

**(3)** Notwithstanding subsection (1), where an application is made to certify a proceeding as a class proceeding in order that a settlement will bind the members of a settlement class, the court shall not certify the proceeding as a class proceeding unless the court approves the settlement. 2007, c. 28, s. 7.

**Adjournment of application and effect of certification**

**8 (1)** The court may adjourn the application for certification to permit the parties to amend their materials or pleadings or to permit further evidence to be introduced.

**(2)** An order certifying a proceeding as a class proceeding is not a determination of the merits of the proceeding. 2007, c. 28, s. 8.

**Subclasses**

**9** Where a class includes a subclass whose members have claims or defences that raise common issues not shared by all the class members so that, in the opinion of the court, the protection of the interests of the subclass members requires that the subclass members be separately represented, the court may, in addition to appointing the representative party for the class, appoint for each subclass a representative party who, in the opinion of the court,

(a) would fairly and adequately represent the interests of the subclass;

(b) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the subclass and of notifying subclass members of the class proceeding; and

(c) does not have, with respect to the common issues for the subclass, an interest that is in conflict with the interests of other subclass members. 2007, c. 28, s. 9.

**Certain matters not bar to certification**

**10** The court shall not refuse to certify a proceeding as a class proceeding by reason only that

(a) the relief claimed includes a claim for damages that would require individual assessment after determination of the common issues;

(b) the relief claimed relates to separate contracts involving different class members;

(c) different remedies are sought for different class members;

(d) the number of class members or the identity of each class member is not ascertained or may not be ascertainable; or

(e) the class includes a subclass whose members have claims that raise common issues not shared by all class members. 2007, c. 28, s. 10.

**Contents of certification order**

**11** **(1)** A certification order shall

(a) describe the class in respect of which the order was made by setting out the class's identifying characteristics;

(b) appoint the representative parties;

(c) state the nature of the claims or defences asserted on behalf of the class;

(d) state the relief sought by the class;

(e) set out the common issues for the class;

(f) state the manner in which and the time within which a class member may opt out of the class proceeding; and

(g) include any other provisions the court considers appropriate.

**(2)** Where a class includes a subclass whose members have claims that raise common issues not shared by all the class members so that, in the opinion of the court, the protection of the interests of the subclass members requires that the subclass members be separately represented, the certification order must include the same information in relation to the subclass that, under subsection (1), is required in relation to the class.

**(3)** Where the certification order is made in respect of a settlement class, the court may, as the court considers appropriate, modify the contents of the order to reflect the existence of the settlement and its terms.

**(4)** The court may, at any time, amend a certification order on an application of a party or class member or on its own motion. 2007, c. 28, s. 11.

**Refusal to certify**

**12** Where the court refuses to certify a proceeding as a class proceeding, the court may permit the proceeding to continue as one or more proceedings between different parties and, for that purpose, the court may

(a) order the addition, deletion or substitution of parties;

(b) order the amendment of the pleadings or the notice of application; and

(c) make any other order it considers appropriate. 2007, c. 28, s. 12.

**Where conditions for certification not satisfied after certification**

**13 (1)** Without limiting subsection 11(4), where at any time after a certification order is made under this Part it appears to the court that the conditions referred to in Section 7 or subsection 9(1) are not satisfied, the court may amend the certification order, decertify the proceeding as a class proceeding or make any other order it considers appropriate.

**(2)** Where the court makes a decertification order under subsection (1), the court may permit the proceeding to continue as one or more proceedings between different parties and may make any order referred to in Section 12 in relation to each of those proceedings. 2007, c. 28, s. 13.

CONDUCT OF CLASS PROCEEDINGS

**Stages of class proceedings**

**14 (1)** Unless the court otherwise orders under Section 15, in a class proceeding,

(a) common issues for a class must be determined together;

(b) common issues for a subclass must be determined together; and

(c) individual issues that require the participation of class members must be determined in accordance with Sections 30 and 31.

**(2)** The court may give judgment in respect of the common issues and separate judgments in respect of any other issue. 2007, c. 28, s. 14.

**Court may determine conduct of class proceeding**

**15** The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms or conditions the court considers appropriate. 2007, c. 28, s. 15.

**Court may stay other proceeding**

**16** The court may at any time stay or sever any proceeding related to the class proceeding on the terms or conditions the court considers appropriate. 2007, c. 28, s. 16.

**Hearing of applications**

**17 (1)** All applications, whether contested or not, in the class proceeding that are made before the trial of the common issues must be heard by the same judge but, where that judge becomes unavailable for any reason to hear an application in the class proceeding, the Chief Justice of the court may assign another judge of the court to hear the application.

**(2)** A judge who hears an application under subsection (1) may, but need not, preside at the trial of the common issues. 2007, c. 28, s. 17.

**Participation of class members**

**18 (1)** In order to ensure the fair and adequate representation of the interests of the class or any subclass or for any other appropriate reason, the court may, at any time, in a class proceeding permit one or more class members to participate in the class proceeding.

**(2)** Participation under subsection (1) must be in the manner and on the terms or conditions, including terms or conditions as to costs, that the court considers appropriate. 2007, c. 28, s. 18.

**Opting out of class proceeding and determination by Court**

**19 (1)** A person who is a member of a class involved in a class proceeding may opt out of the class proceeding

(a) in the manner and within the time specified in the certification order; or

(b) with leave of the court and on the terms or conditions the court considers appropriate.

**(2)** A person referred to in subsection (1) who opts out of the class proceeding ceases, from the time the person opts out and subject to any terms or conditions referred to in subsection (1), to be a member of the class involved in the class proceeding.

**(3)** Notwithstanding anything contained in this Section, the court may at any time determine whether or not a person is a class or subclass member, subject to any terms or conditions the court considers appropriate. 2007, c. 28, s. 19.

**Discovery**

**20 (1)** Except as otherwise provided in this Act or the regulations, parties to a class proceeding are subject to discovery in the same manner as parties to any other proceeding, but only after the proceeding has been certified unless leave of the court has been obtained.

**(2)** Except as otherwise provided in this Act or the regulations, parties may discover a class member only with leave of the court and after all representative parties have been discovered or their discoveries have been waived.

**(3)** In deciding whether to grant a party leave to conduct discovery under subsection (1) or (2), the court shall consider

(a) the stage of the class proceeding and the issues to be determined at that stage;

(b) the presence of subclasses;

(c) whether the discovery is necessary in view of the claims or defences of the party seeking leave;

(d) the approximate monetary value of individual claims, if any;

(e) whether discovery would result in oppression or in undue annoyance, burden or expense for the class members sought to be discovered; and

(f) any other matter the court considers relevant.

**(4)** A class member is subject to the same sanctions under the *Civil Procedure Rules* as a party for failure to submit to discovery and, for greater certainty, the court may dismiss the claims of or allow a claim against any individual class member who fails to submit to discovery. 2007, c. 28, s. 20.

**Examination of other parties**

**21 (1)** Before the certification hearing, parties to a class proceeding may examine any other party to the proceeding, any deponent of an affidavit filed with respect to the certification application or, with leave of the court, any other person, and such examination is limited to issues arising from the certification application.

**(2)** With respect to any other application, including an interlocutory application, a party may not examine a person before the hearing of the application or interlocutory application, except with leave of the court.

**(3)** In deciding whether to grant a party leave to conduct an examination under subsection (1) or (2), the court shall consider the factors set out in subsection 20(3). 2007, c. 28, s. 21.

**Notice of certification**

**22 (1)** Subject to subsection (2), notice that a proceeding has been certified as a class proceeding must be given by the representative party for the class to the class members in accordance with this Section.

**(2)** The court may dispense with notice if, having regard to the factors set out in subsection (3), the court considers it appropriate to do so.

**(3)** Subject to subsection (2), the court shall make an order setting out when and by what means notice is to be given under this Section and in doing so shall have regard to

(a) the cost of giving notice;

(b) the nature of the relief sought;

(c) the size of the individual claims of the class members;

(d) the number of class members;

(e) the presence of subclasses;

(f) the places of residence of class members; and

(g) any other matter the court considers relevant.

**(4)** The court may order that notice be given by

(a) personal delivery;

(b) mail;

(c) posting, advertising or publishing;

(d) individually notifying a sample group within the class;

(e) creating and maintaining an Internet site; or

(f) any other means or combination of means that the court considers appropriate.

**(5)** The court may order that notice be given to different class members by different means.

**(6)** Unless the court orders otherwise, a notice under this Section must

(a) describe the class proceeding, including the names and addresses of the representative parties and the relief sought;

(b) state the manner in which and the time within which a class member may opt out of the class proceeding;

(c) describe any counterclaim or third party claim being asserted in the class proceeding, including the relief sought;

(d) summarize any agreements respecting fees and disbursements between the representative parties and their solicitors;

(e) describe the possible financial consequences of the class proceeding to class and subclass members;

(f) state that the judgment on the common issues for the class, whether favourable or not, will bind all class members who do not opt out of the class proceeding;

(g) state that the judgment on the common issues for a subclass, whether favourable or not, will bind all subclass members who do not opt out of the class proceeding;

(h) describe the rights, if any, of class members to participate in the class proceeding;

(i) give an address to which class members may direct inquiries about the class proceeding; and

(j) give any other information the court considers appropriate.

**(7)** Where the application to certify a proceeding as a class proceeding was made in respect of a settlement class, a notice under this Section must refer to the existence of the settlement and describe its terms and must be modified otherwise as the court considers appropriate.

**(8)** With leave of the court, an application under this Section may include a solicitation of contributions from class members to assist in paying solicitors' fees and disbursements. 2007, c. 28, s. 22.

**Notice of determination of common issues**

**23 (1)** Where the court determines common issues in favour of a class or subclass and considers that the participation of individual class or subclass

members is required to determine individual issues, the representative party for that class or subclass shall give notice to those members in accordance with this Section.

**(2)** Subsections 22(3) to (5) apply with the necessary modifications to a notice given under this Section.

**(3)** A notice under this Section must

(a) state that common issues have been determined;

(b) identify the common issues that have been determined and explain the determinations made;

(c) state that class or subclass members may be entitled to individual relief;

(d) describe the steps that must be taken to establish an individual claim;

(e) state that failure on the part of a class or subclass member to take those steps will result in the member not being entitled to assert an individual claim except with leave of the court;

(f) give an address to which class or subclass members may direct inquiries about the class proceeding; and

(g) give any other information the court considers appropriate. 2007, c. 28, s. 23.

**Notice to protect interests of affected persons**

**24 (1)** At any time in a class proceeding, the court may order any party to give any notice that the court considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the class proceeding.

**(2)** Subsections 22(3) to (5) apply with the necessary modifications to a notice given under this Section. 2007, c. 28, s. 24.

**Approval of notice by court**

**25** A notice under Sections 22 to 24 must be approved by the court before it is given. 2007, c. 28, s. 25.

**Another party may be ordered to give notice**

**26** Where a party is required to give notice under this Act, the court may order another party to give the notice in addition to or instead of the party that was required to give the notice. 2007, c. 28, s. 26.

**Costs of notice**

**27 (1)** The court may make any order it considers appropriate as to the costs of any notice under Sections 22 to 24, including an order apportioning costs among parties.

**(2)** In making an order under subsection (1), the court may have regard to the different interests of a subclass. 2007, c. 28, s. 27.

ORDERS, AWARDS AND RELATED PROCEDURES

**Contents of order respecting judgment on common issues**

**28** An order made in respect of a judgment on common issues of a class or subclass must

(a) set out the common issues;

(b) name or describe the class or subclass members to the extent possible;

(c) state the nature of the claims or defences asserted on behalf of the class or subclass; and

(d) specify the relief granted. 2007, c. 28, s. 28.

**Judgment on common issues is binding**

**29 (1)** A judgment on common issues of a class or subclass binds every class or subclass member, as the case may be, who has not opted out of the class proceeding, but only to the extent that the judgment determines common issues that

(a) are set out in the certification order;

(b) relate to claims described in the certification order; and

(c) relate to relief sought by the class or subclass as stated in the certification order.

**(2)** A judgment on common issues of a class or subclass does not bind a party to the class proceeding in any subsequent proceeding between the party and a person who opted out of the class proceeding. 2007, c. 28, s. 29.

**Determination of issues affecting certain individuals**

**30 (1)** Where the court determines common issues in favour of a class or subclass and determines that there are issues, other than those that may be determined under Section 35, that are applicable only to certain individual class or subclass members, the court may

(a) determine those individual issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;

(b) appoint one or more persons, including, without limiting the generality of the foregoing, one or more independent experts, to conduct a reference into those individual issues under the *Civil Procedure Rules* and report back to the court; or

(c) with the consent of the parties, direct that those individual issues be determined in any other manner.

**(2)** The court may give any necessary directions relating to the procedures that must be followed in conducting hearings, references and determinations under subsection (1).

**(3)** In giving directions under subsection (2), the court shall choose the least expensive and most expeditious method of determining the individ-

ual issues that, in the opinion of the court, is consistent with justice to the class or subclass members and the parties and, in doing so, the court may

(a) dispense with any procedural step that it considers unnecessary; and

(b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.

**(4)** The court shall set a reasonable time within which individual class or subclass members may make claims under this Section in respect of the individual issues.

**(5)** A class or subclass member who fails to make a claim within the time set under subsection (4) may not later make a claim under this Section in respect of the individual issues applicable to that member except with leave of the court.

**(6)** The court may grant leave under subsection (5) if, in the opinion of the court,

(a) there are apparent grounds for relief;

(b) the delay was not caused by any fault of the person seeking the relief; and

(c) the defendant would not suffer substantial prejudice if leave were granted.

**(7)** Unless otherwise ordered by the court making a direction under clause (1)(c), a determination of issues made in accordance with that clause is deemed to be an order of the court. 2007, c. 28, s. 30.

**Individual assessment of liability**

**31** Without limiting the generality of Section 30, where, after determining common issues in favour of a class or subclass, the court determines that a defendant's liability to individual class or subclass members cannot reasonably be determined without proof by those individual class or subclass members, Section 30 applies with the necessary modifications to the determination of the defendant's liability to those class or subclass members. 2007, c. 28, s. 31.

**Aggregate monetary awards**

**32 (1)** Once a defendant has been found liable, the court may make an order for an aggregate monetary award in respect of all or any part of a defendant's liability to class or subclass members and may give judgment accordingly if

(a) monetary relief is claimed on behalf of some or all class or subclass members;

(b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and

(c) the aggregate or a part of the defendant's liability to some or all class or subclass members can, in the opinion of the court, reasonably be determined without proof by individual class or subclass members.

**(2)** Before making an order under subsection (1), the court shall provide the defendant with an opportunity to make submissions to the court in respect of any matter relating to the proposed order, including

(a) submissions that contest the merits or amount of an award under that subsection; and

(b) submissions that individual proof of monetary relief is required due to the individual nature of the relief.

**(3)** Before making an order under subsection (1), the court may permit the admission of additional evidence that, in the opinion of the court, is relevant in the circumstances. 2007, c. 28, s. 32.

**Statistical evidence may be admitted**

**33 (1)** For the purpose of determining issues relating to the amount or distribution of an aggregate monetary award under this Act, the court may admit as evidence statistical information that would not otherwise be admissible as evidence, including information derived from sampling, if the information was compiled in accordance with principles that are generally accepted by experts in the field of statistics.

**(2)** A record of statistical information purporting to be prepared or published under the authority of an Act of the Parliament of Canada or of the legislature of any province of Canada may be admitted as evidence without proof of its authenticity.

**(3)** Statistical information may not be admitted as evidence under this Section unless the party seeking to introduce the information

(a) has given to the party against whom the statistical evidence is to be used a copy of the information at least 60 days before that information is to be introduced as evidence;

(b) has complied with subsections (4) and (5); and

(c) introduces the evidence by an expert who is available for cross-examination on that evidence.

**(4)** A notice under this Section must specify the source of any statistical information sought to be introduced that

(a) was prepared or published under the authority of an Act of the Parliament of Canada or of the legislature of any province of Canada;

(b) was derived from market quotations, tabulations, lists, directories or other compilations generally used and relied on by members of the public; or

(c) was derived from reference material generally used and relied on by members of an occupational group.

**(5)** Except with respect to information referred to in subsection (4), a notice under this Section must

(a) specify the name and qualifications of each person who supervised the preparation of the statistical information sought to be introduced; and

(b) describe any documents prepared or used in the course of preparing the statistical information sought to be introduced.

**(6)** Unless this Section provides otherwise, the law and practice with respect to evidence tendered by an expert in a proceeding applies to a class proceeding.

**(7)** Except with respect to information referred to in subsection (4), a party against whom statistical information is sought to be introduced under this Section may require the party seeking to introduce it to produce for inspection any document that was prepared or used in the course of preparing the information, unless the document discloses the identity of persons responding to a survey who have not consented in writing to the disclosure. 2007, c. 28, s. 33.

**Average or proportional share of aggregate awards**

**34 (1)** Where the court makes an order under Section 32, the court may further order that all or a part of the aggregate monetary award be applied so that some or all individual class or subclass members share in the award on an average or proportional basis if, in the opinion of the court,

(a) it would be impractical or inefficient to

(i) identify the class or subclass members entitled to share in the award, or

(ii) determine the exact shares that should be allocated to individual class or subclass members; and

(b) failure to make an order under this subsection would deny recovery to a substantial number of class or subclass members.

**(2)** Where an order is made under subsection (1), any class or subclass member in respect of whom the order was made may, within the time specified in the order, make an application to the court to be excluded from the proposed distribution and to be given the opportunity to prove that member's claim on an individual basis.

**(3)** In deciding whether to exclude a class or subclass member from an average or proportional distribution, the court shall consider

(a) the extent to which the class or subclass member's individual claim varies from the amount that the person would receive on an average or proportional basis;

(b) the number of class or subclass members seeking to be excluded from an average or proportional distribution; and

(c) whether excluding the class or subclass members referred to in clause (b) would unreasonably deplete the amount to be distributed on an average or proportional basis.

**(4)** An amount recovered by a class or subclass member who proves the person's claim on an individual basis must be deducted from the amount to be distributed on an average or proportional basis before the distribution. 2007, c. 28, s. 34.

**Individual share of aggregate**

**35 (1)** Where the court orders that all or a part of an aggregate monetary award under subsection 32(1) be divided among individual class or subclass members on an individual basis, the court shall also determine whether individual claims need to be made to give effect to the order.

**(2)** Where the court determines under subsection (1) that individual claims need to be made, the court shall specify the procedures for determining the claims.

**(3)** In specifying the procedures under subsection (2), the court shall minimize the burden on class or subclass members and, for that purpose, the court may authorize

(a) the use of standard proof of claim forms;

(b) the submission of affidavit or other documentary evidence;

(c) the auditing of claims on a sampling or other basis; and

(d) any other procedure the court considers appropriate.

**(4)** When specifying the procedures under subsection (2), the court shall set a reasonable time within which individual class or subclass members may make claims under this Section.

**(5)** A class or subclass member who fails to make a claim within the time set under subsection (4) may not later make a claim under this Section except with leave of the court.

**(6)** Subsection 30(6) applies with the necessary modifications to a decision whether to grant leave under subsection (5).

**(7)** The court may amend a judgment given under subsection 32(1) to give effect to a claim made with leave under subsection (5) if the court considers it appropriate to do so. 2007, c. 28, s. 35.

**Distribution**

**36 (1)** The court may direct any means of distribution of amounts awarded under Sections 32 to 35 that it considers appropriate.

**(2)** In giving directions under subsection (1), the court may order that

(a) the defendant distribute directly to the class or subclass members the amount of monetary relief to which each class or subclass member is entitled by any means authorized by the court, including abatement or credit;

(b) the defendant pay into court or some other appropriate depository the total amount of the monetary relief to which all of the class or subclass members are entitled until further order of the court; or

(c) any person other than the defendant distribute directly to each of the class or subclass members, by any means authorized by the court, the amount of monetary relief to which that class or subclass member is entitled.

**(3)** In deciding whether to make an order under clause (2)(a), the court

(a) shall consider whether distribution by the defendant is the most practical way of distributing the award; and

(b) may take into account whether the amount of monetary relief to which each class or subclass member is entitled can be determined from the records of the defendant.

**(4)** The court shall supervise the execution of judgments and the distribution of awards under Sections 32 to 35 and may stay the whole or any part of an execution or distribution for a reasonable period on the terms or conditions it considers appropriate.

**(5)** The court may order that an award made under Sections 32 to 35 be paid

(a) in a lump sum, promptly or within a time set by the court; or

(b) in instalments, on the terms or conditions the court considers appropriate.

**(6)** The court may

(a) order that the costs of distributing an award under Sections 32 to 35, including the costs of any notice associated with the distribution and the fees payable to a person administering the distribution, be paid out of the proceeds of the judgment; and

(b) make any other order it considers appropriate. 2007, c. 28, s. 36.

**Undistributed award**

**37 (1)** The court may order that all or any part of an award under Sections 32 to 35 that has not been distributed within a time set by the court

(a) be applied in any manner that, in the opinion of the court, may reasonably be expected to benefit class or subclass members;

(b) be applied against the cost of the class proceeding;

(c) be forfeited to the Crown in right of the Province; or

(d) be returned to the party against whom the award was made.

**(2)** In deciding whether to make an order under clause (1)(a), the court shall consider

(a) whether the distribution would result in unreasonable benefits to persons who are not class or subclass members; and

(b) any other matter the court considers relevant.

**(3)** The court may make an order under clause (1)(a) whether or not all the class or subclass members can be identified or all their shares can be exactly determined.

**(4)** The court may make an order under clause (1)(a) even if the order would benefit

(a) persons who are not class or subclass members; or

(b) persons who may otherwise receive monetary relief as a result of the class proceeding. 2007, c. 28, s. 37.

**Settlement, discontinuance and dismissal**

**38 (1)** A class proceeding may be settled or discontinued only

(a) with the approval of the court; and

(b) on the terms or conditions the court considers appropriate.

**(2)** A settlement in relation to the common issues affecting a subclass may be concluded only

(a) with the approval of the court; and

(b) on the terms or conditions the court considers appropriate.

**(3)** A settlement under this Section is not binding unless approved by the court.

**(4)** Where a proceeding has been certified as a class proceeding, a settlement of the class proceeding or of common issues affecting a subclass that is approved by the court binds every class or subclass member who has not opted out of the class proceeding, but only to the extent provided by the court.

**(5)** In dismissing a class proceeding or in approving a settlement or discontinuance, the court shall consider whether notice should be given and whether the notice should include any of the following:

(a) an account of the conduct of the class proceeding;

(b) a statement of the result of the class proceeding;

(c) a description of any plan for distributing any settlement funds.

**(6)** Subsections 22(3) to (5) apply with the necessary modifications to a notice referred to in subsection (5). 2007, c. 28, s. 38.

**Appeals**

**39** **(1)** Any party may appeal, without leave, to the Nova Scotia Court of Appeal from

(a) a judgment on common issues; or

(b) an order under Sections 32 to 37, other than an order that determines individual claims made by class or subclass members.

**(2)** With leave of a judge of the Nova Scotia Court of Appeal, a class or subclass member or any party may appeal to that court any order

(a) determining an individual claim made by a class or subclass member; or

(b) dismissing an individual claim for monetary relief made by a class or subclass member.

**(3)** With leave of a judge of the Nova Scotia Court of Appeal, any party may appeal to that court from

(a) a certification order or an order refusing to certify a proceeding as a class proceeding; or

(b) a decertification order.

**(4)** Where a representative party for a class or subclass does not appeal or seek leave to appeal as permitted by subsection (1) or (3) within the time limit for bringing an appeal set under the *Civil Procedure Rules* or where a representative party abandons an appeal under subsection (1) or (3), any member of the class or subclass may make an application to a judge of the Nova Scotia Court of Appeal for leave to act as the representative party for the purposes of subsection (1) or (3).

**(5)** Where a representative party intends to abandon an appeal under subsection (1) or (3), the representative party shall apply to a judge of the Nova Scotia Court of Appeal for approval to abandon the appeal and, where approval is granted, the judge of the Nova Scotia Court of Appeal shall consider whether the appellant should be ordered to provide notice to class or subclass members that the appeal has been abandoned.

**(6)** An application by a class or subclass member for leave to act as the representative party under subsection (4) must be made within 30 days after the expiry of the appeal period available to the representative party or by such other date as the judge of the Nova Scotia Court of Appeal may order.

**(7)** For greater certainty, an application for leave to appeal pursuant to this Section must be made before a single judge of the Nova Scotia Court of Appeal. 2007, c. 28, s. 39.

## COSTS, FEES AND DISBURSEMENTS

**Costs**

**40** **(1)** With respect to any proceeding or other matter under this Act, costs may be awarded in accordance with the *Civil Procedure Rules*.

**(2)** When awarding costs pursuant to subsection (1), the court may consider whether

(a) the class proceeding was a test case, raised a novel point of law or involved a matter of public interest; and

(b) a cost award would further judicial economy, access to justice or behaviour modification.

**(3)** The court may apportion costs against various parties in accordance with the extent of the parties' liability.

**(4)** A class member, other than a representative party, is not liable for costs except with respect to the determination of the class member's own individual claims. 2007, c. 28, s. 40.

**Agreements respecting fees and disbursements**

**41 (1)** An agreement respecting fees and disbursements between a solicitor and a representative party must be in writing and must

(a) state the terms or conditions under which fees and disbursements are to be paid;

(b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding;

(c) where interest is payable on fees or disbursements referred to in clause (a), state the manner in which the interest will be calculated; and

(d) state the method by which payment is to be made, whether by lump sum or otherwise.

**(2)** An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the application of the solicitor.

**(3)** An application under subsection (2) may

(a) unless the court otherwise orders, be made without notice to any other party; or

(b) where notice to any other party is required, be made on the terms or conditions that the court may order respecting disclosure of the whole or any part of the agreement respecting fees and disbursements.

**(4)** Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

**(5)** Where an agreement is not approved by the court, the court may

(a) determine the amount owing to the solicitor in respect of fees and disbursements;

(b) direct that a taxation be conducted in accordance with the *Civil Procedure Rules*; or

(c) direct that the amount owing be determined in any other manner.

**(6)** Sections 68 to 73 of the *Legal Profession Act* do not apply in respect of an agreement referred to in this Section. 2007, c. 28, s. 41.

GENERAL

**Limitation periods**

**42** **(1)** Subject to subsection (2), any limitation period applicable to a cause of action asserted in a class proceeding is suspended in favour of a class member on the commencement of the proceeding and resumes running against the class member when

(a) a ruling is made by the court refusing to certify the proceeding as a class proceeding;

(b) the class member opts out of the class proceeding;

(c) an amendment is made to the certification order that has the effect of excluding the class member from the class proceeding;

(d) a decertification order is made under Section 13;

(e) the class proceeding is dismissed without an adjudication on the merits;

(f) the class proceeding is discontinued with the approval of the court; or

(g) the class proceeding is settled with the approval of the court, unless the settlement provides otherwise.

**(2)** Where there is a right of appeal in respect of an event described in clauses (1)(a) to (g), the limitation period resumes running as soon as the time for appeal has expired without an appeal being commenced or as soon as any appeal has been finally disposed of.

**(3)** Where the running of a limitation period is suspended under this Section and the period has less than six months to run when the suspension ends, the limitation period, notwithstanding anything contained in this Section, is extended to the day that is six months after the day on which the suspension ends. 2007, c. 28, s. 42.

**Civil Procedure Rules**

**43** The *Civil Procedure Rules* apply to class proceedings to the extent that those rules are not in conflict with this Act. 2007, c. 28, s. 43.

**Certain provisions subject to regulations**

**44** Any provision of this Act with respect to discovery, damages, expert evidence or any procedural or substantive matter relating to a class proceeding is subject to the regulations. 2007, c. 28, s. 44.

**Regulations**

**45** **(1)** The Governor in Council may make regulations

(a) respecting discovery, damages, expert evidence or any procedural or substantive matter relating to a class proceeding;

(b) defining any word or expression used but not defined in this Act;

(c) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2007, c. 28, s. 45.

CHAPTER C-29

# An Act to Establish the Clean Nova Scotia Foundation

**Table of Contents**

(The table of contents is not part of the statute)



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## Short title

**1** This Act may be cited as the *Clean Nova Scotia Foundation Act*. R.S., c. 72, s. 1.

## Interpretation

**2** In this Act,

"Board" means the Board of Directors of the Foundation;

"bylaws" means the bylaws of the Foundation made pursuant to this Act;

"Foundation" means the Clean Nova Scotia Foundation. R.S., c. 72, s. 2.

## Foundation

**3** A body corporate to be known as the Clean Nova Scotia Foundation is established. R.S., c. 72, s. 3.

## Objects

**4** **(1)** The objects of the Foundation are to

(a) formulate, develop, promote and implement educational programs and activities to focus public awareness and bring the required resources to bear to achieve, protect and enhance the natural, physical and environmental heritage of the Province; and

(b) undertake other related activities to promote and implement a cleaner Nova Scotia and, without limiting the generality of the foregoing,

(i) discourage littering,

(ii) promote recycling,

(iii) hold conferences and seminars,

(iv) publish newsletters, pamphlets and other publications,

(v) sponsor public advertising,

(vi) conduct research, and

(vii) disseminate information.

**(2)** The activities of the Foundation must be conducted without purpose of gain for its members and any gain or reward to the Foundation must be used in promoting its objects. R.S., c. 72, s. 4.

**Membership**

**5** The membership of the Foundation consists of

(a) each person who, immediately before July 1, 1988, was a member of the Clean Nova Scotia Foundation incorporated pursuant to the *Societies Act*; and

(b) each person who becomes a member of the Foundation pursuant to the bylaws,

as long as that person remains a member of the Foundation. R.S., c. 72, s. 5.

**Board**

**6** **(1)** The control and management of the affairs of the Foundation and the powers of the Foundation are vested in and may be exercised by the Board of Directors of the Foundation.

**(2)** The Board consists of those members of the Foundation who are elected as directors of the Foundation at an annual meeting held pursuant to this Act.

**(3)** A director holds office for such term as is determined by the bylaws.

**(4)** A person may be re-elected to the Board.

**(5)** Where a person ceases to be a member of the Board before that person's term of office expires, the Board may fill the vacancy for the unexpired portion of the term.

**(6)** A vacancy on the Board does not impair the capacity of the remaining members to act. R.S., c. 72, s. 6.

**Powers of foundation and duties of Board**

**7** **(1)** The Foundation may exercise such powers as are necessary or conducive to the achievement of its objects and, without restricting the generality of the foregoing, may

(a) acquire and take by purchase, donation, devise, bequest or otherwise real and personal property and hold, enjoy, sell, exchange, lease, let, improve and develop the same and erect and maintain buildings and structures;

(b) use its funds and property for the attainment of its objects and purposes;

(c) borrow, raise and secure the payment of money in such manner as it thinks fit;

(d) with the approval of the members, issue debentures or mortgage its real property to secure the payment of money borrowed by it or the performance of an obligation;

(e) subject to the bylaws, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;

(f) with the approval of the members, subscribe to or become a member of any other association, whether incorporated or not, which has objects that are wholly or partly similar to its own objects;

(g) make bylaws not inconsistent with this Act or any provision of law for the conduct and management of its activities and affairs.

**(2)** Approval of the members of the Foundation, required by subsection (1), may be given by at least three fourths of the members who are present in person and vote at a meeting of the members held pursuant to this Act and may be given with respect to a specific activity or transaction or with respect to one or more classes of activities or transactions. R.S., c. 72, s. 7.

**Meetings**

**8** **(1)** The Board shall hold an annual meeting of the members of the Foundation during each year.

**(2)** At each annual meeting of the Foundation, the Board shall present statements of revenue and expenses and of assets and liabilities and such other reports as disclose the financial condition of the Foundation and summarize its operations during the immediately preceding fiscal year, prepared in accordance with generally accepted accounting principles and audited by a public accountant licensed pursuant to the *Chartered Professional Accountants Act*.

**(3)** The Board may hold such other meetings of the members of the Foundation as it thinks fit.

**(4)** The Board shall hold a meeting of the members of the Foundation when required to do so by such percentage of the members as may be determined by the bylaws. R.S., c. 72, s. 8.

**Fiscal year**

**9** The fiscal year of the Foundation is the period ending June 30th in each year or such other period as may be determined by the bylaws. R.S., c. 72, s. 9.

**Gifts and devises preserved**

**10** No grant, gift, deed or devise lapses or fails by reason of any defect in the designation of the Foundation if the intention of the maker of the instrument is clear. R.S., c. 72, s. 10.

**Winding up**

**11** In the event of the Foundation ceasing operations or winding up, all the property, assets and undertaking of the Foundation vests in the Crown in right of the Province to be used for purposes which are the same or similar to the purposes of the Foundation. R.S., c. 72, s. 11.

**Former Foundation**

**12** **(1)** In this Section, "former Foundation" means the Clean Nova Scotia Foundation incorporated pursuant to the *Societies Act*.

**(2)** A bylaw of the former Foundation, in effect immediately before July 1, 1988, and that is not inconsistent with this Act, is a bylaw of the Foundation until, pursuant to this Act, the bylaw is amended or repealed or another bylaw is made in its stead.

**(3)** Each person who, immediately before July 1, 1988, was an officer or director of the former Foundation, is an officer or director of the Foundation, as the case may be, until that person ceases to be an officer or director.

**(4)** All property of every nature and kind whatsoever, owned by, belonging to or held in trust for or on behalf of the former Foundation, is the property of the Foundation.

**(5)** The obligations of the former Foundation are the obligations of the Foundation.

**(6)** A reference in any enactment or in any deed, lease, will, trust indenture or other document to the former Foundation is to be, with respect to any subsequent transaction, matter or thing, construed to be a reference to the Foundation. R.S., c. 72, s. 12.

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CHAPTER C-30

# An Act to Prevent Prohibitions on the Use of Clotheslines

**Table of Contents**

(The table of contents is not part of the statute)



WHEREAS the use of clotheslines to dry clothes reduces energy consumption, greenhouse gas and mercury emissions;

AND WHEREAS Nova Scotians should have the ability to utilize clotheslines outdoors:

**Short title**

**1** This Act may be cited as the *Clothesline Act*. 2010, c. 34, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to ensure no law, bylaw, covenant or agreement prevents, prohibits or unreasonably restricts the installation, placement or use of a clothesline outdoors at a single-family dwelling or on the ground floor of a multi-unit residential building. 2010, c. 34, s. 2.

**Interpretation**

**3** In this Act, "clothesline" means a line, rope, wire or cord used to hang laundry to dry. 2010, c. 34, s. 3.

**Limitation on restrictions on clotheslines**

**4** **(1)** No Act, bylaw, covenant, agreement or contract prevents or prohibits the installation, placement or use of a clothesline outdoors at a single-family dwelling or on the ground floor of a multi-unit residential building.

**(2)** For greater certainty, subsection (1) applies to an Act, bylaw, covenant, agreement or contract whether made or entered into before, on or after December 10, 2010. 2010, c. 34, s. 4.

**Reasonable restrictions**

**5** Notwithstanding Section 4, nothing in this Act prevents reasonable restrictions on the installation, placement or use of a clothesline. 2010, c. 34, s. 5.

**Act prevails**

**6** In the event of a conflict between this Act and any other enactment, this Act prevails. 2010, c. 34, s. 6.

CHAPTER C-31

# An Act to Amend and Consolidate the Act Respecting the Collection of Debts

**Table of Contents**

(The table of contents is not part of the statute)

**Short title**

**1** This Act may be cited as the *Collection Act*. R.S., c. 76, s. 1.

**Interpretation**

**2** In this Act,

"amount due on the judgment" includes the costs incurred subsequently to those forming part of the judgment, and that may be recovered by an execution issued upon the judgment;

"creditor" means the person or corporation entitled to receive the amount due on the judgment;

"debt" includes any item or part of the debt forming the subject of the judgment, and includes alimony and maintenance;

"debtor" means a person against whom a judgment is obtained;

"examiner" means the functionary having jurisdiction to enforce and conduct an examination, make an order or issue a warrant under this Act;

"judgment" means any adjudication, order or decree directing the payment of money, whether debt, damages, alimony, maintenance or costs obtained in any court in the Province or before a justice of the peace;

"liability" includes part of a liability forming the subject of the judgment;

"officer" means any of the officials who may execute a warrant or other process under this Act;

"special examiner" means a special examiner under this Act. R.S., c. 76, s. 2.

**Act does not apply**

**3** This Act does not apply to the following cases:

(a) default in payment of a penalty, other than a penalty expressly made recoverable as an ordinary debt;

(b) default in payment of a sum in the nature of a penalty other than a penalty in respect to any contract;

(c) default by a trustee, or person acting in a fiduciary capacity and ordered to pay by a court of justice any sum in the trustee's or person's possession or under the trustee's or person's control;

(d) default by a solicitor in payment of costs when ordered to pay costs for misconduct as solicitor or in payment of a sum of money when ordered to pay the same in the solicitor's character as an officer of the court making the order;

(e) default of a ratepayer to pay any rate or tax whatsoever. R.S., c. 76, s. 3.

**Imprisonment for default**

**4** Subject to this Act, no person may be arrested or imprisoned for default in payment of any judgment ordering or adjudging the payment of money. R.S., c. 76, s. 4.

**Examination of debtor**

**5** **(1)** A judgment creditor, having an unsatisfied judgment, is entitled to institute proceedings against the debtor for an examination in respect to any of the following matters:

(a) the contracting of the debt or the incurring of the liability that forms the subject of the judgment;

(b) the disposition by the debtor of the debtor's property;

(c) the debtor's present circumstances; and

(d) the debtor's present or prospective means of paying the debt.

**(2)** The Governor in Council may appoint one or more persons to be functionaries respectively for the purpose of this Act in the Halifax Regional Municipality, each functionary to be called "an examiner under the *Collection Act*" for the Halifax Regional Municipality. R.S., c. 76, s. 5.

**Proceedings to enforce examination**

**6** Proceedings upon a judgment to enforce an examination may be instituted in each of the following cases before one of the functionaries herein indicated and hereinafter called an "examiner":

(a) where the judgment was obtained in the Supreme Court of Nova Scotia or a court of probate, a commissioner of the Supreme Court residing in the county in which the debtor resides at the date of the application or, where the debtor does not reside in the Province, a commissioner of the Supreme Court residing in the county in which the judgment was obtained, is the examiner;

(b) where the judgment was obtained in the court of, or before, a justice or justices of the peace, any justice of the peace is the examiner;

(c) in every case where a debtor resides in the Halifax Regional Municipality at the date of the application, an examiner under the *Collection Act* for the Halifax Regional Municipality and no other functionary may, notwithstanding this Section, be the examiner. R.S., c. 76, s. 6.

**Execution of warrants**

**7** All warrants or process under this Act may be directed to and executed by the officers herein named:

(a) the sheriff of any county, such sheriff and all other sheriffs in the Province or, generally, all sheriffs, and may be executed, whether directed to them or not, by any sheriff, or any deputy sheriff without authority from the sheriff of whom the deputy sheriff is the deputy, and in any part of the Province, and whether or not the place in which the warrant or process is to be executed is within the bailiwick of such sheriff; or

(b) the police officers of any regional municipality or town, or the constables of any county, and may be executed whether directed to them or not, by any police officer or county constable, and whether or not the place in which the warrant or process is to be executed is within the place for which the police officer or constable is a police officer or constable, as the case may be. R.S., c. 76, s. 7.

**Order for examination**

**8** An order for the examination of a judgment debtor may be obtained by a creditor upon an application, supported by an affidavit of the creditor or the creditor's agent or solicitor, setting forth

(a) the judgment and the date of the recovery thereof;

(b) the amount due on the judgment; and

(c) the name and residence of the debtor or the county in which the debtor is to be found. R.S., c. 76, s. 8.

**Order for attendance**

**9 (1)** The examiner shall, upon such application, make an order requiring the attendance of the debtor before the examiner at the time and place therein named.

**(2)** The order may be in the form prescribed by the regulations, or to the like effect.

**(3)** The order must be served on the debtor at least 24 hours before the time fixed therein for the debtor's attendance and may be served by any literate person. R.S., c. 76, s. 9.

**Adjournment where failure to attend**

**10** Where the debtor does not personally attend at the time and place so fixed for the debtor's attendance, the examiner may, upon affidavit or oral testimony of due service upon the debtor of the order for examination, adjourn the examination to another time. R.S., c. 76, s. 10.

**Arrest where failure to attend**

**11** Where good cause is not shown for the debtor's failure to attend at the time and place fixed for the debtor's attendance, or at any time fixed by an adjournment, the examiner may, upon proof by affidavit or oral testimony of due service upon the debtor of the order for examination, forthwith issue a warrant for the arrest and imprisonment of the debtor. R.S., c. 76, s. 11.

**Warrant for arrest**

**12 (1)** A creditor may, without obtaining any order for the examination of the debtor in the first instance, obtain a warrant for the arrest and imprisonment of the debtor, upon an application to an examiner, supported by an affidavit of the creditor or the creditor's solicitor or agent setting forth

(a) the judgment and date of the recovery thereof;

(b) the amount due on the judgment; and

(c) the deponent's belief that the debtor is about to leave the Province and without stating the ground for such belief.

**(2)** Where, upon the application of the debtor, it is proved, either by affidavit or oral testimony, or upon examination, that the debtor was not at the time of the issuing of the warrant about to leave the Province, the examiner shall set

aside the warrant obtained in the first instance and discharge the debtor from custody or the sureties from liability. R.S., c. 76, s. 12.

**Under hand of examiner**

**13** Every warrant for the arrest and imprisonment of a debtor must be under the hand of the examiner. R.S., c. 76, s. 13.

**Content of warrant**

**14** The warrant must direct the officer to arrest the debtor and bring the debtor before the examiner issuing the warrant, to attend the examination and to be further dealt with according to law. R.S., c. 76, s. 14.

**Return of warrant**

**15 (1)** It is not necessary to make the warrant returnable at any particular time, but the same remains in force until it is executed.

**(2)** The warrant may not be executed on a holiday or on a day preceding a holiday. R.S., c. 76, s. 15.

**Powers of examiner**

**16** The examiner, on such person being brought before the examiner, may

(a) verbally order the officer to keep the debtor in the officer's custody and to bring the debtor before the examiner at the time appointed for examination;

(b) release the debtor upon the debtor entering into a bond with sufficient sureties, to the satisfaction of the examiner, to attend at the time appointed for the examination; or

(c) commit the debtor to jail or lock-up until the time appointed for the examination, then to be brought before the examiner by the officer. R.S., c. 76, s. 16.

**Form of warrant, bond and commitment**

**17 (1)** The warrant may be in the form prescribed by the regulations, or to the like effect.

**(2)** The bond may be in the form prescribed by the regulations, or to the like effect.

**(3)** The commitment may be in the form prescribed by the regulations, or to the like effect. R.S., c. 76, s. 17.

**Examination proceeds upon attendance**

**18** Upon the attendance before the examiner, whether in obedience to the order or at any subsequent time fixed by the examiner and whether brought before the examiner in custody or in pursuance of the bond given by the sureties, the examiner may proceed with the examination. R.S., c. 76, s. 18.

**Scope of examination**

**19** **(1)** The debtor, where the creditor requires it, may be examined fully touching the matters of the inquiry.

**(2)** Either the creditor or debtor may call, examine and cross-examine witnesses and may enforce the attendance of such witnesses, and the production of documents by subpoenas issued out of the court in which judgment was recovered, and shall be issued by the examiner.

**(3)** Where a collecting agency or a solicitor or agent thereof requires a subpoena for the attendance of a witness at any examination of the debtor, the person making the application for the subpoena shall satisfy the examiner by proof on oath that the witness is likely to give material evidence touching the matter of the examination, and the subpoena may not be issued unless the examiner requires the same. R.S., c. 76, s. 19.

**Answers under oath**

**20** The debtor, or any witness, must be sworn to make true answers to all such questions as are put to the debtor or witness touching the matters of the inquiry. R.S., c. 76, s. 20.

**Refusal to be sworn**

**21** Where a debtor or witness refuses or is unwilling, from alleged conscientious motives, to be sworn, the debtor or witness must, where the examiner is satisfied of the sincerity of the debtor's or witness' objections, be permitted, instead of being sworn, to make the affirmation or declaration provided by the *Evidence Act*, and in such case refusal to make such affirmation or declaration, or refusal to answer any such questions, may be dealt with in the same manner as refusal to be sworn. R.S., c. 76, s. 21.

**Failure of witness to attend**

**22** **(1)** Upon failure of a witness to attend at the examination, the examiner, upon proof that the witness was duly served with a subpoena and was paid or tendered fees for attendance and travel, may forthwith issue a warrant under the examiner's hand to bring such person, at the time and place to be therein mentioned, before the examiner, to be examined as a witness.

**(2)** The warrant may be in the form prescribed by the regulations, or to the like effect.

**(3)** The warrant may be executed anywhere in the Province by an officer. R.S., c. 76, s. 22.

**Detention of witness**

**23** Where a person subpoenaed as a witness is brought before an examiner on a warrant issued in consequence of refusal to obey the subpoena, the person may

(a) by the verbal order of the examiner on the warrant, be detained before the examiner, or in a jail or lock-up, or in the custody of the person having the person in charge, in order to secure the person's presence as a witness on the date fixed for the examination; or

(b) in the discretion of the examiner, be released on the person giving a bond, with or without sureties, conditioned for the person's attendance to give evidence. R.S., c. 76, s. 23.

**Refusal to co-operate**

**24 (1)** Where, upon an examination, the debtor or any witness who is produced for the purpose of giving evidence on the examination

(a) refuses to be sworn or to be examined upon affirmation or declaration;

(b) having been sworn, or permitted to affirm or declare, refuses to answer such questions as are put to the debtor or witness touching the matters of the inquiry; or

(c) refuses to produce any documents that the debtor or witness has been required by subpoena to produce,

without in any such case offering any just excuse for the refusal, the examiner may thereupon adjourn the examination and may in the meantime by a warrant in the form prescribed by the regulations, or to the like effect, commit the person so refusing to a jail or lock-up, there to be detained until the time to which the examination is adjourned and to be brought before the examiner.

**(2)** Where the person, upon being brought up at the adjournment of the examination, again refuses to do what is so required of the person, the examiner may make a further adjournment of the examination and another commitment of the person, and so again from time to time until the person consents to do what is so required of the person. R.S., c. 76, s. 24.

**Adjournment of examination**

**25 (1)** The examiner may adjourn any such examination, but no adjournment may be for more than one week.

**(2)** The examiner may commit the debtor to jail until the time fixed for the adjournment, unless the debtor enters into a bond, with sufficient sureties to the satisfaction of the examiner, to attend at the time and place to which the examination is adjourned. R.S., c. 76, s. 25.

**Form of warrant and bond**

**26 (1)** The warrant for commitment may be in the form prescribed by the regulations, or to the like effect.

**(2)** The bond may be in the form prescribed by the regulations, or to the like effect. R.S., c. 76, s. 26.

**Appointment of special examiner**

**27 (1)** The Governor in Council may appoint one or more persons to be a functionary or functionaries for the Halifax Regional Municipality or for a county or municipality for the purposes in this Act specified, such functionary to be called "a special examiner under the *Collection Act*".

**(2)** A person so appointed may not act as an examiner.

**(3)** In every case where the application has been made to an examiner under the *Collection Act* for the Halifax Regional Municipality, a special examiner for the Halifax Regional Municipality and no other functionary may be the special examiner.

**(4)** Sections 19 to 24 and subsection 25(2) apply with the necessary changes to the examination of debtors before a special examiner.

**(5)** The special examiner may adjourn any such examination, but no adjournment may be for a longer period than one month. R.S., c. 76, s. 27.

**Examination by special examiner**

**28 (1)** At the conclusion of the evidence, or after an adjournment for deliberation, the examiner may verbally order a peace officer to take the debtor before a special examiner, who may thereupon proceed with the examination of the debtor in respect of any of the following matters:

(a) the contracting of the debt, or the incurring of the liability that forms the subject of the judgment;

(b) the disposition by the debtor of the debtor's property;

(c) the debtor's present circumstances; and

(d) the debtor's present or prospective means of paying the debt.

**(2)** At the conclusion of the examination, or after adjournment for deliberation, the special examiner may, by warrant, commit the debtor to imprisonment for any term not exceeding 12 months, if it appears to the special examiner that

(a) the debt, that forms the subject of the judgment, was fraudulently contracted;

(b) the credit was obtained under false pretences;

(c) the debtor contracted the debt without having at the time any reasonable expectation of being able to pay the same;

(d) any other fraudulent circumstances have occurred in connection with the contracting of the debt;

(e) the debtor has made a fraudulent disposition of the debtor's property; or

(f) in cases of tort, the tort was wilful and malicious.

**(3)** The warrant of commitment may be in the form prescribed by the regulations, or to the like effect, and may contain the ground of commitment.

**(4)** It must be stated in the warrant that the commitment is terminable upon the debtor paying the amount due on the judgment and the fees, if any, indicated on the warrant. R.S., c. 76, s. 28.

**Assignment of property**

**29 (1)** The examiner, after the examination of the debtor, may require that the debtor execute an assignment of all the debtor's real and personal property, credits and effects (except such property as is exempt from levy on execution) to the creditor in trust for the payment due on the judgment, and, where the debtor refuses to execute such an assignment, the examiner may order the debtor to appear before a special examiner for further examination at such time and place as the examiner may appoint.

**(2)** After such further examination, the special examiner may verbally require that the debtor execute the assignment referred to in subsection (1) and, in the event of the failure of the debtor to execute such an assignment, the special examiner may take such refusal into consideration in fixing the term of imprisonment provided in Section 28 to be inserted in the warrant of commitment.

**(3)** Where the special examiner has determined not to commit the debtor under Section 28, the special examiner may nevertheless verbally require that the debtor execute such assignment and, in the event of the refusal of the debtor, may forthwith, by warrant, commit the debtor to jail for any term not exceeding 12 months, but such commitment is terminable upon the debtor executing such assignment or paying the amount due on the judgment and the fees indicated on the warrant.

**(4)** The warrant of commitment may be in the form prescribed by the regulations, or to the like effect. R.S., c. 76, s. 29.

**Order for payment of judgment**

**30 (1)** Where upon the examination of any judgment debtor, other than a debtor arrested because the debtor was about to leave the Province, it appears to the examiner that the debtor is possessed of means or income sufficient therefor, the examiner may make an order requiring the debtor to pay the amount due on the judgment by instalments.

**(2)** The order must state the amount of the instalments and the time when and the places at which the same must be paid.

**(3)** The examiner may also, in the examiner's discretion, direct that the debtor pay the fees payable by the creditor to any witness and to the examiner or officers under this Act, with the first or any other instalment, and it is sufficient to indorse or indicate the amount of such fees under the order and without other taxation, but no such direction may be made by the examiner for any subsequent order or orders for the same debt unless the creditor satisfies the examiner by proof on oath that the debtor wilfully refuses to pay the instalments directed to be made by the first order.

**(4)** Where the debtor is unable to make any of the payments directed to be made by such order, the debtor may, upon an affidavit by the debtor or the debtor's agent or solicitor setting forth such order and that the debtor is not possessed of means or income sufficient to make the payments directed to be made by such order, obtain *ex parte* from an examiner an order for re-examination, and upon such re-examination the examiner may set aside or vary the order so made.

**(5)** No order may be made against any debtor to run concurrently with any order previously made unless in the opinion of the examiner a further order is fully justified by the circumstances of the debtor.

**(6)** Where it appears to the examiner that no further order should be made the costs of the examination may not be taxed against the debtor.

**(7)** The order for payment of such instalments may be in the form prescribed by the regulations, or to the like effect. R.S., c. 76, s. 30.

**Examination for failure to make payments**

**31 (1)** Where the debtor fails to make any of the payments directed to be made by an order made under Section 30 or under this Section, the creditor may, upon an affidavit by the creditor or the creditor's agent or solicitor setting forth the order and the non-compliance therewith, obtain *ex parte* from a special examiner an order requiring the attendance of the debtor before the special examiner at the time and place therein named.

**(2)** Sections 9 to 17 apply with necessary changes to the enforcing by a special examiner of the attendance of a debtor.

**(3)** Upon attendance before the special examiner the debtor may be examined as to the debtor's means and income.

**(4)** Where, upon such examination, it appears to the special examiner that the debtor is not possessed of means or income sufficient to make the payments directed to be made by the order aforesaid but is possessed of means or income sufficient to make some payment, the special examiner may make an order requiring the debtor to pay the amount due on the judgment by such instalments as appear to the special examiner to be just, but where it appears to the special examiner that the debtor is able to make larger payments than in the order aforesaid, the special examiner may increase the amount of the instalments.

**(5)** No order may be made by the special examiner against any debtor to run concurrently with any order previously made unless in the opinion of the special examiner a further order is fully justified by the circumstances of the debtor.

**(6)** Where it appears to the special examiner that no further order should be made, the costs of the examination may not be taxed against the debtor.

**(7)** Where, upon such examination, it appears to the special examiner that the debtor has without reasonable excuse refused or neglected to pay the instalment mentioned in such order and is possessed of means or income sufficient to pay the same, the special examiner may make an order that an execution directed to the proper officer to arrest the debtor be issued, except that such execution may not be executed on a holiday or a day preceding a holiday.

**(8)** Where the debtor is unable to make any of the payments directed to be made by such order, the debtor may, upon an affidavit of the debtor or the debtor's agent or solicitor setting forth such order and that the debtor is not possessed of means or income sufficient to make the payments directed to be made by such order, apply to the special examiner or to a special examiner to have the instal-

ments payable by such order reduced, and, upon proof that the means or income of the debtor have changed since the making of the original order or the latest subsequent order varying it, the special examiner or a special examiner may vary the original or subsequent order so made.

**(9)** Any person arrested under such execution has the following privileges:

(a) where the person has remained in jail for two days, the jailer shall notify the official having the custody of the documents and records under which the person has been imprisoned, and such official shall forthwith forward all such documents and records to a judge of the Supreme Court of Nova Scotia and the judge shall examine the documents and records *ex parte*, and upon such examination may in the judge's discretion, where the imprisonment is imposing undue hardship on the debtor or the debtor's family, make an order directed to the sheriff that the debtor be released, and the order for release must be forthwith acted upon by the jailer or sheriff; and

(b) the judgment creditor or plaintiff in the cause in which such execution has been issued is liable to pay to the jailer the sum of one dollar per day for the maintenance of the debtor, which sum may be recovered from the plaintiff as a civil debt, and, where at any time such payments for 14 days are unpaid, the jailer shall forthwith release the debtor, and any such sums paid by the creditor to the jailer must be paid over by the jailer to the municipal clerk.

**(10)** The order for payment of such instalments, the order for execution and the execution may be in the form prescribed by the regulations, varied to suit the circumstances, or to the like effect.

**(11)** The prothonotary, clerk, registrar or other official of the court, or justice of the peace, who respectively may issue an execution upon the judgment to take the property of the debtor, shall, in compliance with such order, issue the execution to take the body.

**(12)** No execution issued pursuant to an order under subsection (7) may be executed after 30 days from the date on which the order was made or after a payment on account of the debtor's indebtedness has been made by the debtor and accepted by the creditor, or the creditor's solicitor or agent subsequent to the making of the order, provided, however, that after the expiration of the 30 days or after the acceptance of such payment, where the debtor continues to be in default in making any of the payments referred to in subsection (1), the creditor may proceed in the same manner as if no examination had been held by a special examiner and no such order or execution had been issued. R.S., c. 76, s. 31.

**Condition of arrest**

**32 (1)** Notwithstanding any other provision of this Act, no debtor may be arrested or imprisoned under an order unless the debtor is summoned to appear before a judge of the Supreme Court of Nova Scotia and the judge by order authorizes the arrest and imprisonment.

**(2)** Where a debtor fails to appear before a judge in response to a summons, the judge may proceed in the debtor's absence.

**(3)** A judge before whom a debtor is summoned to appear shall inquire into the circumstances and shall not make an order authorizing the debtor's arrest and imprisonment if imprisonment would impose undue hardship on the debtor or the debtor's family. R.S., c. 76, s. 32.

**Appeal**

**33 (1)** An appeal lies from all orders, decisions or adjudications of an examiner to a judge of the Supreme Court of Nova Scotia.

**(2)** The appeal may be heard either at sittings or in chambers. R.S., c. 76, s. 33.

**Notice of appeal**

**34 (1)** Notice of appeal, stating the grounds thereof, and the time and place at which the appeal will be brought on must be given by the appellant to the respondent at least 48 hours before the hearing.

**(2)** The notice of appeal may be served by being left with the solicitor of the respondent or the respondent personally, or at the respondent's last place of abode, within 10 days from the date of the order, decision or adjudication appealed from or within any additional time allowed upon application to any such judge. R.S., c. 76, s. 34.

**Debtor may remain in custody**

**35 (1)** The debtor, where the appeal is from a decision or adjudication adjudging imprisonment, must either remain in custody until the time of the hearing of the appeal or shall enter into a bond in a sum to be fixed by the examiner, but not exceeding the amount due on the judgment, with two sufficient sureties conditioned personally to appear before the judge in the hearing of the appeal, and to surrender the debtor to prison in case of an adjudication of imprisonment.

**(2)** Every surety shall, where required by the examiner, make an affidavit of the surety's sufficiency as such surety.

**(3)** Upon the filing of the bond, the debtor must be discharged from custody, pending the result of the appeal.

**(4)** The sureties to the bond are discharged by surrendering the debtor to prison. R.S., c. 76, s. 35.

**Appeal**

**36 (1)** The appeal, where made to a judge of the Supreme Court of Nova Scotia, must be brought

(a) before the judge who first holds a sitting in the county in which the appeal is made, unless otherwise ordered by the judge; or

(b) where a judge of the Supreme Court resides in the county, within 30 days from the date of the order, decision or adjudication of the examiner.

**(2)** Where the appellant fails to prosecute the appellant's appeal within the time prescribed by this Section, the appeal stands dismissed and the decision or adjudication of the examiner is confirmed without further order. R.S., c. 76, s. 36.

**Order to compel debtor's attendance**

**37 (1)** Where the appeal is from an order of the examiner discharging the debtor, the judge before whom the appeal is to be heard may, upon application, make an order requiring the attendance of the debtor before the judge at a time and place named therein.

**(2)** Where the debtor fails to attend in obedience to the order, the judge may issue an order under the judge's hand for the arrest and imprisonment of the debtor and may enforce the attendance of the debtor in the manner prescribed for enforcing attendance before an examiner. R.S., c. 76, s. 37.

**Evidence on appeal**

**38** Where the appeal is from an adjudication of the examiner upon an examination had before the examiner, the evidence at such examination may be read on the appeal, but the judge, in the judge's discretion, may have the debtor or any other witness called before the judge for examination, whether debtor or other witness was called before the examiner or not. R.S., c. 76, s. 38.

**Duties and powers of judge on appeal**

**39 (1)** The judge, to whom the appeal is made, shall thereupon hear and determine the matter of the appeal and may confirm or reverse the decision or order of the examiner or may make such order, adjudication or commitment as to the judge seems just and that the examiner might have made under this Act, and has, for the enforcement thereof, like powers and may use the like process and procedure.

**(2)** The judge may, in the judge's discretion, order the unsuccessful party upon the appeal to pay to the other the costs of the appeal, to be taxed according to the scale of fees of the court of which the judge is a member. R.S., c. 76, s. 39.

**Decision on appeal final**

**40** The judgment of the judge upon the appeal under this Act is final. R.S., c. 76, s. 40.

**Sections 33 to 40 apply to appeal**

**41** Sections 33 to 40 apply with necessary changes to an appeal from all orders, decisions or adjudications of a special examiner. R.S., c. 76, s. 41.

**Fees payable to examiner**

**42 (1)** The fees in the *Costs and Fees Act* are payable to the examiner and the officer, respectively, and in the discretion of the examiner may be verbally ordered to be paid by the debtor to the creditor and, where not paid, may be endorsed or indicated on the order or warrant made against the debtor, without any taxation, and may be enforced by means of the order or warrant, but, where the

judgment debt is less than $50, the fees payable to the examiner may not exceed the sum of $3.50.

**(2)** The fees payable to a special examiner are double the fees in the *Costs and Fees Act* prescribed for an examiner but, where the judgment debt is less than $50, the fees payable to the special examiner may not exceed the sum of $5. R.S., c. 76, s. 42.

**Validity of forms in regulations**

**43** The forms prescribed under Section 47, or forms to the like effect, are deemed good, valid and sufficient in law. R.S., c. 76, s. 43.

**Order for commitment not to be held invalid**

**44 (1)** No order or warrant of commitment made by an examiner, a special examiner or the judge on appeal may, on any application, be held invalid or brought in question in any court or before any judge for any irregularity, informality or insufficiency therein, if the court or judge before which or whom the question is raised is, upon perusal of the evidence taken upon the examination, satisfied that there was ground for making an order or warrant of commitment under this Act.

**(2)** Such court or judge shall, upon such application, hear such evidence and may make such order or warrant of commitment thereupon as the examiner might have made, and such order or warrant of commitment may be enforced in the same manner as if it had been made by such examiner. R.S., c. 76, s. 44.

**Where commitment refused**

**45** After an examination has taken place under this Act before an examiner, a special examiner or a judge on appeal and an order or warrant of commitment has been refused, no subsequent order or proceedings to enforce an examination may be applied for, in respect to the same judgment, unless it is proved by affidavit before the examiner that there is an amount due upon the judgment and that

(a) the judgment debtor is about to leave the Province;

(b) some subsequent fraudulent circumstance has occurred in respect to the amount due on the judgment, or the disposition of the debtor's property since the last examination; or

(c) the debtor is then in receipt of such income as will enable the debtor to pay the amount due on the judgment by instalments. R.S., c. 76, s. 45.

**Filing of evidence**

**46 (1)** After the conclusion of the examination of any debtor under this Act, the examiner or special examiner shall forthwith file the evidence taken before the examiner or special examiner on the examination with the prothonotary for the county in which the evidence is taken if the judgment is in the Supreme Court of Nova Scotia and in other cases with the papers in the cause and, in cases where an order for commitment to jail is made by the examiner or special examiner, the examiner or special examiner shall forthwith file the evidence taken before the examiner or special examiner on the application for the warrant for commitment in the same manner as the evidence taken in the examination of the debtor.

**(2)** The prothonotary or person with whom the evidence is filed is not entitled to any fee for filing the evidence.

**(3)** Where the examination is not concluded, the portion of the evidence that has been taken before the examiner must be filed in like manner. R.S., c. 76, s. 46.

**Regulations**

**47** **(1)** The Minister of Justice may make regulations prescribing forms for the purpose of this Act.

**(2)** The forms contained in the Schedules to Chapter 76 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Section.

**(3)** The exercise by the Minister of Justice of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

CHAPTER C-32

# An Act Respecting Collection and Debt Management Agencies

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Collection and Debt Management Agencies Act*. R.S., c. 77, s. 1; 2012, c. 40, s. 3.

## Interpretation

**2** In this Act,

"collection agency" means a person, other than a collector, who deals with a debtor for the purpose of obtaining or arranging for payment of money owing to another person, or who holds out to the public that it provides such a service or any person who sells or offers to sell forms or letters represented to be a collection system or scheme, but does not include a debt management agency;

"collector" means an individual employed, appointed or authorized by a collection agency to solicit business or collect debts for the agency or to deal with or trace debtors for the agency;

"debt management agency" means a person, other than a debt management agent, who carries on the activities of offering or undertaking to act for a debtor in the Province in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors in consideration of a fee, commission or other remuneration that is payable by the debtor;

"debt management agent" means an individual employed, appointed or authorized by a debt management agency to act for or deal with debtors;

"licence" means a valid and subsisting licence granted under this Act;

"Minister" means the Minister of Service Nova Scotia;

"Registrar" means the person appointed as Registrar for the purposes of this Act. R.S., c. 77, s. 2; 2012, c. 40, s. 4; 2014, c. 34, s. 2.

**Act does not apply**

**3** This Act does not apply to

(a) any barrister or firm of barristers of the Supreme Court of Nova Scotia; or

(b) any other person or class of persons exempted by the regulations. 2012, c. 40, s. 5.

**Act prevails**

**4** **(1)** This Act prevails over any agreement to the contrary, whether verbal or written, express or implied.

**(2)** Any waiver or release by a person of the rights, benefits, protections or remedies under this Act and any agreement that in any way limits or abrogates or in effect limits or abrogates any such right, benefit, protection or remedy is void. 2012, c. 40, s. 6.

**Registrar**

**5** **(1)** The Minister shall appoint a Registrar who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

**(2)** The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar's stead.

**(3)** The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar's duties.

**(4)** A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

**(5)** A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2012, c. 40, s. 7; 2014, c. 39, s. 2.

**Prohibition**

**6** **(1)** Except as otherwise permitted under this Act or the regulations, no person or individual shall carry on the activities of

(a) a collection agency unless the person holds a collection agency licence;

(b) a debt management agency unless the person holds a debt management agency licence;

(c) a collector unless the individual holds a collector's licence; or

(d) a debt management agent unless the individual holds a debt management agent's licence.

**(2)** No person may hold both a collection agency licence and a debt management agency licence.

**(3)** No individual may hold both a collector's licence and a debt management agent's licence.

**(4)** A collection agency shall not carry on the activities of a collection agency in a name other than the name shown on its licence nor invite the public to deal at a place other than that authorized by its licence.

**(5)** A debt management agency shall not carry on the activities of a debt management agency in a name other than the name shown on its licence nor invite the public to deal at a place other than that authorized by its licence.

**(6)** A collection agency or debt management agency shall direct a debtor to

(a) make payments at or otherwise communicate through the place authorized by its licence; or

(b) deal directly with the creditor of the debt.

**(7)** No collection agency shall conduct collection agency activity except at the place authorized by the licence and unless the activity is entered on the systems of the collection agency.

**(8)** No debt management agency shall conduct debt management agency activity except at the place authorized by the licence and unless the activity is entered on the systems of the debt management agency.

**(9)** Notwithstanding subsections (7) and (8), a collector or a debt management agent may remotely conduct collection agency activity or debt management agency activity, respectively, from a place other than the place authorized by the agency licence if the conditions prescribed by the regulations are met. 2012, c. 40, s. 8; 2021, c. 27, s. 1.

**Prohibition — falsely representing self**

**7** **(1)** No person shall represent itself as carrying on the activities of

(a) a collection agency unless the person holds a collection agency licence; or

(b) a debt management agency unless the person holds a debt management agency licence.

**(2)** No individual shall purport to be carrying on the activities of

(a) a collector unless the individual holds a collector's licence; or

(b) a debt management agent unless the individual holds a debt management agent's licence. 2012, c. 40, s. 9; 2021, c. 27, s. 2.

**Application for licence**

**8** **(1)** An application for a licence must be made to the Registrar upon a form provided by the Registrar and must be accompanied by the fee prescribed in the regulations.

**(2)** An applicant or person acting on behalf of an applicant may be required by the Registrar to verify by affidavit or otherwise the statements made in the application. R.S., c. 77, s. 6; 2012, c. 40, s. 10; 2021, c. 27, s. 3.

**Application for collection agency licence**

**9** **(1)** An applicant for a collection agency licence shall deliver to the Registrar as part of the application

(a) one copy of each form of agreement that the collection agency uses or proposes to use when entering into an agreement with persons for whom the collection agency acts;

(b) one copy of each form or form letter that the collection agency uses or proposes to use in making demands for the collection of debts; and

(c) a bond or other form of security as prescribed by the regulations.

**(2)** The agreement referred to in subsection (3) must set out particulars of the fees charged or proposed to be charged by the collection agency. R.S., c. 77, s. 6; 2012, c. 40, s. 10.

**Application for debt management agency licence**

**10** **(1)** An applicant for a debt management agency licence shall deliver to the Registrar as part of the application

(a) one copy of each form of agreement that the debt management agency uses or proposes to use when entering into an agreement with a debtor, unless the form or content of the agreement is as prescribed by the regulations; and

(b) a bond or other form of security as prescribed by the regulations.

**(2)** The agreement referred to in clause (1)(a) must

(a) contain cancellation rights as prescribed by the regulations; and

(b) set out particulars of the fees charged or proposed to be charged by the debt management agency. 2012, c. 40, s. 11.

**Address for service**

**11 (1)** Every applicant for a licence shall state in the application an address for service in the Province, and any notice under this Act or the regulations is for all purposes sufficiently served if delivered or sent by registered mail to that address or to the address for service stated or shown in a notice given pursuant to subsection (2).

**(2)** Every licensee shall notify the Registrar in writing of any change in the licensee's address for service. R.S., c. 77, s. 7; 2012, c. 40, s. 12.

**Agency represented by collector**

**12 (1)** Every application for a licence as a collector must be accompanied by a statement in writing given by a licensed collection agency that the applicant, if granted a licence, is authorized to act as a collector representing that collection agency.

**(2)** A licence issued to a collector must indicate thereon the name of the collection agency that furnished the statement required under subsection (1) and on whose behalf the collector is authorized to act as a collector.

**(3)** Every application for a debt management agent's licence must be accompanied by a statement in writing given by a licensed debt management agency that the applicant, if granted a licence, is authorized to act as a debt management agent representing that debt management agency.

**(4)** A licence issued to a debt management agent must indicate thereon the name of the debt management agency that furnished the statement required under subsection (3) and on whose behalf the debt management agent is authorized to act as a debt management agent. R.S., c. 77, s. 8; 2012, c. 40, s. 13.

**Deemed agent**

**13 (1)** A collector who is the holder of a licence is deemed to be authorized by the collection agency specified in the licence to act for or on behalf of that collection agency.

**(2)** A debt management agent who is the holder of a licence is deemed to be authorized by the debt management agency specified in the licence to act for or on behalf of that debt management agency. R.S., c. 77, s. 9; 2012, c. 40, s. 14.

**Notice of termination of representation**

**14 (1)** Where a collector ceases to represent a collection agency, the collection agency shall forthwith give notice in writing to the Registrar that the collector has ceased to represent the collection agency and the receipt of such notice by the Registrar operates as a termination of the licence of the collector.

**(2)** A collection agency that fails to give the notice required in subsection (1) within five days after the collector has ceased to represent it is guilty of an offence.

**(3)** Where a debt management agent ceases to represent a debt management agency, the debt management agency shall forthwith give notice in writing to the Registrar that the debt management agent has ceased to represent the debt management agency and the receipt of such notice by the Registrar operates as a termination of the licence of the debt management agent.

**(4)** A debt management agency that fails to give the notice required by subsection (3) within five days after the debt management agent has ceased to represent it is guilty of an offence. R.S., c. 77, s. 10; 2012, c. 40, s. 15.

**No action against debtor by unlicensed agency, collector or agent**

**15 (1)** No action may be brought by a collection agency, debt management agency, collector or debt management agent against a debtor for the enforcement of an agreement unless the collection agency, debt management agency, collector or debt management agent was licensed under this Act at the time that the debtor entered into the agreement.

**(2)** Subsection (1) does not apply if the collection agency, debt management agency, collector or debt management agent is exempted pursuant to Section 3. 2012, c. 40, s. 16.

**Transfer prohibited**

**16 (1)** The transfer of the licence of a collector from one collection agency to another is prohibited.

**(2)** The transfer of a licence of a debt management agent from one debt management agency to another is prohibited. R.S., c. 77, s. 11; 2012, c. 40, s. 17.

**New application**

**17 (1)** Where a collector whose licence is terminated is appointed by another collection agency or is reappointed by the collection agency for whom the collection agent was previously authorized to act, the collector shall make a new application to the Registrar for a licence.

**(2)** Where a debt management agent whose licence is terminated is appointed by another debt management agency or is reappointed by the debt management agency for whom the debt management agent was previously authorized to

act, the debt management agent shall make a new application to the Registrar for a licence. R.S., c. 77, s. 12; 2012, c. 40, s. 18.

**Restrictions on licence**

**18** **(1)** The Registrar may

(a) grant a licence; or

(b) where a licence is already granted, by notice to the licensee, make the licence subject to such terms, conditions and restrictions as are prescribed by the Governor in Council.

**(2)** Every licensee shall comply with the terms, conditions and restrictions to which the licensee's licence is subject. R.S., c. 77, s. 13; 2012, c. 40, s. 19.

**Expiry of licence**

**19** Unless previously terminated or cancelled, every licence expires at midnight on April 30th of each year. R.S., c. 77, s. 14.

**Suspension or cancellation**

**20** **(1)** The Registrar may suspend or cancel a licence where the Registrar is satisfied that the licensee

(a) has violated any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions to which the licensee's licence is subject;

(b) has made a material misstatement in the application for the licensee's licence or in any of the information or material submitted by the licensee to the Registrar pursuant to Section 9 or 10;

(c) is guilty of misrepresentation, fraud, dishonesty or false or misleading advertising; or

(d) has demonstrated incompetency, unfitness or untrustworthiness to carry on the activities in respect of which the licensee's licence was granted.

**(2)** Where a bond or other form of security filed under this Act is terminated, the licence of the collection agency or debt management agency is automatically suspended and remains suspended until the collection agency or debt management agency files with the Registrar a new bond or other form of security in the amount and form required.

**(3)** Where the licence of a collection agency is suspended or cancelled, the licences of all collectors of the collection agency are automatically terminated.

**(4)** Where the licence of a debt management agency is suspended or cancelled, the licences of all debt management agents of the debt management agency are automatically terminated. R.S., c. 77, s. 15; 2012, c. 40, s. 20.

**Further information**

**21** The Registrar may at any time require further information or material to be submitted by an applicant for a licence or by a licensee within a specified time and may require verification by affidavit or otherwise of any information or material so submitted or previously submitted. R.S., c. 77, s. 16.

**Appeal**

**22 (1)** A person who is dissatisfied with a decision of the Registrar under this Act may, within 30 days from the date of the decision, appeal to a judge of the Supreme Court of Nova Scotia who may upon hearing the appeal, which must be heard in accordance with the *Summary Proceedings Act*, by order do any one or more of the following things:

(a) dismiss the appeal;

(b) allow the appeal;

(c) allow the appeal subject to terms and conditions;

(d) vary the decision appealed against;

(e) refer the matter back to the Registrar for further consideration and decision;

(f) award costs of the appeal;

(g) make such other order as to the judge seems just.

**(2)** The appeal must be by notice of appeal and a copy thereof must be served upon the Registrar not less than 10 days before the day on which the motion is returnable.

**(3)** On the hearing of an appeal, any evidence taken before the Registrar and certified by the Registrar may, with leave of the judge hearing the appeal, be read and has the like force and effect as if the witness were there examined and any party affected by the appeal may call witnesses and adduce evidence whether or not the witnesses were called or the evidence adduced at the hearing before the Registrar either as to the credibility of witnesses or as to any other fact material to the inquiry.

**(4)** An appeal lies to the Nova Scotia Court of Appeal from a decision of the Supreme Court of Nova Scotia upon any question of law but such appeal can only be taken by leave of a judge of the Nova Scotia Court of Appeal given upon a petition presented to the judge within 30 days after the rendering of the decision and upon such terms as the judge may determine, and notice of the petition must be given to the Registrar at least two clear days before the presentation of the petition.

**(5)** Where leave to appeal has been granted, the appeal must be brought by notice served on the Registrar within 10 days after the leave to appeal has been granted, and the notice must contain the names of the parties, the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 77, s. 17; 2012, c. 40, s. 21.

**Further application**

**23** A further application for a licence may be made upon new or other evidence being produced where it is clear that material circumstances have changed. R.S., c. 77, s. 18.

**Records and books of account**

**24 (1)** Every collection agency and debt management agency shall keep proper records and books of account showing money received and money paid out, including a receipt book, cash book, client ledger, debtor ledger and journal or equivalent electronic accounting records satisfactory to the Registrar.

**(2)** In accordance with the regulations, every collection agency and debt management agency shall acknowledge, by means of receipt, any payments, agreements or transactions made by or on behalf of debtors. 2012, c. 40, s. 22.

**Agency acts as trustee**

**25 (1)** A collection agency is the trustee of any money collected on behalf of another person.

**(2)** A debt management agency is the trustee of any money received from a debtor for distribution to the debtor's creditors.

**(3)** Every collection agency and debt management agency shall maintain a trust account in a bank in the Province and shall deposit into the trust account all of the money collected on behalf of another person or received from a debtor for distribution to the debtor's creditors, without making any deduction, within three days of collecting or receiving the money.

**(4)** Notwithstanding subsection (3), the Registrar may

(a) authorize a collection agency or debt management agency to maintain its trust account in a financial institution of a class approved by the Registrar that is located outside the Province; and

(b) prescribe the time within which the money referred to in subsection (3) must be deposited into the trust account. 2012, c. 40, s. 23.

**Use of money in trust**

**26 (1)** No collection agency or debt management agency may deposit any money into the trust account it maintains pursuant to Section 25 except money collected or received from a debtor.

**(2)** No collection agency or debt management agency may withdraw money from a trust account it maintains pursuant to Section 25 except for the purpose of

(a) paying a creditor money received on behalf of that creditor;

(b) paying the fees, commissions and disbursements to which the collection agency or debt management agency is entitled;

(c) returning money collected from a debtor by a debt management agency if the debt management program is rejected by the creditor or cancelled;

(d) correcting an error caused by money being deposited to the trust account by mistake; or

(e) making a disposition, in accordance with the regulations, of money that is unclaimed or cannot be returned to a debtor.

**(3)** A collection agency or debt management agency that pays creditors from money withdrawn from its trust account shall do so in the manner prescribed by the regulations and must provide the creditor with a statement containing such information as prescribed by the regulations. 2012, c. 40, s. 23.

**Prohibitions — collection agencies and collectors**

**27** **(1)** No collection agency or collector shall

(a) collect or attempt to collect for a creditor money in excess of the amount owing by the debtor to the creditor;

(b) collect or attempt to collect money for a creditor without first satisfying itself that the money is owing by the debtor to the creditor;

(c) collect or attempt to collect a debt without the written authority of the creditor;

(d) collect or attempt to collect money from a person who is not liable for the debt;

(e) make any charge against a person for whom it acts in addition to those contained in the agreement with that person;

(f) send any communication or make any call, for the purpose of demanding a debt, for which the collection agency or collector elects to make the charges payable by the recipient;

(g) continue to communicate with or continue to collect or attempt to collect money from

(i) a person, if that person has informed the collection agency or collector that the person is not the person sought by the collection agency or collector, unless the collection agency or collector first takes all reasonable precautions to ensure that that person is the person sought by the collection agency or collector,

(ii) a debtor, if the debtor has notified the collection agency or collector in writing to communicate only with the debtor's legal adviser and an address for the legal adviser has been provided, or

(iii) a debtor, if the debtor has notified the creditor and the collection agency by registered mail that the debt is in dispute and requests that the creditor take the matter to court;

(h) communicate verbally with a debtor unless, at least five days in advance of the first verbal contact with the debtor, the

collection agency sends the debtor written notice and, where the debtor claims that the debtor did not receive the notice, the collection agency shall send the written notice to the debtor at an address provided by the debtor;

(i) use any form or form of letter to collect or attempt to collect money from a debtor unless a copy of the form or form of letter is filed with the Registrar;

(j) use, without lawful authority, any summons, notice or demand or other document expressed in language of the general style or purport of any form used in any court, or printed or written or in the general appearance or format of any such form;

(k) in any way threaten, abuse or intimidate a debtor, any member of the debtor's family or household, any relative, neighbour, friend or acquaintance of the debtor, the debtor's employer or any person who has guaranteed to pay the debt of the debtor either orally or in writing to induce a person to pay a debt;

(l) make telephone calls or personal calls or written communications of such nature or with such frequency as to constitute harassment of the debtor, any member of the debtor's family or household, any relative, neighbour, friend or acquaintance of the debtor, the debtor's employer or any person who has guaranteed to pay the debt of the debtor;

(m) unless requested by the person being contacted, contact by telephone, personal call or electronic means or otherwise attempt to contact a person in relation to the collection of a debt

(i) on a Sunday or any other day designated by the regulations,

(ii) on any day other than a day referred to in subclause (i) except between the hours of 8:00 a.m. and 9:00 p.m.,

(iii) on any day that falls during a consecutive seven-day period in which the collection agency or collector acting on behalf of the same creditor has contacted the person three times, or

(iv) at such other times as may be prescribed by the regulations;

(n) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including references to the police, a law firm, prison, credit history, court proceedings, lien or garnishment;

(o) indicate to the debtor or any other person contacted for the purpose of collecting a debt that the collection agency or collector is a legal collector, litigation specialist, part of a law firm or the legal department of a business, including a legal department of the collection agency itself or of the creditor of the debt;

(p) give, or threaten to give, by implication, inference or statement, directly or indirectly, to the person who employs a debtor, or any member of the debtor's family or household information that

may adversely affect the employment or employment opportunities of the debtor, or any member of the debtor's family or household;

(q) publish or threaten to publish, either in print or through electronic means, a debtor's failure to pay;

(r) make a demand by telephone, by personal call or by writing for payment of an account without indicating the name of the creditor with whom the account was incurred, the balance of the account and the identity and authority of the person making the demand;

(s) where using an automated call system, fail to provide a contact number for the debtor to call when leaving a message;

(t) communicate or attempt to communicate with any member of a debtor's family or household or any relative, neighbour, friend or acquaintance of a debtor, unless

(i) the person being contacted has guaranteed to pay the debt of the debtor, and the contact is in respect of that guarantee,

(ii) the collection agency or collector does not have the debtor's home address or personal telephone number and the contact is for the sole purpose of obtaining the debtor's home address or personal telephone number, or

(iii) the debtor has requested that the collection agency discuss the debt with that person;

(u) communicate or attempt to communicate with a debtor's employer, unless

(i) the employer has guaranteed to pay the debt of the debtor and the contact is in respect of that guarantee,

(ii) the contact is solely for the purpose of confirming the debtor's employment status, business title or business address and occurs only once, or

(iii) the contact is authorized in writing by the debtor;

(v) directly or indirectly communicate to a debtor an intention to proceed with any legal action for which

(i) the collection agency or collector does not have the written authority of the creditor, or

(ii) there is no lawful authority;

(w) commence or continue an action for the recovery of a debt in the name of the collection agency or collector as plaintiff unless such debt has been assigned to the collection agency or collector, as the case may be, in good faith by instrument in writing for valuable consideration and notice of such assignment has been given to the debtor; or

(x) commence a legal proceeding where there has been an assignment with respect to the collection of a debt or recommend to a

creditor that a proceeding be commenced, unless the collection agency first gives notice to the debtor that the collection agency or collector intends to commence the proceeding or recommend that a proceeding be commenced.

**(2)** Notwithstanding any agreement to the contrary between a debtor and a creditor, any charges made or incurred by a collection agency or made or incurred by a creditor in employing a collection agency to collect the debt is deemed not to be a part of the amount owing by the debtor and is not recoverable by the creditor or by the collection agency acting on behalf of the creditor. R.S., c. 77, s. 20; 2012, c. 40, s. 24; 2021, c. 27, s. 4.

**Prohibitions — debt management agencies and agents**

**28** **(1)** No debt management agent shall collect or attempt to collect a debt without providing in all contacts and correspondence with the debtors and creditors

(a) the agent's name as shown on the debt management agent's licence; and

(b) the name of the debt management agency as shown on the debt management agency licence.

**(2)** No debt management agency or debt management agent shall

(a) collect from a debtor any amount greater than that prescribed by the regulations pursuant to subsection (6) for acting for the debtor in making arrangements or negotiating with the debtor's creditors on behalf of the debtor or receiving money from the debtor for distribution to the debtor's creditors;

(b) make any arrangement with a debtor to accept a sum of money that is less than the amount of the balance due and owing to a creditor as final settlement without the prior express consent of the creditor;

(c) fail to provide any person for whom the debt management agency or debt management agent acts with a written report on the status of that person's account in accordance with the regulations;

(d) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including references to the police, a law firm, prison, credit history, court proceedings, lien or garnishment;

(e) charge a fee for a dishonoured cheque unless provision for the fee was included in the agreement with the debtor;

(f) charge or receive any fee in the form of a promissory note or other negotiable instrument other than a cheque or bank draft;

(g) lend money or provide credit to a debtor for whom the debt management agency or agent is acting or offering to act;

(h) offer, pay or give any gift, bonus, premium, reward or other compensation to a debtor for entering into an agreement;

(i) directly or indirectly collect any fee for referring, advising, procuring, arranging for or assisting a debtor in obtaining any extension of credit from a lender, creditor or service provider;

(j) make a claim for breach of contract against a debtor who cancels an agreement;

(k) fail to inform a debtor within 30 days after a creditor has notified the debt management agency that the creditor has decided not to participate in or has withdrawn from a debt management program;

(l) communicate information about a debt or the existence of a debt with any person except the debtor, a guarantor of the debt, the debtor's representative or the creditor of the debt; or

(m) enter into an agreement with a debtor without first providing such information as may be prescribed by the regulations.

**(3)** No debt management agency may charge any fee, commission or disbursement for its services except in accordance with this Act and the regulations.

**(4)** No debt management agency may collect or retain from a debtor any fee, commission or disbursement for its services unless before providing the service it has

(a) entered into a written agreement signed by the debt management agency and the debtor to provide the service; and

(b) delivered a copy of the agreement required under clause (a) to the debtor.

**(5)** The content or form of the agreement referred to in clause (4)(a) may be prescribed by the regulations.

**(6)** No debt management agency shall charge a debtor any fee, commission or disbursements unless the fee, commission or disbursement has been determined in accordance with the regulations and does not exceed the maximum amount prescribed by the regulations. 2012, c. 40 s. 25.

**Investigation**

**29 (1)** The Registrar, or any person authorized by the Registrar in writing, may investigate and inquire into any matter the investigation of which the Registrar considers expedient for the due administration of this Act.

**(2)** The person making an investigation may at all reasonable times demand the production of and inspect all or any of the books, documents, papers, correspondence and records of the person in respect of whom the investigation is being made, and any person who has the custody, possession or control of any such books, documents, papers, correspondence or records shall produce them and permit the inspection thereof by the person making the investigation.

**(3)** For the purpose of subsection (1), the Registrar or any person designated in writing by the Registrar may at any reasonable time enter upon the

business premises of the collection agency or debt management agency to make an investigation.

**(4)** For the purpose of subsection (1), a collection agency or debt management agency that maintains records outside the Province may request the permission of the Registrar to produce its records for inspection at a place outside the Province.

**(5)** Where a collection agency or debt management agency makes a request under subsection (4) and permission is granted by the Registrar, the cost of carrying out the inspection, including all necessary and reasonable travel expenses, must be paid by the collection agency or debt management agency. R.S., c. 77, s. 21; 2012, c. 40, s. 26.

**Services of unlicensed agent or collector**

**30 (1)** No person shall knowingly engage or use the services of a collection agency or debt management agency that is not licensed under this Act.

**(2)** No collection agency shall employ a collector or appoint or authorize a collector to act on its behalf unless the collector is licensed under this Act.

**(3)** No debt management agency shall employ a debt management agent or appoint or authorize a debt management agency to act on its behalf unless the debt management agent is licensed under this Act. R.S., c. 77, s. 22; 2012, c. 40, s. 27.

**False or misleading statements**

**31 (1)** No person licensed under this Act may produce, distribute or publish any false, misleading or deceptive statements in any written, oral or visual advertisement, circular, program or other advertising medium.

**(2)** Where any person licensed under this Act is making false, misleading or deceptive statements in any written, oral or visual advertisement, circular, program or other advertising medium, the Registrar may order the immediate cessation of such statements. 2012, c. 40, s. 28.

**Cancellation of agreement**

**32 (1)** A debtor may cancel an agreement referred to in subsection 28(4) under the circumstances described in the regulations.

**(2)** A debt management agency shall not cancel an agreement referred to in subsection 28(4) except under the circumstances described in the regulations.

**(3)** Where an agreement is cancelled pursuant to subsection (1) or (2), the debt management agency shall, within 15 days, return to the debtor any money held in trust for the benefit of the debtor, less any amount paid to a creditor prior to the cancellation of the agreement and any fees permitted by the regulations. 2012, c. 40, s. 28.

**Offence**

**33** A person who

(a) does anything that is prohibited by this Act or the regulations;

(b) omits to do anything that is required by this Act or the regulations to be done; or

(c) fails to comply with an order of the Registrar given under this Act,

is guilty of an offence against this Act. R.S., c. 77, s. 23; 2012, c. 40, s. 29.

**Penalty**

**34** **(1)** A person who is guilty of an offence against this Act or the regulations is liable on summary conviction to a fine of not less than $500 nor more than $25,000 or to imprisonment for a term not exceeding one year, or to both.

**(2)** Notwithstanding subsection (1), where the person convicted of an offence under this Act or the regulations is a collection agency or debt management agency, the maximum penalty may be increased to $300,000. R.S., c. 77, s. 24; 2012, c. 40, s. 30.

**Evidence of carrying on activities**

**35** Where in a prosecution for an offence under this Act it is alleged that the accused carried on the activities of a collection agency or debt management agency without being the holder of a licence, evidence of one transaction is prima facie evidence that the accused carried on such activity. R.S., c. 77, s. 25; 2012, c. 40, s. 31.

**Certificate of Registrar**

**36** A certificate under the hand of the Registrar stating that

(a) a collection agency, debt management agency, collector, debt management agent or other person named in the certificate was or was not licensed under this Act;

(b) a licence was granted to a collection agency, debt management agency, collector or debt management agent; or

(c) the licence of a collection agency, debt management agency, collector or debt management agent was suspended, cancelled, terminated or reinstated,

is, without proof of the office or signature of the Registrar, admissible in evidence as prima facie proof of the facts stated in the certificate for all purposes in any action, proceeding or prosecution. R.S., c. 77, s. 26; 2012, c. 40, s. 32.

**Limitation period**

**37** A prosecution for an offence under this Act or the regulations may not be commenced more than three years after the later of

(a) the date on which the offence was committed; and

(b) the date on which evidence of the offence first came to the attention of the Registrar. 2018, c. 43, s. 1.

**Debtor may recover certain money paid**

**38** A debtor may recover in any court of competent jurisdiction any money paid contrary to this Act or the regulations. 2012, c. 40, s. 34.

**Regulations**

**39** **(1)** The Governor in Council may make regulations

(a) governing applications for licences or renewal of licences and prescribing terms and conditions of licences;

(b) prescribing the conditions under which a collector or a debt management agent may work remotely;

(c) requiring the payment of fees on application for licences or renewal of licences and prescribing the amount thereof;

(d) prescribing forms for the purposes of this Act, or requiring forms to be in a form specified by the Registrar, and providing for their use;

(e) prescribing a standard form of agreement or content of an agreement, including cancellation rights, for the purpose of Section 10;

(f) requiring and governing the maintenance of trust accounts by collection agencies and debt management agencies and prescribing the money that must be held in trust and the terms and conditions thereof;

(g) governing deposits into and withdrawals from trust accounts;

(h) governing dispositions of money that is unclaimed or cannot be returned to a debtor for the purpose of clause 26(2)(e);

(i) governing the manner in which collection agencies or debt management agencies pay creditors from money withdrawn from trust accounts for the purpose of subsection 26(3);

(j) governing the information to be provided to a creditor in a statement pursuant to subsection 26(3);

(k) requiring and governing the books, accounts and records that must be kept by collection agencies and debt management agencies and requiring the accounting and remission of money to creditors in such manner and times as are prescribed, including the disposition of money that is unclaimed or cannot be returned to a debtor;

(l) prescribing the form and contents of records of collection agencies and debt management agencies;

(m) prescribing the form, content and manner of delivery of receipts;

(n) requiring collection agencies and debt management agencies or any class thereof to deliver a bond or other form of security to the Registrar in such form and terms and with such collateral security as are prescribed by the regulations, and providing for the

forfeiture of bonds or other forms of security and the disposition of the proceeds;

(o) exempting any person or class of person from the application of this Act;

(p) requiring collection agencies and debt management agencies to make returns and furnish information to the Registrar, and respecting the time and manner for providing the information;

(q) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;

(r) prescribing the information that must be disclosed to a debtor by a debt management agency for the purpose of clause 28(2)(m) before entering into an agreement with the debtor;

(s) prescribing the form and manner in which information must be disclosed to a debtor by a debt management agency before entering into an agreement with the debtor;

(t) prohibiting the use of any particular method or practice by collection agencies or debt management agencies;

(u) prescribing days and times when a person may not be contacted in relation to the collection of a debt for the purpose of clause 27(1)(m);

(v) prescribing the procedures and matters that a collection agency, debt management agency, collector or debt management agent must follow to satisfy itself that money demanded of a debtor is owing by the debtor to the creditor;

(w) respecting advertising by collection agencies, debt management agencies, collectors and debt management agents;

(x) prescribing the form and contents of the written report on the status of a person's account for the purpose of clause 28(2)(c);

(y) respecting the circumstances under which a debtor may cancel an agreement for the purpose of subsection 32(1);

(z) respecting the circumstances under which a debt management agency may cancel an agreement for the purpose of subsection 32(2);

(aa) respecting the form and manner in which a debtor may notify a debt management agency of the cancellation of an agreement;

(ab) respecting the form and manner in which a debt management agency shall notify a debtor of the cancellation of an agreement;

(ac) respecting the fees, commissions and disbursements that may be charged by a debt management agency;

(ad) respecting fees permitted pursuant to subsection 32(3);

(ae) respecting the circumstances in which debt management agency fees, commissions and disbursements apply;

(af) respecting the methods of calculating debt management agency fees, commissions and disbursements and the maximum amounts that may be charged;

(ag) defining any word or expression used but not defined in this Act;

(ah) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 77, ss. 28, 29; 2012, c. 40, ss. 35, 36; 2021, c. 27, s. 5.

CHAPTER C-33

# An Act to Provide for the Establishment of a Combat Sports Authority for Nova Scotia

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Combat Sports Authority Act*. R.S., c. 43, s. 1; 2017, c. 8, s. 2.

## Interpretation

**2** In this Act,

"Authority" means the Nova Scotia Combat Sports Authority;

"contest" means a contest or exhibition of professional boxing, professional mixed martial arts or any other professional combat sport that is designated by the regulations;

"contestant" means an athlete who engages in a contest;

"gross gate receipts" means all money collected in respect of a contest including all television and film royalties or money collected to obtain the rights to represent the contest in any form;

"Minister" means the member of the Executive Council responsible for sport;

"official" means a person who participates in combat sport in an official capacity, and includes referees, judges, inspectors, timekeepers, medical advisers and ring announcers;

"participant" means a person who is associated with a contestant in the capacity of manager, second, trainer, matchmaker or agent or an agent of any of them;

"person" includes a partnership, corporation or association;

"promoter" means a person who conducts or is associated in a directory capacity in the conduct of a contest. R.S., c. 43, s. 2; 2017, c. 8, s. 3.

**Nova Scotia Combat Sports Authority**

**3 (1)** There is a body corporate to be known as the Nova Scotia Combat Sports Authority, which must be composed of not fewer than five nor more than nine members appointed by the Governor in Council.

**(2)** The Governor in Council shall designate a member of the Authority to be the Chair.

**(3)** A member of the Authority holds office for such term as is prescribed by the member's appointment.

**(4)** Where a member of the Authority is absent, ill or unable to act, the Minister may authorize another person to act in that member's place and stead and perform that member's duties.

**(5)** Members of the Authority must be paid the necessary expenses incurred by them while engaged in the performance of their official duties and such salary or remuneration as the Governor in Council determines. R.S., c. 43, s. 3; 2017, c. 8, s. 4.

**Referee in Chief and Advisor to the Authority**

**4** The Governor in Council may appoint one person who is not a member to be the Referee in Chief and Advisor to the Authority. 2017, c. 8, s. 4.

**Personnel**

**5 (1)** The Authority may appoint a Secretary-treasurer, Medical Adviser and such other officers and employees as may be required by the Authority for the proper conduct and management of the Authority.

**(2)** Notwithstanding subsection (1), the Authority may, subject to the approval of the Minister, avail itself of the services of staff in the Minister's Department.

**(3)** The Authority may employ or appoint such temporary staff or advisers as it considers necessary to provide adequate supervision of contests. R.S., c. 43, s. 4; 2017, c. 8, s. 5; 2019, c. 11, s. 1.

**Supervision of Authority by Minister**

**6** The Minister has general supervision and direction of the work of the Authority. R.S., c. 43, s. 5.

**Revenue of Authority**

**7** **(1)** The Authority shall maintain, in its own name, one or more accounts in any bank.

**(2)** The revenue of the Authority from any source must be

(a) retained by the Authority;

(b) deposited in an account established under subsection (1); and

(c) used by the Authority to carry out its objects or to promote safety in combat sport. 2019, c. 11, s. 2.

**Payment to Authority**

**8** **(1)** For the purposes of this Section, "gross gate receipts" does not include any tax, levy or commission payable pursuant to the *Theatres and Amusements Act.*

**(2)** Every person promoting, conducting or holding a contest in the Province shall pay to the Authority an amount to be determined by the Authority but not exceeding five per cent of the gross gate receipts received by such person in respect of such contest. R.S., c. 43, s. 7; 2017, c. 8, s. 7.

**Accounts of Authority**

**9** **(1)** The fiscal year of the Authority is from April 1st to March 31st in the following year.

**(2)** The Authority shall keep such books of account and records in the form and including such content as may be prescribed by the regulations.

**(3)** The accounts of the Authority must be audited annually as prescribed by the regulations.

**(4)** The Authority shall prepare and submit to the Minister an annual budget as prescribed by the regulations.

**(5)** The Authority shall submit to the Minister such business plans as may be prescribed by the regulations. 2019, c. 11, s. 3.

**Objects of Authority**

**10** The Authority may

(a) supervise and regulate contests in the Province;

(b) establish and enforce uniform rules for the conduct of contestants;

(c) provide for the licensing of all persons engaged in or connected with the presentation of contests;

(d) provide for and enforce proper medical standards and periodic medical examinations for contestants and officials, as prescribed by the regulations; and

(e) train officials in accordance with nationally established standards. R.S., c. 43, s. 9; 2017, c. 8, s. 8.

**Regulations**

**11 (1)** The Authority, subject to the approval of the Governor in Council, may make regulations

(a) prescribing the rules of procedure to govern proceedings of the Authority;

(b) prescribing the form and content of the books of account and records to be kept by the Authority;

(c) respecting the auditing of the Authority;

(d) prescribing the requirements for the preparation and submission of the Authority's annual budget;

(e) respecting business plans for the Authority;

(f) concerning the issuance of licences for contestants, officials, promoters and participants;

(g) prescribing the form and manner of applications for licences;

(h) prescribing and regulating the fees to be paid for licences;

(i) prescribing the privileges, terms, conditions, limitations and restrictions to be granted to or observed by any licensee;

(j) prescribing the conditions upon which licences may be issued and providing for the revocation, suspension or withholding of licences;

(k) prescribing adherence to the form and content of contracts between contestants, managers, promoters or other participants, and for the filing thereof with the Authority;

(l) concerning bonds, deposits or forfeits to be posted by promoters, contestants or participants;

(m) concerning approval by the Authority of details of any proposed contest and the filing of contracts relating thereto;

(n) providing for disciplinary action against contestants, promoters, participants or officials, including fines, suspensions or revocation of licences;

(o) monitoring standards for training facilities, rings and physical equipment;

(p) designating combat sports for the purpose of the definition of contest;

(q) concerning the standards of refereeing and judging and the conduct of contests;

(r) concerning the control and cost of a pay-per-view contest;

(s) concerning the medical examination of all contestants and the availability of medical assistance during any contest;

(t) governing the participation of amateur athletes in contests.

**(2)** The exercise by the Authority of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 43, s. 10; 2017, c. 8, s. 9; 2019, c. 11, s. 4.

**Prohibition and offence**

**12 (1)** No person shall conduct, promote or hold a contest in the Province without a licence from the Authority.

**(2)** No person shall engage, officiate or participate in a contest in the Province without a licence from the Authority, which is the sole licensing body in this respect.

**(3)** A person who violates this Section is guilty of an offence and upon summary conviction liable to a fine not exceeding $10,000. R.S., c. 43, s. 11; 2017, c. 8, s. 10.

**Fines by Authority**

**13** Notwithstanding any other provision of this Act or the regulations, the Authority is authorized and empowered to impose fines not exceeding $10,000 or 25% of the gross gate receipts, whichever is the greater, for a violation of any provision of this Act or the regulations. R.S., c. 43, s. 12.

**Hearings**

**14 (1)** The Authority is authorized and empowered to hold hearings relating to the carrying out of its objects or powers, and to summon any person by subpoena signed by the Chair and to require such person to give evidence on oath and to produce such documents and things as the Authority considers requisite in any such hearing.

**(2)** For the purpose of any such hearing, the Authority shall have and may exercise all the powers of a commissioner appointed under the *Public Inquiries Act*. R.S., c. 43, s. 13.

**Appeal**

**15 (1)** An order or decision of the Authority imposing a fine, suspension or revocation of licence may be appealed by the person affected to a judge of the Supreme Court of Nova Scotia by serving a notice of appeal on the Chair or Secretary-treasurer of the Authority within 20 days after the date of the order or decision appealed against.

**(2)** On the hearing of any such appeal, the judge may consider the record of the proceedings before the Authority and such additional or further evidence as the judge considers appropriate in the circumstances and may confirm, rescind or vary the order or decision of the Authority. R.S., c. 43, s. 14.

CHAPTER C-34

# An Act Respecting Domestic Commercial Arbitration and to Promote and Encourage the Use of Arbitration as a Means of Alternative Dispute Resolution

**Table of Contents**

(The table of contents is not part of the statute)

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**Short title**

**1** This Act may be cited as the *Commercial Arbitration Act*. 1999, c. 5, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to revise and update the law respecting commercial arbitration and thereby encourage and promote the use of arbitration as an alternative to court proceedings in resolving disputes between parties to a contract. 1999, c. 5, s. 2.

**Interpretation**

**3** **(1)** In this Act,

"arbitration agreement" means, subject to subsections (2) and (3), an agreement or part of an agreement by which two or more persons agree to submit a matter in dispute to arbitration;

"arbitrator" includes an umpire;

"award" means an award made by an arbitral tribunal pursuant to this Act;

"court" means,

(a) in Sections 8 and 9, the Supreme Court of Nova Scotia and the Provincial Court of Nova Scotia; and

(b) in all other Sections, the Supreme Court of Nova Scotia;

"party" means a party to an arbitration agreement.

**(2)** Where the parties to an arbitration agreement make a further agreement in connection with the arbitration, that further agreement forms part of the arbitration agreement.

**(3)** Where a matter is authorized or required pursuant to an enactment to be submitted to arbitration, a reference in this Act to an arbitration agreement is a reference to the enactment, unless the context otherwise requires. 1999, c. 5, s. 3.

**Application of Act**

**4** **(1)** This Act applies to an arbitration conducted under an arbitration agreement or authorized or required pursuant to an enactment unless

(a) the application of this Act is excluded by an agreement of the parties or by law; or

(b) Part II of the *International Commercial Arbitration Act* applies to the arbitration.

**(2)** Where there is a conflict between this Act and another enactment that authorizes or requires the arbitration, the other enactment prevails.

**(3)** This Act does not apply to an arbitration authorized or required pursuant to any of the following:

(a) the *Trade Union Act*;

(b) a collective agreement under the *Trade Union Act*;

(c) any enactment set out in the regulations.

**(4)** This Act binds the Crown in right of the Province. 1999, c. 5, s. 4.

**Variation or exclusion of provision of Act**

**5** The parties to an arbitration agreement may agree to vary or exclude any provision of this Act, except subsection 7(2), Sections 22 and 43, subsection 48(2) and Sections 49, 51 and 53. 1999, c. 5, s. 5.

**Deemed waiver**

**6** A party to an arbitration who is aware of a non-compliance with this Act, except with a provision referred to in Section 5, or non-compliance with the

arbitration agreement and who does not object to the non-compliance within the time limit provided or, where none is provided, within a reasonable time, not to exceed 30 days, is deemed to have waived the right to object. 1999, c. 5, s. 6.

**Arbitration agreement**

**7** **(1)** An arbitration agreement is not required to be in writing.

**(2)** An agreement requiring or having the effect of requiring that a matter in dispute be adjudicated by arbitration before the matter may be dealt with by a court has the same effect as an arbitration agreement.

**(3)** An arbitration agreement may only be rescinded in accordance with the law of contract. 1999, c. 5, s. 7.

COURT INTERVENTION

**Restriction on power of court to intervene**

**8** No court may intervene in matters governed by this Act, except for the following purposes as provided by this Act:

(a) to assist the arbitration process;

(b) to ensure that an arbitration is carried out in accordance with the arbitration agreement;

(c) to prevent manifestly unfair or unequal treatment of a party to an arbitration agreement;

(d) to enforce awards. 1999, c. 5, s. 8.

**Stay**

**9** **(1)** Where a party to an arbitration agreement commences a proceeding in a court in respect of a matter in dispute to be submitted to arbitration under the agreement, the court shall, on the motion of another party to the arbitration agreement, stay the proceeding.

**(2)** The court may refuse to stay the proceeding pursuant to subsection (1) only in the following cases:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid;

(c) the subject-matter of the dispute is not capable of being the subject of arbitration pursuant to the law of the Province;

(d) the motion to stay the proceeding was brought with undue delay;

(e) the matter in dispute is a proper one for default or summary judgment.

**(3)** An arbitration of the matter in dispute may be commenced or continued while the motion pursuant to subsection (1) is before the court.

**(4)** Where the court refuses to stay the proceeding,

(a) no arbitration of the matter in dispute may be commenced; and

(b) an arbitration that has been commenced may not be continued and anything done in connection with the arbitration, before the refusal of the court, is without effect.

**(5)** The court may stay the proceeding with respect to the matters in dispute dealt with in the arbitration agreement and allow the proceeding to continue with respect to other matters if the court finds that

(a) the agreement deals with only some of the matters in dispute in respect of which the proceeding was commenced; and

(b) it is reasonable to separate the matters in dispute dealt with in the agreement from the other matters.

**(6)** There is no appeal from the decision of the court pursuant to this Section. 1999, c. 5, s. 9.

**Powers of court**

**10** **(1)** The powers of the court with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitration as in court actions.

**(2)** On the application of an arbitral tribunal, or on the application of a party with the consent of the other parties or the arbitral tribunal, the court may determine any question of law that arises during the arbitration.

**(3)** The determination of the court of a question of law may be appealed to the Nova Scotia Court of Appeal with leave of that Court.

**(4)** On the application of all the parties to more than one arbitration, the court may order, on terms that the court considers just,

(a) that the arbitrations be consolidated;

(b) that the arbitrations be conducted simultaneously or consecutively; or

(c) that any of the arbitrations be stayed until any of the others are completed.

**(5)** When the court orders, pursuant to subsection (4), that arbitrations be consolidated, the court may appoint an arbitral tribunal for the consolidated arbitration and, where all the parties agree as to the choice of the arbitral tribunal, the court shall appoint that arbitral tribunal.

**(6)** Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation. 1999, c. 5, s. 10.

ARBITRAL TRIBUNAL

**Composition**

**11** Where an arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, the tribunal must be composed of one arbitrator. 1999, c. 5, s. 11.

**Court-appointed member and chair**

**12** **(1)** The court may appoint the arbitral tribunal, on the application of a party, if

(a) the arbitration agreement provides no procedure for appointment of the arbitral tribunal; or

(b) the person with power to appoint the arbitral tribunal has not done so within the time provided in the agreement or after a party has given the person seven days notice to do so, whichever is later.

**(2)** There is no appeal from the appointment of the court of the arbitral tribunal.

**(3)** Subsections (1) and (2) apply to the appointment of individual members of arbitral tribunals.

**(4)** An arbitral tribunal composed of three or more arbitrators shall, and an arbitral tribunal composed of two arbitrators may, elect a chair from among the arbitrators. 1999, c. 5, s. 12.

**Duties of arbitrator**

**13** **(1)** An arbitrator shall be independent of the parties and impartial as between the parties.

**(2)** Before accepting an appointment as an arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which that person is aware that may give rise to a reasonable apprehension of bias.

**(3)** An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose the circumstances to all the parties. 1999, c. 5, s. 13.

**No right to revoke appointment**

**14** A party cannot revoke the appointment of an arbitrator. 1999, c. 5, s. 14.

**Challenge and removal**

**15** **(1)** A party may challenge an arbitrator only on one of the following grounds:

(a) circumstances exist that may give rise to a reasonable apprehension of bias;

(b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

**(2)** A party who appointed an arbitrator or participated in the appointment of an arbitrator may challenge the arbitrator only on grounds of which the party was unaware at the time of the appointment.

**(3)** A party may not challenge an arbitrator pursuant to clause (1)(b) after the commencement of the arbitration hearing.

**(4)** A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge within 15 days of becoming aware of the grounds for challenge.

**(5)** The other parties may agree to remove the arbitrator who is being challenged or the arbitrator may resign.

**(6)** Where the arbitrator is not removed by the parties or does not resign, the arbitral tribunal, including the arbitrator who is being challenged, shall decide the issue within seven days and shall immediately notify the parties of the decision of the arbitral tribunal.

**(7)** Within 10 days after being notified of the decision of the arbitral tribunal pursuant to subsection (6), a party may make an application to the court to decide the issue.

**(8)** While an application is pending pursuant to subsection (7), the arbitral tribunal, including the arbitrator who is being challenged, may continue the arbitration and make an award, unless the court otherwise orders. 1999, c. 5, s. 15.

**Termination of arbitrator's mandate**

**16** **(1)** The mandate of an arbitrator terminates when

(a) the arbitrator resigns or dies;

(b) the parties agree to remove the arbitrator;

(c) 10 days elapse after all the parties are notified of the decision of the arbitral tribunal to uphold a challenge of the arbitrator and remove the arbitrator, and no application is made to the court pursuant to subsection 15(7); or

(d) the court removes the arbitrator pursuant to subsection 17(1).

**(2)** The resignation of an arbitrator or an agreement of a party to terminate the mandate of an arbitrator does not imply acceptance of the validity of any reason advanced for challenging or removing the arbitrator. 1999, c. 5, s. 16.

**Removal by court**

**17** **(1)** The court may remove an arbitrator on the application of a party pursuant to subsection 15(7), or may do so on the application of a party, if the arbitrator becomes unable to perform the functions of an arbitrator, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct the arbitration in accordance with Section 21.

**(2)** The arbitrator is entitled to be heard by the court on an application pursuant to subsection (1).

**(3)** When the court removes an arbitrator, the court may give directions on the conduct of the arbitration.

**(4)** Where the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, the court may order that the arbitrator receive no payment for services and may order that the arbitrator compensate the parties for all or part of the costs, as determined by the court, that were incurred by the parties in connection with the arbitration before the removal of the arbitrator.

**(5)** The arbitrator or a party may, within 30 days after receiving the decision of the court, appeal an order made pursuant to subsection (4) or the refusal to make such an order to the Nova Scotia Court of Appeal with leave of that Court.

**(6)** Except as provided in subsection (5), there is no appeal from the decision of the court or from directions given by the court pursuant to this Section. 1999, c. 5, s. 17.

**Consequences of termination of mandate**

**18** **(1)** When the mandate of an arbitrator terminates, a substitute arbitrator must be appointed, following the procedures that were used in the appointment of the arbitrator being replaced.

**(2)** When the mandate of an arbitrator terminates, the court may, on the application of any party, give directions concerning the conduct of the arbitration.

**(3)** The court may appoint the substitute arbitrator on the application of a party if

(a) the arbitration agreement provides no procedure for appointing the substitute arbitrator; or

(b) a person with power to appoint the substitute arbitrator has not done so within the time provided in the agreement or after a party has given the person seven days notice to do so, whichever is later.

**(4)** There is no appeal from the decision of the court or from directions given by the court pursuant to this Section.

**(5)** Where the arbitration is to be conducted only by a named arbitrator, the parties to the arbitration agreement may provide in the agreement that this Section does not apply. 1999, c. 5, s. 18.

JURISDICTION OF ARBITRAL TRIBUNAL

**Powers of tribunal**

**19** **(1)** An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may, in that connection, rule on objections with respect to the existence or validity of the arbitration agreement.

**(2)** The arbitral tribunal may determine any question of law that arises during the arbitration.

**(3)** Where the arbitration agreement forms part of another agreement, the arbitration agreement must, for the purpose of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the other agreement is found to be invalid.

**(4)** A party who objects to the jurisdiction of an arbitral tribunal to conduct an arbitration shall object no later than the beginning of the hearing or, where there is no hearing, no later than the first occasion on which the party submits to the tribunal a statement referred to in Section 27.

**(5)** A party who has appointed or who has participated in the appointment of an arbitrator is not prevented from objecting to the jurisdiction of the arbitral tribunal to conduct the arbitration.

**(6)** A party who objects on the grounds that the arbitral tribunal is exceeding its jurisdiction shall object as soon as the matter alleged to be beyond the jurisdiction of the tribunal is raised during the arbitration.

**(7)** Notwithstanding Section 6, where the arbitral tribunal considers the delay justified, a party may object after the time referred to in subsection (4) or (6), as the case may be, has passed.

**(8)** The arbitral tribunal may rule on an objection when the objection is raised or may deal with the objection in an award.

**(9)** Where the arbitral tribunal rules on an objection as a preliminary question, a party may, within 30 days after receiving notice of the ruling, make an application to the court to decide the matter and the court, when deciding the matter, shall apply the principles set out in Section 8.

**(10)** There is no appeal from the decision of the court on an application pursuant to subsection (9).

**(11)** While an application is pending pursuant to subsection (9), the arbitral tribunal may continue the arbitration and make an award. 1999, c. 5, s. 19.

**Further powers of tribunal**

**20 (1)** On the request of a party, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration and may order a party to provide security in that connection.

**(2)** The court may enforce the order of an arbitral tribunal made pursuant to subsection (1) as if the order were a similar order made by the court in an action. 1999, c. 5, s. 20.

CONDUCT OF ARBITRATION

**Rights of parties**

**21 (1)** An arbitral tribunal shall treat the parties equally and fairly.

**(2)** Each party must be given an opportunity to present a case and to respond to the case presented by the other parties. 1999, c. 5, s. 21.

**Procedure**

**22 (1)** An arbitral tribunal may determine the procedure to be followed in the arbitration.

**(2)** An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair of the arbitral tribunal. 1999, c. 5, s. 22.

**Evidence**

**23 (1)** An arbitral tribunal is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence.

**(2)** An arbitral tribunal may determine the manner in which evidence is to be admitted. 1999, c. 5, s. 23.

**Time and place of arbitration**

**24 (1)** An arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the convenience of the parties and the other circumstances of the case.

**(2)** An arbitral tribunal may meet at any place the tribunal considers appropriate for consultation among the members of the tribunal, for hearing witnesses, experts or parties or for inspecting property or documents. 1999, c. 5, s. 24.

**Commencement of arbitration**

**25 (1)** An arbitration may be commenced in any way recognized by law, including the following:

(a) a party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement;

(b) where the arbitration agreement gives a person who is not a party power to appoint an arbitrator, a party serves notice to exercise that power on the person and serves a copy of the notice on the other parties;

(c) a party serves on the other parties a notice demanding arbitration under the arbitration agreement.

**(2)** An arbitral tribunal may exercise the powers of the tribunal when every member of the tribunal has accepted appointment. 1999, c. 5, s. 25.

**Deemed reference**

**26** An arbitration commenced without identifying the matters in dispute is deemed to refer to arbitration all matters in dispute that the arbitration agreement entitles the party commencing the arbitration to refer to arbitration. 1999, c. 5, s. 26.

**Statements of parties**

**27** **(1)** An arbitral tribunal may require that the parties submit statements within a specified period of time.

**(2)** The statements of the parties referred to in subsection (1) must indicate the facts supporting the position of the parties, the points at issue and the relief sought by the parties.

**(3)** The parties may submit, with the statements referred to in subsection (1), the documents the parties consider relevant or may refer to the documents or other evidence the parties intend to submit.

**(4)** The parties may amend or supplement the statements referred to in subsection (1) during the arbitration, but the arbitral tribunal may disallow a change that is unduly delayed.

**(5)** The parties may submit the statements referred to in subsection (1) orally with the permission of the arbitral tribunal.

**(6)** The parties, and persons claiming through or under the parties, shall, subject to any legal objection, comply with the directions of the arbitral tribunal, including directions to

(a) submit to examination on oath or affirmation with respect to the matters in dispute; or

(b) produce records and documents that are in the possession or under the control of the parties or the persons claiming through or under the parties.

**(7)** The court may enforce a direction of the arbitral tribunal pursuant to this Section as if the direction were a direction made by the court in an action. 1999, c. 5, s. 27.

**Property and documents**

**28** **(1)** An arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument, but the tribunal shall hold a hearing if a party requests a hearing.

**(2)** An arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspecting property or documents.

**(3)** A party shall

(a) provide to the other parties a copy of any statement submitted to the arbitral tribunal; and

(b) make available to the other parties any other information supplied to the arbitral tribunal.

**(4)** An arbitral tribunal may not rely on an expert report or other document of which the parties have not been informed. 1999, c. 5, s. 28.

**Effect of certain defaults of party**

**29 (1)** Where the party commencing an arbitration does not submit a statement within the period of time specified pursuant to subsection 27(1), the arbitral tribunal may dismiss the claim by making an award terminating the arbitration, unless the party offers a satisfactory explanation.

**(2)** Where a party other than the one who commenced the arbitration does not submit a statement within the period of time specified pursuant to subsection 27(1), the arbitral tribunal may continue the arbitration unless that party offers a satisfactory explanation, but the tribunal may not treat the failure of that party to submit a statement as an admission of an allegation of any other party.

**(3)** Where a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitration and make an award on the evidence before the tribunal, unless the party offers a satisfactory explanation.

**(4)** In the case of an unreasonable delay by the party who commenced the arbitration, the arbitral tribunal may

(a) make an award terminating the arbitration; or

(b) give directions for the speedy determination of the arbitration,

and may impose conditions on its decision. 1999, c. 5, s. 29.

**Experts**

**30 (1)** An arbitral tribunal may appoint an expert to report to the tribunal on specific issues concerning the arbitration.

**(2)** The expert referred to in subsection (1) must be a person agreed on by the parties and, failing an agreement, must be determined by the arbitral tribunal.

**(3)** The remuneration to be paid to the expert must be paid by the parties in equal portions, subject to the direction of the arbitral tribunal.

**(4)** The arbitral tribunal may require the parties to give the expert any relevant information or to allow the expert to inspect property or documents.

**(5)** At the request of a party or of the arbitral tribunal, the expert, after making a report, shall participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject-matter of the report. 1999, c. 5, s. 30.

**Notices and oaths**

**31 (1)** A party may serve a person with a notice requiring the person to attend and give evidence at the arbitration at the time and place named in the notice.

**(2)** The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents and must be served in the same way.

**(3)** An arbitral tribunal may administer oaths, affirmations and declarations.

**(4)** An arbitral tribunal shall require witnesses to testify under oath, affirmation or declaration.

**(5)** On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if the arbitration were a court proceeding. 1999, c. 5, s. 31.

**Exemption**

**32** No person may be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding. 1999, c. 5, s. 32.

**Procedure**

**33 (1)** Notwithstanding anything contained in Sections 21 to 32, unless the parties otherwise agree, an arbitration pursuant to this Act must be conducted following the procedure set out in Schedule A to this Act.

**(2)** Notwithstanding subsection (1) but subject to subsection (3), the parties may agree to have the arbitration conducted following the expedited procedure set out in Schedule B to this Act.

**(3)** The expedited procedure referred to in subsection (2) may be utilized by the parties within five days of the dispute arising provided that the dispute has not already been referred to arbitration or that the time for referring the dispute to arbitration has not expired.

**(4)** The procedure set out in Schedule A to this Act applies to the expedited procedure set out in Schedule B to this Act, but where there is a conflict between Schedule A and Schedule B, Schedule B prevails. 1999, c. 5, s. 33.

AWARD AND TERMINATION OF ARBITRATION

**Duties and powers on making award**

**34** An arbitral tribunal shall decide a matter in dispute in accordance with the law, including equity, and may order specific performance, injunctions and other equitable remedies. 1999, c. 5, s. 34.

**Applicable law**

**35 (1)** In deciding a matter in dispute, an arbitral tribunal shall apply the law of a jurisdiction designated by the parties or, where none is designated, the law of the jurisdiction the arbitral tribunal considers appropriate in the circumstances.

**(2)** A designation by the parties of the law of the jurisdiction refers to the substantive law of that jurisdiction and not to the conflict of laws rules of that jurisdiction, unless the parties expressly indicate that the designation includes those conflict of laws rules. 1999, c. 5, s. 35.

**Manner of decision**

**36** An arbitral tribunal shall decide the matters in dispute in accordance with the arbitration agreement and the contract, if any, under which the matters arose and shall also take into consideration any applicable usages of trade. 1999, c. 5, s. 36.

**Composition required for decision**

**37** Where an arbitral tribunal is composed of more than one member, a decision of a majority of the members is a decision of the arbitral tribunal but, where there is no majority decision or unanimous decision, the decision of the chair governs. 1999, c. 5, s. 37.

**Permitted techniques**

**38 (1)** The members of an arbitral tribunal may, where the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute.

**(2)** After the members of an arbitral tribunal use a technique referred to in subsection (1), the members of the arbitral tribunal may resume their roles as arbitrators without disqualification. 1999, c. 5, s. 38.

**Mediation**

**39 (1)** During any arbitration under this Act, the parties may agree to adjourn the arbitration and refer any or all matters in dispute to mediation.

**(2)** Where a matter is referred to mediation pursuant to subsection (1), unless otherwise agreed by the parties, the procedure for conducting the mediation is as set out in Schedule C to this Act.

**(3)** Where the mediation is unsuccessful, or where either party withdraws from the mediation, the arbitration shall recommence at a time to be set by the arbitral tribunal.

**(4)** Where an arbitration is recommenced pursuant to subsection (3), the members of the arbitral tribunal may resume their roles as arbitrators without disqualification.

**(5)** A mediator shall not act as a representative or counsel of a party in proceedings in respect of a dispute that is the subject-matter of the mediation and the mediator may not be subpoenaed to give evidence as a witness in any such proceedings nor shall the mediator voluntarily offer to give such evidence.

**(6)** The parties shall not rely on or introduce as evidence in any proceedings, whether or not such proceedings relate to the subject-matter of the mediation,

(a) any views expressed, or suggestions made, by the other party in respect of a possible settlement of the dispute;

(b) any admissions made by the other party in the course of mediation;

(c) any proposals or recommendations made by the mediator; or

(d) the fact that the other party has indicated willingness to accept a proposal or recommendation for settlement made by the mediator. 1999, c. 5, s. 39.

**Effect of settlement**

**40** Where the parties settle the matters in dispute during arbitration, the arbitral tribunal shall terminate the arbitration and shall record the settlement in the form of a consent award. 1999, c. 5, s. 40.

**Effect of award**

**41** An award made by an arbitral tribunal binds the parties unless the award is set aside or varied pursuant to Section 48 or 49. 1999, c. 5, s. 41.

**Required contents of award**

**42 (1)** An award made by an arbitral tribunal must be made in writing and, except in the case of an award pursuant to Section 40, must, unless the parties otherwise agree, state the reasons on which the award is based.

**(2)** An award must indicate the place where and the date on which the award was made.

**(3)** An award must be dated and signed by all the members of the arbitral tribunal, or by a majority of the members if an explanation of the omission of the other signatures is included.

**(4)** A copy of an award must be sent to each party. 1999, c. 5, s. 42.

**Power to extend time for award**

**43** The court may extend the time in which an arbitral tribunal is required to make an award, even if the time has expired. 1999, c. 5, s. 43.

**Explanation of award**

**44 (1)** A party may, within 15 days after receiving a copy of the award of the arbitral tribunal, request, in writing, that the arbitral tribunal provide a further explanation of the reasons on which the award is based.

**(2)** Where the arbitral tribunal does not give a sufficient explanation within 15 days after receiving a request pursuant to subsection (1), the court, on the application of the party, may order the tribunal to give an explanation.

**(3)** An application pursuant to subsection (2) must be made within 45 days after the party receives a copy of the award. 1999, c. 5, s. 44.

**Interim and final awards**

**45 (1)** The arbitral tribunal may make interim awards.

**(2)** The arbitral tribunal may make more than one final award, disposing of one or more matters in dispute referred to arbitration in each award. 1999, c. 5, s. 45.

**Termination of arbitration**

**46** **(1)** An arbitration is terminated when

(a) the arbitral tribunal makes a final award or awards in accordance with this Act, disposing of all matters in dispute referred to arbitration;

(b) the arbitral tribunal terminates the arbitration pursuant to subsection (2), 29(1) or (4); or

(c) the mandate of the arbitrator is terminated pursuant to Section 16, if the arbitration agreement provides that the arbitration is to be conducted only by that arbitrator.

**(2)** An arbitral tribunal shall make an order terminating the arbitration if

(a) the party that commenced the arbitration withdraws the matters in dispute, unless the other party objects to the termination and the arbitral tribunal agrees that the other party is entitled to obtain a final settlement of the matters in dispute;

(b) the parties agree that the arbitration should be terminated; or

(c) the arbitral tribunal finds that the continuation of the arbitration has become unnecessary or impossible.

**(3)** An arbitration that is terminated may only be revived for the purpose of Section 47, subsections 49(7) and (8) or subsection 56(4).

**(4)** The death of a party to an arbitration does not terminate an arbitral tribunal.

**(5)** Subsection (4) does not affect a rule of law or an enactment under which the death of a person extinguishes a cause of action. 1999, c. 5, s. 46.

**Power to make corrections**

**47** **(1)** An arbitral tribunal may, on its own initiative within 30 days after making an award or at the request of a party made within 30 days after receiving the award,

(a) correct typographical errors, errors of calculation and similar errors in the award;

(b) amend the award to correct an injustice caused by an oversight on the part of the arbitral tribunal.

**(2)** The arbitral tribunal may

(a) on its own initiative within 30 days after making an award or such longer time as approved by the parties; or

(b) at the request of a party within 30 days after receipt of the award by that party,

make an additional award to deal with a matter in dispute that was presented in the arbitration but omitted from the earlier award.

**(3)** The arbitral tribunal is not required to hold a hearing or meeting before rejecting a request made pursuant to this Section. 1999, c. 5, s. 47.

APPEALS AND SETTING ASIDE

**Prerequisite to right to appeal**

**48 (1)** Unless the parties otherwise agree, there is no appeal of an award.

**(2)** Where an arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact. 1999, c. 5, s. 48.

**Setting aside by court**

**49 (1)** On the application of a party, the court may set aside an award on any of the following grounds:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid or has ceased to exist;

(c) the award deals with a matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement;

(d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or, where the agreement did not deal with the matter, was not in accordance with this Act;

(e) the subject-matter of the arbitration is not capable of being the subject of arbitration pursuant to the law of the Province;

(f) the applicant was treated manifestly unfairly and unequally, was not given an opportunity to present a case or to respond to the case of another party or was not given proper notice of the arbitration or of the appointment of an arbitrator;

(g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement;

(h) an arbitrator committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;

(i) the award was obtained by fraud.

**(2)** Where clause (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned decisions, the court shall set aside the impugned decisions and allow the other decisions to stand.

**(3)** The court shall not set aside an award on grounds referred to in clause (1)(c) if the applicant has agreed to the inclusion of the matters in dispute, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what matters in dispute have been referred to it.

**(4)** The court shall not set aside an award on grounds referred to in clause (1)(h) if the applicant had an opportunity to challenge the arbitrator on those grounds pursuant to Section 15 before the award was made and did not do so or if those grounds were the subject of an unsuccessful challenge.

**(5)** The court shall not set aside an award on a ground to which the applicant is deemed, pursuant to Section 6, to have waived the right to object.

**(6)** Where the ground alleged for setting aside the award could have been raised as an objection to the jurisdiction of the arbitral tribunal to conduct the arbitration, the court may set the award aside on that ground if the court considers the failure of the applicant to make an objection in accordance with Section 19 justified.

**(7)** When the court sets aside an award pursuant to this Section, the court may remove an arbitrator or the arbitral tribunal and may give directions concerning the conduct of the arbitration.

**(8)** Instead of setting aside an award pursuant to this Section, the court may remit the award to the arbitral tribunal and give directions concerning the conduct of the arbitration. 1999, c. 5, s. 49.

**Limitation periods**

**50 (1)** The following actions must be commenced within 30 days after an appellant or applicant receives the award, correction, explanation, change or statements of reasons on which the appeal or application is based:

(a) an appeal pursuant to subsection 48(2);

(b) an application to set aside an award pursuant to Section 49.

**(2)** An application to set aside an award on the grounds that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced

(a) within the period referred to in subsection (1); or

(b) within 30 days after the applicant discovers or ought to have discovered the fraud or corrupt act,

whichever is later. 1999, c. 5, s. 50.

**Declaration of invalidity**

**51 (1)** At any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration is invalid or has ceased to exist;

(c) the subject-matter of the arbitration is not capable of being the subject of arbitration pursuant to the law of the Province; or

(d) the arbitration agreement does not apply to the matter in dispute.

**(2)** When the court grants a declaration pursuant to subsection (1), the court may also grant an injunction prohibiting the commencement or continuation of the arbitration. 1999, c. 5, s. 51.

**Appeal to Nova Scotia Court of Appeal**

**52** An appeal from the decision of the court in

(a) an appeal of an award;

(b) an application to set aside an award; or

(c) an application for a declaration of invalidity,

may be made to the Nova Scotia Court of Appeal with leave of that Court. 1999, c. 5, s. 52.

ENFORCEMENT

**Procedure for making award a judgment**

**53 (1)** A party who is entitled to enforce an award may file the award with the prothonotary of the court.

**(2)** Upon filing with the court pursuant to subsection (1), the award is a judgment of the court and may be enforced as any other judgment of the court. 1999, c. 5, s. 53.

GENERAL

**Applicable law and limitation periods**

**54 (1)** The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a matter in dispute in the arbitration were a cause of action.

**(2)** Where the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, the court may order that the period from the commencement of the arbitration to the date of the order must be excluded from the computation of the time within which an action may be brought on a cause of action that was a matter in dispute in the arbitration.

**(3)** An application for the enforcement of an award may not be made more than

(a) two years after the day on which the applicant receives the award; or

(b) two years after all appeal periods have expired,

whichever is later. 1999, c. 5, s. 54.

**Service of documents**

**55 (1)** A notice or other document may be served on an individual by leaving the notice or document with that individual.

**(2)** A notice or other document may be served on a corporation, partnership, association, society or other entity by leaving the notice or document with an officer, director or agent of the corporation, partnership, association, society or other entity, or at a place of business of the corporation, partnership, association, society or other entity with a person who appears to be in control or management of the place.

**(3)** A notice or other document may be served by sending the notice or document to the addressee by telephone transmission of a facsimile to the number that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal.

**(4)** Where a reasonable effort to serve a notice or other document pursuant to subsection (1) or (2) is not successful and it is not possible to serve the notice or document pursuant to subsection (3), the notice or document may be sent by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, where no mailing address was specified or furnished, to the addressee's last known place of business or residence.

**(5)** Unless the addressee establishes that the addressee, acting in good faith, through absence, illness or other cause beyond the control of the addressee failed to receive the notice or other document until a later date, it is deemed to have been received

(a) on the day it is given or transmitted, in the case of service pursuant to subsection (1), (2) or (3); or

(b) on the fifth day after the day of mailing, in the case of service pursuant to subsection (4).

**(6)** The court may make an order for substituted service or an order dispensing with service in the same manner as under the *Civil Procedure Rules* if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed towards the appointment of an arbitral tribunal and that it is unpractical for any reason to effect prompt service pursuant to subsection (1), (2), (3) or (4).

**(7)** This Section does not apply to the service of documents in respect of court proceedings. 1999, c. 5, s. 55.

**Costs of an arbitration**

**56 (1)** An arbitral tribunal may award the costs of an arbitration.

**(2)** The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor-client basis, a party-and-party basis or any other basis.

**(3)** The costs of an arbitration consist of the legal expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

**(4)** Where the arbitral tribunal does not deal with costs in an award, a party may, within 30 days after receiving an award, request that the arbitral tribunal make a further award dealing with costs.

**(5)** In the absence of an award dealing with costs, each party is responsible for that party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

**(6)** Where a party makes an offer, in writing, to another party to settle the matter in dispute or part of the matter, the offer is not accepted and the award of the arbitral tribunal is no more favourable to the party to which the offer was made than was the offer, the arbitral tribunal may take that fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

**(7)** The fact that an offer to settle has been made may not be communicated to the arbitral tribunal until the tribunal has made a final determination of all aspects of the matters in dispute other than costs.

**(8)** In this Section, "party-and-party costs" means party-and-party costs as set out in the *Civil Procedure Rules*. 1999, c. 5, s. 56.

**Interest**

**57** **(1)** An arbitral tribunal has the same power with respect to interest as the court has under the *Interest on Judgments Act*, but the provision for payment into court does not apply.

**(2)** An award is a judgment of the court for the purpose of the *Interest Act* (Canada). 1999, c. 5, s. 57.

**Fees and expenses of tribunal**

**58** **(1)** The fees and expenses of the arbitrator are those set out in an agreement between the parties and, where there is no agreement between the parties with respect to the costs and expenses of the arbitrator, the fees and expenses paid to an arbitrator may not exceed the fair and reasonable value of the services performed and the necessary and reasonable expenses actually incurred.

**(2)** A party to an arbitration may apply to the clerk of the court to have the account for fees and expenses of an arbitrator taxed by a taxing officer in the same manner as a charge for services as a barrister and solicitor pursuant to the *Civil Procedure Rules*.

**(3)** Where the arbitral tribunal awards costs and directs that the costs be taxed, or awards costs without fixing the amount or indicating how the amount is to be ascertained, a party to the arbitration may have the costs taxed by a taxing officer in a similar manner as costs pursuant to the *Civil Procedure Rules*, having regard to the special characteristics of arbitrations.

**(4)** In taxing the part of the costs represented by the fees and expenses of the arbitral tribunal, the taxing officer shall apply the same principles as in the taxation of an account pursuant to subsection (1).

**(5)** Subsection (2) applies even if the account has been paid. 1999, c. 5, s. 58.

**Applicable law**

**59** **(1)** Subject to Section 4 and clause 60(1)(a), this Act applies to an arbitration conducted under an arbitration agreement entered into before the coming into force of this Act if the arbitration is commenced on or after December 3, 1999.

**(2)** The *Arbitration Act* applies to arbitrations commenced before December 3, 1999. 1999, c. 5, s. 59.

**Regulations**

**60** **(1)** The Governor in Council may make regulations

(a) prescribing enactments to which this Act does not apply;

(b) amending the Schedules to this Act;

(c) defining any word or expression used but not defined in this Act;

(d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1999, c. 5, s. 60.

## SCHEDULE A

### ARBITRATION PROCEDURE - CONDUCT OF ARBITRATION

**Representation**

**1** The parties to an arbitration may be represented or assisted by any person during an arbitration.

**2** Where a party intends to be represented or assisted by a lawyer, that party shall, in writing, advise the other party of the lawyer's name and the capacity in which the lawyer is acting at least five days before any scheduled hearing or meeting.

**Place of Arbitration**

**3** Unless otherwise agreed, the arbitration must be held in Halifax, but the arbitrator may meet in any other place that the arbitrator considers necessary for consultation, to hear witnesses, experts or other parties or for the inspection of documents, goods or other property.

**Pre-arbitration Meeting**

**4** The parties shall meet with the arbitrator within seven days of the date of the arbitrator's appointment for a pre-arbitration meeting to

(a) identify the issues in dispute;

(b) discuss the procedure to be followed in the arbitration;

(c) establish time periods for taking certain steps, including the dates, time and location of the arbitration; and

(d) deal with any other matter that will assist the parties to settle their differences and assist the arbitration to proceed in an efficient and expeditious manner.

**5** The pre-arbitration meeting may take place by conference telephone call.

**6** The arbitrator shall record any agreements or consensus reached at the pre-arbitration meeting and shall, within three days of that meeting, send a copy of that document to each of the parties or their representatives.

**Conduct of the Arbitration**

**7** Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party must be treated fairly and must be given full opportunity to present a case.

**8** Under this Schedule, the power of the arbitrator includes, but is not limited to,

(a) ordering the arbitration to be conducted by documents only or with limited oral hearings;

(b) controlling or refusing discovery examinations;

(c) determining in what order issues will be dealt with;

(d) limiting or extending the extent of document disclosure;

(e) requiring further particulars of the claim and the issues advanced;

(f) requiring earlier disclosure of intended witnesses and documents;

(g) limiting the number of experts or refusing to allow expert evidence;

(h) requiring the use of a single independent expert to deal with a particular issue or any number of issues;

(i) requiring experts to file written reports in place of giving oral testimony;

(j) requiring expert reports earlier in the process than required under this Schedule;

(k) determining when and in what order experts will be heard;

(l) setting the dates, times and location for the arbitration;

(m) ordering pre-arbitration meetings as required; and

(n) fixing and awarding costs, including solicitor-client costs and the costs of the arbitration proceeding.

**Exchange of Documents**

**9** Within 15 days of the pre-arbitration meeting, or where the parties agree that no pre-arbitration meetings will be held, within 15 days after the arbitrator has been appointed, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claim of the claimant, the points at issue and the relief or remedy sought.

**10** Within 15 days after the respondent receives the claimant's statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent's defence, the particulars requested in the statement of claim and a written statement of the respondent's counterclaim, if any.

**11** The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimant's defence to the counterclaim within 15 days after the claimant receives the counterclaim.

**12** Each party shall submit with the party's statement a list of the documents upon which the party intends to rely and the list of documents must describe each document by specifying its document type, date, author, recipient and subject-matter.

**Amendment of or Supplemental Claim**

**13** The arbitrator may allow a party to amend or supplement the party's claim or counterclaim or defence during the course of the arbitration unless the arbitrator considers the delay in amending or supplementing the claim to be prejudicial to the other party or unless the arbitrator considers that the amendment or supplement goes beyond the terms of the arbitration agreement or the submission to arbitrate.

**Production of Documents**

**14** The arbitrator may, on application of a party or on the arbitrator's own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

**15** Each party shall make available to the other for inspection and copying any documents upon which the party intends to rely.

**Agreed Statement of Facts**

**16** The parties shall, within a period of time specified by the arbitrator, identify those facts, if any, that are not in dispute and submit to the arbitrator an agreed statement of facts.

**Arbitration Hearings**

**17** The arbitrator shall set the dates for any oral hearings or meetings and shall give at least seven days written notice of such hearings or meetings to the parties.

**18** All oral hearings and meetings shall be held in private and all written documentation shall be kept confidential by the arbitrator and the parties and not disclosed to any other person, except by the consent of all parties.

**Evidence**

**19** Each party shall prove the facts relied upon to support the party's claim or defence.

**20** Where a party is presenting evidence through a witness, the party shall, no later than seven days before the commencement of the oral hearing, advise the arbitrator and the other party of the name and address of the witness and provide a brief summary of the evidence to be given by the witness.

**21** The written statement of an expert must be given to the other party and the arbitrator at least 14 days before the commencement of the oral hearing.

**22** The arbitrator shall be the judge of the relevance and materiality of the evidence offered and the arbitrator is not required to apply the legal rules of evidence.

**23** All oral evidence must be taken in the presence of the arbitrator and all the parties, except where any of the parties is absent, in default or has waived the right to be present.

**24** The parties shall prepare books containing all of the documents to be introduced at the oral hearing and shall submit those books to the other party and to the arbitrator no later than 14 days before the commencement of the oral hearing.

**25** The parties are deemed to have consented to the authenticity of all documents contained in the document books, unless the party gives notice of objection within seven days of the oral hearing to the other party and the arbitrator.

**26** The arbitrator may allow a party to introduce into evidence at the oral hearing a document that was not disclosed or submitted at least 14 days before the commencement of the hearing, but the arbitrator may take that failure into account at the time the arbitrator fixes any costs.

**Examination of Parties**

**27** At an oral hearing an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all the documents that the arbitrator requires.

**Witnesses**

**28** The arbitrator may determine the manner in which witnesses are to be examined and may require a witness, other than a party or the party's representative, to leave the oral hearing during the testimony of another witness.

**29** Where an arbitrator allows the evidence of a witness to be presented by a written statement, the other party may require that the witness be present at an oral hearing for cross-examination.

**30** The arbitrator may call a witness on the motion of the arbitrator, but where a witness is called by the arbitrator, the parties have the right to cross-examine that witness and call evidence in rebuttal.

**Experts**

**31** The arbitrator may appoint one or more experts to report on specific issues to be determined by the arbitrator and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection by the expert.

**32** The arbitrator shall communicate the expert's terms of reference to the parties.

**33** Any dispute between a party and an expert as to the relevance of the required information or the production of the information must be referred to the arbitrator for decision.

**34** Upon receipt of the expert's report, the arbitrator shall inform the parties of the contents of the report and the parties shall be given an opportunity to express, in writing, their opinion on the report.

**35** The expert shall, at the request of a party, make available to that party for inspection all documents, goods or other property in the expert's possession which the expert was provided with in order to prepare the expert's report and the expert shall provide that party with a list of all documents, goods or other property not in the expert's possession but with which the expert was provided in order to prepare the expert's report and a description and location of those documents, goods or other property.

**36** Where the party so requests or if the arbitrator considers it necessary, the expert shall, after delivery of the expert's written or oral report, be present at an oral hearing where the parties have the opportunity to cross-examine the expert and call evidence in rebuttal.

**Default of Party**

**37** Where a claimant, without sufficient cause and after five days notice from the arbitrator, fails to communicate the claimant's statement of claim within the required time, the arbitrator may terminate the arbitration with respect to that claim.

**38** Where the respondent, without sufficient cause and after five days notice from the arbitrator, fails to communicate the respondent's statement of defence within the required time, the arbitrator shall continue the arbitration and an award may not be made solely on the default of the respondent and the arbitrator shall require the claimant to submit such evidence as the arbitrator may require for the making of the award.

**39** Where a party, without sufficient cause, fails to appear at an oral hearing or fails to produce documentary evidence, the arbitrator may continue the arbitration and the arbitrator shall make an award based upon the evidence before the arbitrator.

**40** Where a party, without sufficient cause, fails to comply with any order or direction of the arbitrator or any requirement under the Act or this Schedule, the arbitrator may grant such relief as the arbitrator considers appropriate, including costs.

**General Powers of Arbitrator**

**41** The arbitrator may

(a) order an adjournment of the proceedings from time to time;

(b) make an interim order on any matter with respect to which the arbitrator may make a final order, including an interim order for the preservation of property which is the subject matter of the dispute;

(c) order "on-site" inspection of documents, exhibits or other property;

(d) order the taking down and recording of a transcription of any oral hearing;

(e) at any time extend or abridge a period of time required in this Schedule or fixed or determined by the arbitrator where the arbitrator considers it just and appropriate in the circumstances.

1999, c. 5, Sch. A.

## SCHEDULE B

### EXPEDITED ARBITRATION PROCEDURE

**Representation**

**1** The parties may be represented or assisted by any person during an arbitration.

**2** Where a party intends to be represented or assisted by a lawyer, the party shall, in writing, advise the other party of the lawyer's name and the capacity in which the lawyer is acting at least five days before any scheduled meeting or hearing.

**Appointment of Arbitrator**

**3** The parties shall appoint a sole arbitrator within five days of the commencement of the expedited arbitration procedure.

**Time and Place of Arbitration**

**4** Unless otherwise agreed, the arbitration must be held at a place determined by the arbitrator.

**5** A hearing must be commenced within 15 days of the appointment of the arbitrator.

**Conduct of Expedited Arbitration Process**

**6** Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present the party's case.

**Exchange of Documents**

**7** Within five days of the appointment of the arbitrator, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claimant's claim, the points at issue and the relief or remedy sought.

**8** Within five days after the respondent receives the claimant's statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent's defence, the particulars requested in the statement of claim and a written statement of the respondent's counterclaim, if any.

**9** The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimant's defence to the counterclaim within five days after the claimant receives the counterclaim.

**10** Each party shall submit with the party's statement a list of the documents upon which the party intends to rely and the list of documents must describe each document by specifying its document type, date, author, recipient and subject-matter.

**Production of Documents**

**11** The arbitrator may, on the application of a party or on the arbitrator's own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

**12** Each party shall make available to the other for inspection and the making of copies any documents upon which the former party intends to rely.

**Confidentiality**

**13** All oral hearings and meetings must be held in private and all written documents must be kept confidential by the arbitrator and the parties and may not be disclosed to any other person, except with the consent of all parties.

**Evidence**

**14** Each party shall provide the facts relied upon to support the party's claim or defence.

**15** The arbitrator is the judge of relevancy and materiality of the evidence offered and is not required to apply the legal rules of evidence.

**Examination of Parties**

**16** In an oral hearing, an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all documents that the arbitrator requires.

**Decision of the Arbitrator**

**17** The sole arbitrator shall render a decision within 10 days after completion of the arbitration.

**Time for Completion of Arbitration**

**18** The arbitration must be completed within 30 days of the appointment of the arbitrator.

1999, c. 5, Sch. B.

## SCHEDULE C

### MEDIATION PROCEDURE

**Appointment of Mediator**

**1** The appointed mediator shall sign a statement verifying that the mediator has no interest in the case nor is the mediator aware of any circumstances that could raise the likelihood of a claim of bias.

**Time and Place of Mediation**

**2** Unless otherwise agreed, the mediation must commence no later than four days after the appointment of the mediator at a place determined by the mediator.

**Pre-conference Preparation**

**3** Each party shall prepare a brief summary, not to exceed three pages, of the issues in dispute with the party's position with respect to those issues.

**4** The summaries must be delivered to the mediator at least two days before the first mediation conference.

**Process**

**5** At the mediation conference, each party should be prepared to make a brief oral statement explaining the party's position.

**6** Each party is expected to participate in structured negotiations with the active assistance of the mediator.

**7** Each party should bring any documents the party needs in order to effectively negotiate.

**8** The documents referred to above will be used by the mediator to understand the position of the party but may be kept confidential on request and, where confidentiality is requested, the documents may not be revealed to the other party.

**9** The mediator may caucus privately with any party during the mediation conference if the mediator considers that it will assist the process.

**10** Any party may request a private caucus with the mediator at any time.

**11** Each party shall co-operate in good faith with the mediator.

**12** Each party shall make every effort to attend a scheduled conference and shall co-operate to avoid any unnecessary delays.

**Necessary Parties**

**13** All parties necessary to the reaching of a final settlement should be present at the mediation conference.

**14** The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions should be present at the mediation conference.

**Presentation**

**15** Although oral evidence, other than that of the parties to the dispute, is not encouraged at a mediation conference, the mediator may allow persons other than parties to make presentations.

**Representation**

**16** A party may be represented at a mediation conference by counsel or another representative and, where so represented, may request the opportunity to meet privately with counsel or that representative at any time during the mediation conference.

**Resort to Other Proceedings**

**17** Unless it is necessary for a party to initiate or continue arbitral or judicial proceedings to preserve the party's rights, no party shall initiate or continue any arbitral or judicial proceeding in respect of any of the matters in the dispute that is the subject-matter of the mediation, during the mediation process.

**Record**

**18** No transcript may be kept of the mediation conference.

**Confidentiality**

**19** The mediator, the parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement.

**Adjournment**

**20** The mediator may adjourn or cancel a mediation conference at any time.

**Withdrawal**

**21** Either party may withdraw from the mediation at any time.

**Settlement Agreement**

**22** When the parties reach a settlement, the parties shall reduce the agreement to writing.

**23** Where the parties are unrepresented, the mediator may suggest the parties seek independent legal advice before a settlement agreement is signed.

**Without Prejudice Proceeding**

**24** In all respects, the mediation conference is deemed to be a without prejudice proceeding.

1999, c. 5, Sch. C.

CHAPTER C-35

# An Act Respecting Commercial Mediation

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Commercial Mediation Act*. 2005, c. 36, s. 1.

## Purpose of Act

**2** The purpose of this Act is to facilitate the use of mediation to resolve commercial disputes. 2005, c. 36, s. 2.

## Conflict with other enactments

**3** Where there is a conflict between this Act and any other enactment that requires or authorizes mediation, the other enactment prevails. 2005, c. 36, s. 3.

## Application of Act

**4** **(1)** Subject to subsection (3), this Act applies to commercial mediation unless, subject to subsections 6(4) and 9(4), the parties to the mediation agree to exclude or modify its application.

**(2)** Subject to subsection (3), this Act binds the Crown in right of the Province.

**(3)** This Act does not apply to a mediation

(a) if the mediation is conducted in the course of an arbitration under the *Commercial Arbitration Act* unless, and then only to the extent that, the parties to the mediation agree;

(b) if the mediation is required or authorized by the *Teachers Collective Bargaining Act* or the *Trade Union Act* or by a collective agreement under either of those Acts; or

(c) if, or to the extent that, its application is excluded or modified by the regulations. 2005, c. 36, s. 4.

**Meaning of mediation**

**5** Mediation means a collaborative process in which parties agree to request a third party, referred to as a mediator, to assist them in their attempt to try to reach a settlement of their commercial dispute, but a mediator does not have any authority to impose a solution to the dispute on the parties. 2005, c. 36, s. 5.

**Interpretation**

**6 (1)** This Act is based on the United Nations Commission on International Trade Law, (UNCITRAL) Model Law on International Commercial Conciliation (2002), and in interpreting this Act, consideration must be given to its international origin, the need to promote uniformity in its application and the observance of good faith.

**(2)** In interpreting this Act, recourse may be had to

(a) the Report of the United Nations Commission on International Trade Law on its 35th session; and

(b) the UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002.

**(3)** Where a question arises during a mediation that no rule in this Act expressly covers, the question is to be settled in conformity with the general principles on which the Model Law on International Conciliation is based.

**(4)** The parties to mediation may not exclude or modify the application of this Section. 2005, c. 36, s. 6.

**Commencement and termination of mediation**

**7 (1)** A mediation commences on the day on which the parties to a dispute agree to submit that dispute to mediation.

**(2)** A party who invites another party to mediate may consider its invitation rejected if the party does not receive acceptance within 30 days after the day on which the party sent its invitation or within the period specified in the invitation.

**(3)** A mediation terminates on the day on which the parties reach a settlement agreement or the day on which the mediator or any party declares to the others that the mediation is terminated. 2005, c. 36, s. 7.

**Appointment of mediator**

**8 (1)** Generally, a mediation is to be conducted by a mediator appointed by agreement of the parties.

**(2)** The parties may ask an institution or a third party to recommend or appoint a mediator and, where the institution or third party agrees to do so, it shall make every effort to recommend or appoint a person who is impartial and independent.

**(3)** A mediator and any person who is approached or recommended to be a mediator shall disclose without delay any circumstances that are likely to give rise to justifiable doubts about their impartiality or independence. 2005, c. 36, s. 8.

**Conduct of mediation**

**9 (1)** The parties are free to agree on the manner in which the mediation is to be conducted and may agree to follow a set of existing rules.

**(2)** To the extent that the parties have not agreed on the manner in which the mediation is to be conducted, the mediator may conduct the mediation as the mediator considers appropriate, taking into account any requests by the parties and the circumstances of the mediation, including the need for a speedy settlement.

**(3)** The mediator may meet or communicate with the parties together or separately.

**(4)** The mediator shall maintain fair treatment of the parties throughout the mediation, taking into account the circumstances of the mediation, and the parties to a mediation may not exclude or modify this rule. 2005, c. 36, s. 9.

**Proposals for settlement**

**10** The mediator may make proposals for settlement of a dispute at any stage of the mediation. 2005, c. 36, s. 10.

**Disclosure of information between parties**

**11 (1)** A mediator may disclose to a party any information relating to a mediation that the mediator receives from another party unless that other party has expressly asked the mediator not to disclose the information.

**(2)** With respect to third parties, all information relating to a mediation must be kept confidential unless

(a) all the parties agree to the disclosure;

(b) the disclosure is required under the law;

(c) the disclosure is required for the purposes of carrying out or enforcing a settlement agreement; or

(d) the disclosure is required for a mediator to respond to a claim of misconduct. 2005, c. 36, s. 11.

**Admissibility**

**12 (1)** None of the following information, in any form, is admissible in evidence in an arbitral, judicial or administrative proceeding:

(a) an invitation by a party to mediate, a party's willingness or refusal to mediate a dispute, information exchanged between

the parties before a mediation commences and any agreement to mediate;

(b) a document prepared solely for the purposes of a mediation;

(c) views expressed or suggestions made by a party during a mediation concerning a possible settlement of the dispute;

(d) statements or admissions made by a party during a mediation;

(e) proposals for settlement made by the mediator;

(f) the fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;

(g) the fact that a party terminated the mediation.

**(2)** Notwithstanding subsection (1), the information may be admitted in evidence to the extent required

(a) under the law;

(b) for the purposes of carrying out or enforcing a settlement agreement; or

(c) for a mediator to respond to a claim of misconduct.

**(3)** Except for the limitations set out in subsection (1), information created for purposes other than a mediation does not become inadmissible because it was used in a mediation.

**(4)** Subsections (1) and (2) apply whether or not the arbitral, judicial or administrative proceeding relates to a dispute that is or was the subject of a mediation. 2005, c. 36, s. 12.

**Conflict of interest**

**13** A mediator shall not act as

(a) both a mediator and an arbitrator; or

(b) an arbitrator after acting as the mediator,

for the dispute that is the subject of the mediation or for another dispute that arises from the same contract or legal relationship or a related contract or legal relationship between the parties. 2005, c. 36, s. 13.

**Agreements respecting arbitral or judicial proceedings**

**14 (1)** The parties to a mediation may agree not to proceed with arbitral or judicial proceedings before a mediation is terminated.

**(2)** Notwithstanding subsection (1), an arbitrator or court may permit the proceedings to proceed if the arbitrator or court considers that it is necessary to preserve the rights of any party or is otherwise necessary in the interests of justice and the arbitrator or court may make any order necessary.

**(3)** Commencement of arbitral or judicial proceedings is not of itself to be regarded as a termination of the agreement to mediate disputes or as termination of a mediation. 2005, c. 36, s. 14.

**Settlement agreement binding and enforceable**

**15** **(1)** A settlement agreement is binding on the parties.

**(2)** On application to the Supreme Court of Nova Scotia with notice to all parties, the agreement may be filed with the Court.

**(3)** Once filed, the agreement is enforceable as if it were a judgment of that court. 2005, c. 36, s. 15.

**Regulations**

**16** **(1)** The Governor in Council may make regulations

(a) excluding or modifying the application of this Act;

(b) defining any word or expression used but not defined in this Act;

(c) respecting any matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2005, c. 36, s. 16.

CHAPTER C-36

# An Act Respecting Common Fields

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Common Fields Act*. R.S., c. 78, s. 1.

## BOUNDARIES AND FENCES

**Maintenance of boundaries**

**2** **(1)** Every proprietor of lands lying unfenced or in a common field shall once in two years, on six days notice given to the proprietor or the proprietor's agent by an adjoining proprietor, run the lines and make up and keep up the boundaries of such lands by stones or other sufficient marks.

**(2)** Any person neglecting to do so is liable to a penalty of four dollars. R.S., c. 78, s. 2.

**Maintenance of fence**

**3** **(1)** Every proprietor of any field adjoining a common field that is enclosed and improved shall, when the proprietor's part of the fence dividing the proprietor's land from such common field becomes defective, immediately make the same a legal fence.

**(2)** Where the proprietor neglects to do so after three days notice given to the proprietor by the field keeper or any proprietor, any fence viewer on application may forthwith cause the same to be repaired, and the person who should have repaired the same shall pay double the expense of such repairs to the fence viewer. R.S., c. 78, s. 3.

**Cost of fencing part of common field**

**4** Where any proprietor in a common field desires to have the proprietor's part thereof separately fenced, the proprietor shall, unless otherwise agreed to by two thirds in interest of the proprietors, bear the whole expense of fencing the same and shall keep the fence in repair at the proprietor's own expense. R.S., c. 78, s. 4.

ANNUAL MEETING

**Date and place**

**5** The proprietors of common fields shall meet annually at some convenient place on the first Monday of September, or on some other day to be appointed at a general meeting. R.S., c. 78, s. 5.

REGULATIONS

**Subject-matter**

**6** A majority in interest of the proprietors present at the annual meeting may make such regulations as appear expedient respecting the managing, fencing and improving of such common fields and keeping the fences thereof in repair, and the making and repairing of roads and bridges in and across the same as appears expedient. R.S., c. 78, s. 6.

**Record**

**7** **(1)** The regulations must be entered in a book to be kept for that purpose and must be signed by the chair of the meeting.

**(2)** The production of the book and proof of the entry made therein is sufficient evidence of the regulations. R.S., c. 78, s. 7.

**Penalty**

**8** Any person who violates any of the regulations is liable to a penalty not exceeding two dollars. R.S., c. 78, s. 8.

**Failure respecting fence**

**9** Where any proprietor, after three days notice from another proprietor, fails to comply with any regulation of the proprietors under which the proprietor is bound to make or repair any fence, the fence viewer shall on application make or

repair such fence if the fence viewer thinks it insufficient and the person so failing shall, in addition to any penalty imposed by this Act, pay to the fence viewer double the expense of making or repairing the fence. R.S., c. 78, s. 9.

## COMMITTEE OF PROPRIETORS

**Appointment**

**10** At the annual meeting the proprietors shall appoint from among themselves a committee, of not fewer than three nor more than five, to carry into effect the regulations made respecting the common field for the ensuing year. R.S., c. 78, s. 10.

**Assessment**

**11 (1)** When the committee finds it necessary to raise money to carry into effect any regulations not applying to the making or repairing of roads or bridges in or across the common field, it shall assess the amount on the several proprietors or occupiers of the common field by an even and equal rate according to the quantity and quality of the land held.

**(2)** In cases of regulations applicable to the making and repairing of roads and bridges in or across such common field, the committee shall assess the amount required on the proprietors or occupiers by an even and equal rate according to the benefit to be derived from such roads and bridges by each proprietor or occupier respectively. R.S., c. 78, s. 11.

**Grand Prairie and Wickwire dykes exception**

**12 (1)** Section 11 does not apply to any common field on the Grand Prairie or Wickwire dykes in Horton but the committee for any common field on such dykes, after calling a meeting of the proprietors, of which three days notice must be given to all proprietors residing within six miles of their clerk's office, may, with the sanction of such meeting, make and repair all fences, gates, roads and bridges in, across or around the same and may do all acts necessary for the security and improvement of such common field.

**(2)** The committee shall notify the commissioners of sewers of the said dykes of the expense incurred in and about such work, and the commissioners shall include the amount in any sum of money to be by them assessed upon the proprietors of such dykes as ordinary dyke rates and shall apply such amount in payment of the expenses incurred as certified by such committee. R.S., c. 78, s. 12.

**Collector**

**13** The committee may, by writing, appoint a person to collect from the proprietors or occupiers the several sums assessed upon them respectively and the collector, upon neglect of any person assessed to pay the amount for which the person has been rated after due notice thereof, may collect the same as if it were a private debt due to the collector. R.S., c. 78, s. 13.

**Assessment for attendance**

**14** The committee may include in any sum to be assessed one dollar for the attendance of each of their number for every day actually employed in carrying the regulations into effect. R.S., c. 78, s. 14.

BRANDS OR MARKS

**Recording of brands**

**15** Every brand or mark adopted by the proprietors of any common field by their regulations, for branding or marking animals to be turned on such field, must before being used be entered in the book of regulations. R.S., c. 78, s. 15.

**Effect of recording brand**

**16** After entry of such brand or mark, no brand or mark similar thereto may be adopted or entered in such book of regulations. R.S., c. 78, s. 16.

**Penalty**

**17** If any proprietor of a common field, or any person by the proprietor's direction, places a brand or mark not entered in the book of regulations upon any animal for the purpose of turning such animal into a common field or counterfeits any such brand or mark for the purpose of branding or marking any animal, the proprietor or person is liable to a penalty not exceeding $20. R.S., c. 78, s. 17.

CHAPTER C-37

# An Act to Establish the Nova Scotia Communications and Information Centre

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Communications and Information Act*. R.S., c. 79, s. 1.

## Interpretation

**2** In this Act,

"Minister" means the Minister of Communications Nova Scotia. 1992, c. 14, s. 11.

## Supervision of Act

**3** The Minister has the general supervision and management of this Act. 1992, c. 14, s. 11.

**Duties of Communications Nova Scotia**

**4** Communications Nova Scotia shall

(a) provide a centralized information service for all government departments, agencies, boards, commissions and other components of government;

(b) disseminate, communicate and transmit information products, be they in the form of press releases, films, still photographs, television or radio presentations, advertising, graphic arts, printing or other creative forms, within the public service and outside the public service;

(c) establish an inquiry service to respond to inquiries from the general public concerning Provincial Government policies, programs and services, and receive suggestions and comments concerning such activities;

(d) provide information outlets through which government publications and information are available;

(e) act as adviser on development technology in the field of communications "hardware" systems and introduce such systems as the Governor in Council considers to be contributory to a more efficient public service; and

(f) perform such other duties as the Governor in Council directs. R.S., c. 79, s. 5; 1992, c. 14, s. 12.

**King's Printer**

**5** The Governor in Council shall appoint a suitable person having practical experience in the business of printing to be known as the King's Printer who is an official in Communications Nova Scotia. R.S., c. 79, s. 6; 1992, c. 14, s. 13.

**Duties of King's Printer**

**6 (1)** It is the duty of the King's Printer to cause to be printed and published under the King's Printer's supervision the statutes of the Province, the journals of the House of Assembly and all such official, departmental and other reports, books, forms, documents and other papers as are required to be printed at the expense of the Province.

**(2)** The King's Printer shall perform all such other duties as the Minister or the Speaker of the Assembly prescribes.

**(3)** Whatever is printed under the supervision of the King's Printer by the authority of this Act is held to be printed by the King's Printer. R.S., c. 79, s. 7; 1992, c. 14, s. 14; 2022, c. 54, s. 21.

**Work by contract**

**7 (1)** All printing, binding and other like work done under the supervision of Communications Nova Scotia or the King's Printer must be done and furnished under contract and every such contract must be in such form and for such time as the Minister or the Speaker of the Assembly determines.

**(2)** No contract may be made until after such reasonable public notice or advertisement for tenders as the Minister or Speaker, as the case may be, considers advisable and the lowest best tender received must be accepted, provided

that the Minister or the Speaker, respectively, is satisfied as to the ability of the person making that tender to fulfill the contract.

**(3)** This Section does not apply to any printing that the Governor in Council declares to be of a confidential character. R.S., c. 79, s. 8; 1992, c. 14, s. 15.

**Confidential work**

**8 (1)** Whenever it appears to the Governor in Council that any printing is of a confidential character, the Governor in Council may authorize such printing to be done by the King's Printer, or under the King's Printer's supervision at fair prices without tender.

**(2)** A separate account of all such work, with details of the quantities, rates charged, amounts paid and the names of the persons performing the work, must be kept by the King's Printer. R.S., c. 79, s. 9; 1992, c. 14, s. 16.

**Duties of Communications Nova Scotia**

**9** Communications Nova Scotia shall assist in preparing advertisements, specifications and contracts in connection with public printing, examine all work done under any contract and require contractors to carry out fully the terms and provisions of the same and shall check and audit all accounts in connection with such work. R.S., c. 79, s. 10; 1992, c. 14, s. 17.

**Statutes**

**10 (1)** The statutes must be printed on fine paper in such form and type as the Speaker directs, any head notes and marginal notes must be printed in such type as the Speaker directs and such notes must refer to the year and chapter of previous statutes whenever the text amends or repeals the same.

**(2)** The statutes must be bound and lettered and distributed in such manner as the Speaker directs. R.S., c. 79, s. 11; 1992, c. 14, s. 18.

**Journals of Assembly**

**11 (1)** The journals of the Assembly must be printed on fine paper in such form and type as the Speaker directs, with any marginal notes printed in such type as the Speaker directs, and must be bound and lettered in such manner as the Speaker directs.

**(2)** The journals of the Assembly must be uniform in printing and binding and all departmental and other reports and documents to be laid before the Assembly, or ordered to be printed by the Assembly and intended to be bound with the journals of the Assembly must also, with the exception of the marginal notes, be in all respects uniform with the journals. R.S., c. 79, s. 12; 1992, c. 14, s. 18.

**Form of printing and publication**

**12** The form of printing and publication of all legislative materials, with the exception of books, papers and forms required to conduct an election to elect a member to serve in the House of Assembly, must be as the Speaker directs. 1992, c. 14, s. 19.

**Certified statutes to King's Printer**

**13** The Legislative Counsel of the Assembly or such other person as the Governor in Council may appoint for that purpose shall furnish the King's Printer with a certified copy of every Act of the Legislature as soon as the same has received the assent of the Governor or, if the Bill has been reserved, as soon as the assent thereto has been proclaimed in the Province. R.S., c. 79, s. 13; 1992, c. 14, s. 20.

**Distribution of statutes**

**14 (1)** Communications Nova Scotia shall as soon as practicable after the close of every session of the Legislature transmit in the most economical mode the proper number of printed copies of the Acts of that session to the persons hereinafter mentioned:

(a) to the members of the Assembly, such number of copies as is directed by any resolution of the Assembly or, in default of such resolution, such number as the Governor in Council directs;

(b) to such public departments, administrative bodies, officials or other persons as the Governor in Council specifies.

**(2)** Where any bill receives assent before the termination of any session of the Legislature, Communications Nova Scotia shall, if so instructed by the Governor in Council, cause distribution to be made of such number of copies thereof to the same persons and in the like manner as is in this Section provided with respect to other Acts. R.S., c. 79, s. 14; 1992, c. 14, s. 21.

**Excess copies of statutes**

**15** Where after the distribution of such printed Acts any copies remain in the possession of Communications Nova Scotia, Communications Nova Scotia may dispose thereof in such manner by sale or otherwise as the Governor in Council directs. R.S., c. 79, s. 16; 1992, c. 14, s. 23.

**Royal Gazette**

**16 (1)** The official gazette of the Province is the Royal Gazette as published under the authority of the Attorney General in print or electronic form.

**(2)** Proclamations, official and other notices and all such matters whatsoever as the Governor in Council requires to be published must be published in the Royal Gazette and all advertisements, notices or publications, which by any Act or law in force in the Province are required to be published by the Government or any department thereof, by any sheriff or other officer, by any municipal authority or by any officer or person, whomsoever, must be published in the Royal Gazette, unless some other mode of publishing the same is directed by law. R.S., c. 79, s. 17; 2022, c. 54, s. 22.

**Powers of Governor in Council**

**17 (1)** The Governor in Council may

(a) prescribe the form, mode and conditions of the publication of the Royal Gazette;

(b) designate the public bodies, officers and persons to whom it must be sent without charge;

(c) regulate the price of copies of the Royal Gazette, or portions thereof, and the charges to be paid for the publication of notices, advertisements and documents, or notices of correction for anything previously published.

**(2)** All sums payable for such subscriptions and charges must be paid in advance to the Minister. R.S., c. 79, s. 18; 1992, c. 14, s. 24; 2022, c. 54, s. 23.

**General Revenue Fund**

**18** Expenses incurred under this Act must be paid out of the General Revenue Fund. R.S., c. 79, s. 20.

**Certificate**

**19** No money for printing, binding or other such work done pursuant to this or any other Act of the Legislature may be paid out of the General Revenue Fund without a certificate from the Department or the King's Printer that the work has been properly done and that the charges therefor are fair and reasonable. R.S., c. 79, s. 22; 1992, c. 14, s. 26.

**Agreements**

**20 (1)** The Governor in Council may enter into and carry out agreements with the Government of Canada, or a member or agency thereof, or a province, or a member or agency thereof, or with any person or corporation to effect the objects and purpose of the Act.

**(2)** The Governor in Council may authorize the Minister or the Speaker to execute such agreements and instruments as are necessary for the exercise of any of the powers conferred by this Act. R.S., c. 79, s. 24; 1992, c. 14, s. 28.

**Hansard office**

**21 (1)** Notwithstanding anything contained in this Act, the staff and equipment of the Hansard office are under the supervision, direction and control of the Speaker of the Assembly.

**(2)** Where there is any conflict between this Act and the *House of Assembly Act* or the rules of the Assembly, the *House of Assembly Act* and the rules of the Assembly prevail.

**(3)** When the staff and equipment of the Hansard office are not required by the Speaker of the Assembly, the Clerk of the Assembly or the Legislative Counsel, such staff and equipment may be utilized by the Department. R.S., c. 79, s. 26; 1992, c. 14, s. 29.

**Reference to Public Printing Act**

**22** A reference in any Act or regulation to the former *Public Printing Act* is to be read and construed to be a reference to this Act. R.S., c. 79, s. 27.

**Regulations**

**23** The Governor in Council may make such rules and regulations as are considered expedient for the better carrying out of this Act. R.S., c. 79, s. 25.

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CHAPTER C-38

# An Act Respecting the Nova Scotia Community College

**Table of Contents**

(The table of contents is not part of the statute)

**Short title**

**1** This Act may be cited as the *Community Colleges Act*. 1995-96, c. 4, s. 1.

**Interpretation**

**2** In this Act,

"Agency" means the Nova Scotia Apprenticeship Agency, a special operating agency designated pursuant to the *Public Service Act*;

"auditor of the College" means an auditor appointed pursuant to Section 26;

"Board" means the Board of Governors of the College;

"College" means the Nova Scotia Community College established pursuant to this Act;

"College certificate" means a certificate granted by the Board;

"College diploma" means a diploma granted by the Board;

"Minister" means the Minister of Advanced Education;

"predecessor College" means the Nova Scotia Community College as it existed prior to April 1, 1996;

"President" means the President of the College;

"program of study" means a group of courses that leads to the granting of a College diploma or College certificate;

"student" means a person enrolled in the current academic year as a student of the College;

"students' association" means a students' association of the College. 1995-96, c. 4, s. 50; 2014, c. 3, s. 16.

**Nova Scotia Community College**

**3** A body corporate to be known as the Nova Scotia Community College is established. 1995-96, c. 4, s. 51.

**Functions of College**

**4** **(1)** The College is a post-secondary institution and is responsible for enhancing the economic and social well-being of the Province by meeting the occupational training requirements of the population and the labour market of the Province and, without restricting the generality of the foregoing, the College may

(a) offer education and training and related services for full and part time students;

(b) provide education and training and related services to governments, corporations, the Agency and other bodies and persons consistent with the mandate of the College, on terms and conditions the College considers appropriate;

(c) participate in joint programs with respect to education and training and related services developed and delivered in conjunction with other post-secondary institutions, educational bodies and the Agency.

**(2)** A reference in this Act to the "mandate of the College" is a reference to the functions and responsibilities of the College as set out in this Section. 1995-96, c. 4, s. 52; 2014, c. 3, s. 17.

**Powers of Minister respecting appointments**

**5** **(1)** The Minister may

(a) appoint a person or a committee to review and evaluate any program or service offered by the College, the mandate of the College or any other matter relating to the development, content or delivery of a program or service by the College;

(b) appoint a person to examine, inspect or audit the financial condition, administrative condition or any other matter related to the management and operation of the College;

(c) recommend the appointment of an administrator of the College pursuant to Section 36.

**(2)** For the purpose of subsection (1), a person or committee appointed by the Minister has the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* and may examine and inspect any records, documents and things in the possession or under the control of the College and make any inquiries the person or committee thinks appropriate.

**(3)** A person having custody of records, documents or things referred to in subsection (2) shall make them available to the person or committee appointed by the Minister at the time they are requested. 1995-96, c. 4, s. 53.

**Duties of Board**

**6** **(1)** In this Section,

"suspension" means the removal of one or more sections of a program of study for a definite or indefinite period or permanently;

"transfer" means to move a program of study from one campus of the College to another campus of the College.

**(2)** The Board shall

(a) establish programs of study for the College consistent with the mandate of the College; and

(b) establish guidelines for the establishment, expansion, suspension or transfer of any program of study, service or facility of the College to ensure the orderly growth and development of the College.

**(3)** The Board may revise existing programs of study for the College consistent with the mandate of the College.

**(4)** The proposed programs of study, revisions to programs of study or guidelines referred to in subsections (2) and (3) must be approved by the Minister, subject to such conditions, restrictions and referrals to such persons or bodies of persons prescribed by the regulations and subsection (5).

**(5)** Before the Minister approves a proposed program of study, proposed revision to a program of study or a proposed guideline,

(a) the Agency may make recommendations to the Minister concerning the proposed program of study, proposed revision to a program of study or proposed guideline if it is in relation to a trade that is within the mandate of the Agency; and

(b) any other person, or body of persons, prescribed by the regulations may make recommendations to the Minister concerning the proposed program of study, proposed revision to a program of study or proposed guideline.

**(6)** The Board shall provide to the Agency a copy of the proposed program of study, proposed revisions to a program of study or proposed guidelines in relation to a trade that is within the mandate of the Agency. 1995-96, c. 4, s. 54; 2014, c. 3, s. 18.

**Delegation of powers by Minister**

**7** The Minister may delegate to any person or body of persons, including the Agency with respect to trades and related matters within its mandate, any of the powers, duties and functions conferred or imposed on the Minister pursuant to this Act. 1995-96, c. 4, s. 55; 2014, c. 3, s. 19.

**Board of Governors**

**8** **(1)** There is a Board of Governors of the College consisting of

(a) two students of the College elected by the students of the College;

(b) one academic staff member of the College elected by the academic staff members of the College;

(c) one administrative staff member of the College elected by the administrative staff members of the College;

(d) one support staff member of the College elected by the support staff of the College;

(e) not fewer than five and not more than seven persons nominated by the Minister; and

(f) not fewer than five and not more than seven persons appointed by the Board.

**(2)** The Board is the governing body of the College.

**(3)** When making an appointment to the Board pursuant to clauses (1)(e) and (f), the Minister and the Board shall take into consideration

(a) the person's knowledge of occupations that are of particular significance to the labour market and economic needs of the Province; and

(b) the desirability of achieving on the Board an equitable representation of the diversity of educational and community interests served by the programs and services of the College.

**(4)** Before making an appointment to the Board pursuant to clause (1)(e), the Minister shall request from the academic staff members of the College the name of an academic staff member to be considered for appointment to the Board by the Minister.

**(5)** When making appointments pursuant to clause (1)(f), the Board shall appoint members from a list of nominations put forward to the Board by a nominating committee of the Board.

**(6)** The majority of the members of the nominating committee referred to in subsection (5) must be persons who are not members of the Board.

**(7)** In addition to the persons referred to in subsection (1), the President is a non-voting member of the Board.

**(8)** The members of the Board appointed pursuant to clause (1)(a) must be appointed for a term of one year and all other members of the Board must be appointed for a term not to exceed three years. 1995-96, c. 4, s. 56; 2014, c. 3, s. 20.

**Vacancies**

**9** **(1)** A member of the Board continues to hold office after the expiry of the member's term until the member is reappointed, the member's successor is appointed or a period of three months has expired, whichever first occurs.

**(2)** A member of the Board appointed pursuant to subsection 8(1) may be reappointed but shall not hold office for more than two consecutive terms.

**(3)** The Board may fill a vacancy on the Board by appointing a person to fill the unexpired term of office of the former member and an appointment pursuant to this subsection is not a term of office for the purpose of subsection (1).

**(4)** Where a person appointed to the Board pursuant to clause 8(1)(a), (b), (c) or (d) ceases to be a student or an employee of the College, that person ceases to be a member of the Board.

**(5)** Notwithstanding subsection (4), a student appointed pursuant to clause 8(1)(a) who graduates before the expiration of their term of office on the Board, may remain a member of the Board until the expiration of the term of office.

**(6)** Where a member of the Board fails to attend three consecutive regular meetings of the Board without an excuse acceptable to the Board, the member's appointment must be revoked by the Board.

**(7)** A vacancy on the Board does not impair the ability of the Board to act. 1995-96, c. 4, s. 56.

**Reimbursement for expenses only**

**10** No member of the Board and no member of a committee is entitled to be reimbursed for that member's service as a member of the Board or a committee of the Board but each member of the Board or a committee of the Board is entitled

to actual and reasonable expenses necessarily incurred as a member of the Board or a member of a committee, in accordance with a policy adopted by the Board. 1995-96, c. 4, s. 57.

**Quorum**

**11** A majority of the members of the Board constitutes a quorum. 1995-96, c. 4, s. 58.

**Chair, vice-chair and officers**

**12** **(1)** The Board shall annually elect at its first meeting from among its members a chair and a vice-chair.

**(2)** A person appointed pursuant to clause 8(1)(a), (b), (c) or (d) and the President are not eligible to be elected as the chair or vice-chair of the Board.

**(3)** A person elected as the chair or vice-chair of the Board may be re-elected to that position.

**(4)** In the case of the absence or incapacity of the chair or vice-chair or, where there is a vacancy in either of those offices, the Board may designate one of its members, other than a person appointed pursuant to clause 8(1)(a), (b), (c) or (d), to act as chair or vice-chair, as the case may be, on an interim basis.

**(5)** The chair of the Board may only vote in the event of a tie.

**(6)** The Board shall appoint such officers as the bylaws of the Board may provide. 1995-96, c. 4, s. 59.

**President**

**13** **(1)** The Board shall appoint and determine the terms and conditions of employment of a President who is the chief executive officer of the College.

**(2)** Subject to the direction of the Board, the President is responsible for the general management and direction of the College, including

(a) the policies, programs and services of the College;

(b) the business affairs of the College; and

(c) such other matters as may be delegated by the Board to the President.

**(3)** The term of office of the President may not exceed five years and the President may be reappointed.

**(4)** The process adopted by the Board for the appointment, review and removal of a President is subject to the approval of the Minister. 1995-96, c. 4, s. 60.

**Annual stewardship report**

**14** **(1)** The President and the Chief Executive Officer of the Agency shall, at the end of each fiscal year of the Board, jointly prepare an annual steward-

ship report concerning trades and related matters that are within the mandate of both the College and the Agency.

**(2)** The annual stewardship report must include such information as the President and the Chief Executive Officer of the Agency may determine and any information prescribed by the regulations or requested by the Minister.

**(3)** The annual stewardship report must be

(a) approved by the Board and the Apprenticeship Board of the Agency; and

(b) submitted by the President and the Chief Executive Officer of the Agency to the Minister by a date to be determined by the Minister. 2014, c. 3, s. 21.

**Meetings**

**15** **(1)** The Board may make bylaws respecting the calling of its meetings, notice to Board members and the public and the conduct of business at meetings, and generally regulating the conduct of its business and affairs.

**(2)** Bylaws of the Board made pursuant to subsection (1) must be open to examination by the public during the normal office hours of the College.

**(3)** Subject to subsection (4), all meetings of the Board must be open to the public and no person may be excluded from a meeting except for improper conduct as determined by the Board.

**(4)** Nothing in this Section prevents the members of the Board from meeting in private to discuss matters related to personnel, the acquisition, sale, lease and security of property, labour relations, legal opinions and other similar matters. 1995-96, c. 4, s. 61.

**Management and control of College**

**16** Subject to this Act, the Board has the power to manage and control the College and its property, revenue, business and affairs. 1995-96, c. 4, s. 62.

**Duties of Board**

**17** **(1)** The Board shall

(a) provide programs of study and related services consistent with the mandate of the College;

(b) provide for the granting of certificates and diplomas;

(c) determine policies with respect to the organization, administration and operation of the College and determine policies not inconsistent with the guidelines referred to in Section 6 with respect to programs of study of the College;

(d) ensure that the business and affairs of the College are conducted in accordance with this Act;

(e) collaborate with the Agency to develop guidelines for the evaluation of a program of study that pertains to a trade that is

within the mandate of the Agency, subject to approval of the guidelines by the Minister;

(f) subject to the regulations, consult with the Minister when developing guidelines for the evaluation of a program of study other than a program of study that pertains to a trade that is within the mandate of the Agency;

(g) evaluate programs of study on a regular basis in accordance with guidelines approved by the Minister;

(h) consult with the Agency when evaluating a program of study concerning a trade within the mandate of the Agency;

(i) subject to the regulations, consult with the Minister when evaluating a program of study other than a program of study that pertains to a trade that is within the mandate of the Agency;

(j) be responsible, in respect of the expenditures by the Board, for the operation of the College from the funds provided and for accounting for those expenditures;

(k) meet at least four times each year and hold any other meetings that the Board considers appropriate;

(l) prepare and maintain full and accurate records of its proceedings, transactions and finances;

(m) develop and adopt conflict of interest guidelines for members of the Board and employees of the College;

(n) establish a public tender and procurement policy;

(o) establish a fair hiring policy;

(p) establish a performance-evaluation system for employees of the College;

(q) establish a policy to prevent harassment and discrimination of students and employees of the College;

(r) subject to the approval of the Minister, establish an admissions policy for the College;

(s) with the approval of the Governor in Council, establish a tuition policy for the College and a schedule of tuition fees;

(t) subject to subsection 21(3), establish, by bylaw, procedures for the appointment of members of committees, including the chair of a committee;

(u) establish a policy for the reimbursement of expenses incurred by members of the Board and committees of the Board;

(v) make available publications of the programs of study, admission requirements and fees of the College;

(w) publish an annual academic report that includes student information respecting enrollment, attrition, graduation and graduate employment placement and such other information as the Minister requires;

(x) develop and maintain a multi-year operating plan and a multi-year capital plan;

(y) collaborate with the Agency in the development and implementation of that part of the multi-year operating plan referred to in clause (x) that concerns trades and related matters that are within the mandate of both the College and the Agency; and

(z) at least every five years, conduct a special organizational and operational review of the College in accordance with guidelines approved by the Minister.

**(2)** In establishing policies and bylaws of the College, the Board shall ensure, to the extent reasonable, that such policies and bylaws are consistent with the principles and goals of employment and educational equity. 1995-96, c. 4, s. 63; 2014, c. 3, s. 22.

**Powers of Board**

**18** The Board may

(a) establish, suspend or transfer to another campus of the College a program of study in accordance with guidelines established pursuant to Section 6;

(b) establish extension programs and courses other than programs of study;

(c) provide for the discipline of students with the power to expel, suspend, fine or levy assessments for damages done to property;

(d) provide, and facilitate the providing of, scholarships and bursaries to students;

(e) prescribe fees, other than tuition fees for programs of study;

(f) subject to the *Government Records Act*, make bylaws with respect to the preservation, destruction or disposal of records of the College;

(g) act as a trustee of any money or property given in any manner for the support of the College or its students;

(h) authorize the establishment of a charitable foundation, as defined in the *Income Tax Act* (Canada), to benefit, directly or indirectly, the College and its students;

(i) co-operate with any college, university, school or other institution, body or person, including the Agency, to achieve the mandate of the College;

(j) enter into agreements for the purpose of performing its duties or exercising its powers pursuant to this Act;

(k) by bylaw, establish a procedure for the signing of cheques and other documents by mechanical or other means;

(l) do any other thing that the Board considers necessary or advisable to carry out the mandate of the College. 1995-96, c. 4, s. 64; 2014, c. 3, s. 23.

**Powers of Minister**

**19** **(1)** Subject to the approval of the Governor in Council and to the *Finance Act*, the Minister, on behalf of the Crown in right of the Province, may, for the purpose of establishing, maintaining, assisting, expanding, constructing or equipping facilities of the College,

(a) purchase or otherwise acquire, hold, improve and maintain any real and personal property and lease, sell or convey the same for such consideration and on such conditions as the Minister considers proper;

(b) construct, improve, renovate, alter, add to, repair, extend, provide services for, move or remove any building, chattel or other thing;

(c) purchase or otherwise acquire control of a facility from any person on such terms and in such manner as the Minister considers proper;

(d) transfer to the College any real or personal property on such conditions as the Minister considers proper;

(e) do such things and exercise such powers as the Minister considers desirable to carry out the intent and purpose of this Act.

**(2)** Such sums as are authorized by subsection (1) may be chargeable to or paid out of the Capital Account, the Special Reserve Account or the Revenue of the Province for any year or years.

**(3)** Subject to the approval of the Governor in Council, the Minister may, for and on behalf of the Crown in right of the Province, execute all necessary agreements or other instruments whatsoever considered necessary or desirable to carry out the intent and purpose of this Act.

**(4)** The Board is bound by agreements entered into by the Minister prior to April 1, 1996, that, in the opinion of the Minister, are necessary or desirable to carry out the intent and purpose of this Act. 1995-96, c. 4, s. 65; 2010, c. 2, s. 93.

**Property**

**20** **(1)** The Board may

(a) purchase, lease or receive as a gift or otherwise any real or personal property that it considers necessary for the efficient operation of the College;

(b) sell, lease or otherwise dispose of any of its property that it considers to be no longer necessary for the purpose of the College.

**(2)** The Board shall manage, insure, maintain, repair, alter or improve any property of the College and may construct or erect on property of the College any buildings, structures or any other improvements.

**(3)** Where property is owned by the Crown in right of the Province and used by the College for the purpose of the College, the Board shall assess

the need for new buildings and repairs or alterations to existing buildings and make recommendations to the appropriate Government department.

**(4)** Where property owned by the Crown in right of the Province is, in the opinion of the Board, no longer required for the purpose of the College, the Board shall notify the Minister.

**(5)** Where a building owned by the College and used for the purpose of the College is sold or partially or completely destroyed, the College shall pay the proceeds of any sale or insurance recovery into a special reserve fund and that fund may be used by the College only for capital projects.

**(6)** The Board may enter into an agreement with a department of Government whereby the College assumes responsibility for the maintenance, repair, alteration or improvement of property of the Crown used for the purpose of the College.

**(7)** Where property of the Crown in right of the Province is transferred to the College to be used for the purpose of the College, all liabilities and obligations with respect to that property are the liabilities and obligations of the College. 1995-96, c. 4, s. 66.

**Program advisory committees**

**21 (1)** The Board may establish program advisory committees for one or more programs of study offered at the College to be composed of members appointed by the Board and, subject to the regulations, by the Minister.

**(2)** Notwithstanding subsection (1), the Board shall establish a program advisory committee for any program of study offered at the College in relation to a trade that is within the mandate of the Agency.

**(3)** Notwithstanding subsection (1), a program advisory committee established under subsection (2) must consist of the Trade Advisory Committee, as defined in the *Apprenticeship and Trades Qualifications Act*, for a trade that is within the mandate of the Agency.

**(4)** The Board must notify the Apprenticeship Board of the Agency when a program advisory committee is to be established in relation to a trade that is within the mandate of the Agency.

**(5)** The Board must notify the Minister when a program advisory committee is established.

**(6)** The duty of a program advisory committee is to advise the Board and make recommendations to the Board regarding programs of study and new programs of study and perform such other functions as are determined by the Board. 1995-96, c. 4, s. 67; 2014, c. 3, s. 24.

**Campus advisory and other committees**

**22 (1)** The Board may establish advisory committees for one or more campuses of the College to be composed of members appointed by the Board.

**(2)** The duty of an advisory committee is to assist the Board to ensure that the campuses of the College are meeting the needs of the communities and regions they serve and perform such other functions as are determined by the Board.

**(3)** The Board may establish other committees that the Board considers necessary for the management and operation of the College. 1995-96, c. 4, s. 68.

**President as committee member**

**23** The President is a non-voting member of all committees established by the Board. 1995-96, c. 4, s. 69.

**Fiscal year of Board**

**24** The fiscal year of the Board is the same as the fiscal year of the Province. 1995-96, c. 4, s. 70.

**Annual estimates**

**25 (1)** Before the beginning of each fiscal year, the Board shall prepare an annual estimate of all sums that are required for the lawful purposes of the College for the fiscal year.

**(2)** The annual estimate referred to in subsection (1) must be consistent with the multi-year operating and capital plans of the College.

**(3)** The Board shall submit its annual estimate to the Minister for approval in the form and at the time determined by the Minister.

**(4)** The Minister may approve the annual estimate submitted pursuant to subsection (3) or may, after consultation with the Board, amend the estimate, and the Board shall adopt the annual estimate as approved or amended by the Minister. 1995-96, c. 4, s. 71.

**Annual report**

**26 (1)** The Board shall, at the end of each fiscal year, prepare and submit to the Minister, by a date determined by the Minister, an annual report of the operations of the College during the preceding fiscal year and the report must include audited financial statements of the College and any other information that the Minister requests.

**(2)** Upon receipt of the annual report referred to in subsection (1), the Minister shall table the report in the House of Assembly or, where the Assembly is not then sitting, with the Clerk of the Assembly. 1995-96, c. 4, s. 72.

**Auditor**

**27** The Board shall annually appoint a person who is a licensed public accountant or a firm in which a member is a licensed public accountant to be the auditor of the College and the auditor shall make all examinations that are, in the opinion of the auditor, necessary to enable the auditor to report accurately on the financial statements of the College and on the state of the financial affairs of the College. 1995-96, c. 4, s. 73.

**Accounts**

**28** The Board may establish and maintain accounts in the name of the College with a bank, trust or loan company, credit union or other similar financial institution. 1995-96, c. 4, s. 74.

**Investments**

**29 (1)** Subject to subsections (2) and (3), the Board may, for the sound and efficient management of any money of the College, establish and adhere to investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and to obtain a reasonable return.

**(2)** The Governor in Council may make regulations prescribing or prohibiting the investment of money and prescribing investments or classes of investments in which such money may be invested for the sound and efficient management of any money of the College.

**(3)** Nothing in this Section permits the Board to invest money received under a trust in investments that are expressly forbidden by the instrument, if any, creating the trust.

**(4)** For the purpose of receiving, holding, managing or applying any devised, bequest or trust under or arising out of the Will of James Barclay Hall, late of Lawrencetown in the County of Annapolis, the Board is deemed to be a trustee of the Nova Scotia College of Geographic Sciences, which facility is continued as a campus of the College. 1995-96, c. 4, s. 75.

**Borrowing**

**30 (1)** Subject to the approval of the Minister, the College may borrow or raise money for operating purposes by way of overdraft, line of credit, loan or otherwise upon the credit of the College.

**(2)** The terms and conditions of a temporary loan, overdraft or line of credit must be determined by resolution of the Board.

**(3)** The payment of principal and interest on temporary borrowings pursuant to this Section may be guaranteed by the Crown in right of the Province on such terms as may be approved by the Governor in Council. 1995-96, c. 4, s. 76.

**Further borrowing powers**

**31 (1)** Subject to the approval of the Governor in Council, the College may

(a) raise money by way of loan on the credit of the College and issue notes, bonds, debentures or other securities;

(b) sell or otherwise dispose of notes, bonds, debentures or other securities for such sums and at such prices as are considered expedient;

(c) raise money by way of loan on any securities;

(d) pledge or hypothecate any securities as collateral security.

**(2)** The powers conferred on the College pursuant to subsection (1) may be exercised

(a) only for the repayment of notes, bonds, debentures or other securities issued by the College; or

(b) in cases to which clause (a) does not apply, only to the extent permitted by this Act or an Act of the Legislature.

**(3)** When securities are pledged or hypothecated by the College as security for a loan that is later paid off, the securities are not thereby extinguished but are still alive and may be reissued and sold or pledged as if the former pledging had not taken place.

**(4)** Notes, bonds, debentures and other securities authorized pursuant to this Section must be in a form, bear a rate or rates of interest and be payable as to principal, interest and premium, if any, in the currency of a country or countries, at times and places and in the amounts and manner and on any other terms and conditions that the Board, with the approval of the Governor in Council, may determine.

**(5)** Notes, bonds, debentures and other securities authorized pursuant to this Section must

(a) be sealed with the seal of the College;

(b) together with any coupons, be signed by the chair of the Board and one other member of the Board; and

(c) be countersigned by an officer appointed by the Board for that purpose.

**(6)** The seal of the College may be engraved, lithographed, printed or otherwise mechanically reproduced on a note, bond, debenture or other security, and the signature of the chair of the Board and the member of the executive committee on a note, bond, debenture or other security may be engraved, lithographed, printed or otherwise mechanically reproduced and has the same effect as if manually affixed, and any such signature is for all purposes valid and binding on the College, notwithstanding that a person whose signature is so reproduced has ceased to hold office.

**(7)** A recital or declaration in a resolution or the minutes of the Board authorizing the issue or sale of notes, bonds, debentures or other securities, to the effect that the amount of notes, bonds, debentures or other securities is so authorized and is necessary to realize the net sum authorized or required to be raised by way of loan, is conclusive evidence of that fact. 1995-96, c. 4, s. 77.

**Crown guarantee**

**32** **(1)** The payment of the principal, interest and premium, if any, of any notes, bonds, debentures or other securities issued by the College, may be guaranteed by the Crown in right of the Province on such terms and in a form and manner as may be approved by the Governor in Council.

**(2)** A guarantee pursuant to subsection (1) must be signed by the Minister of Finance and Treasury Board or such other officer or officers as may be designated by the Governor in Council and, on its being signed, the Crown in right of the Province is liable for the payment of the principal, interest and premium, if any, of the notes, bonds, debentures and securities guaranteed, according to the terms of the guarantee.

**(3)** The signature of the Minister of Finance and Treasury Board or of an officer or officers for which provision is made in subsection (2) may be engraved, lithographed, printed or otherwise mechanically reproduced, and the mechanically reproduced signature of such a person is for all purposes valid and binding on the Crown in right of the Province, notwithstanding that any person whose signature is so reproduced has ceased to hold office. 1995-96, c. 4, s. 78.

**Payments by Minister**

**33 (1)** The Minister may make payments to the College out of money appropriated by the Legislature for that purpose.

**(2)** Payments made to the College pursuant to subsection (1) are financial assistance for the purpose of the *Auditor General Act* and are subject to audit by the Auditor General. 1995-96, c. 4, s. 79.

**Students' association**

**34 (1)** For each campus of the College there may be a students' association to provide for the administration of the affairs of the students of the campus.

**(2)** The use of the name of the College or a campus of the College in the name of an incorporated students' association is subject to the approval of the Board. 1995-96, c. 4, s. 80.

**Student activity fees**

**35 (1)** A students' association may set student activity fees.

**(2)** The College may collect student activity fees and require the payment of the fees before registering a student.

**(3)** Student activity fees collected pursuant to subsection (2) must be paid to the students' association of the campus to which the fees apply.

**(4)** A students' association shall apply the fees received pursuant to subsection (3) to the provision and promotion of such social, educational and recreational activities and services for the benefit of students as the association considers advisable. 1995-96, c. 4, s. 81.

**Appointment of administrator by Government**

**36 (1)** The Governor in Council may, on the recommendation of the Minister, appoint a person as administrator of the College if

(a) the Board takes up a practice or tolerates a situation incompatible with the mandate of the College or this Act;

(b) in the opinion of the Minister, financial or significant operational problems exist with respect to the College; or

(c) in the opinion of the Minister, it is otherwise in the public interest to do so.

**(2)** The administrator appointed pursuant to subsection (1) shall be paid the remuneration and expenses that the Governor in Council determines and payment must be made out of the funds of the College. 1995-96, c. 4, s. 82.

**Effect of appointment**

**37 (1)** On the appointment of an administrator pursuant to this Act, the appointments of the members of the Board terminate.

**(2)** During the period of the administrator's appointment, the administrator is the sole member of the Board and, in the name of the Board, may exercise the powers and perform the duties of the Board.

**(3)** The administrator shall act in accordance with any directions given by the Minister.

**(4)** The President is subject to the direction of the administrator.

**(5)** Where the office of President is or becomes vacant during the appointment of an administrator, the requirement to appoint a President is suspended and, while the office of President is vacant, the administrator shall perform the duties and exercise the powers otherwise vested in the President. 1995-96, c. 4, s. 83.

**Disestablishment of Board**

**38 (1)** The Governor in Council may, on the recommendation of the Minister, order the disestablishment of the Board on terms and conditions, and with a disposition of assets and liabilities that the Governor in Council considers appropriate.

**(2)** On disestablishment of the Board pursuant to subsection (1),

(a) all the rights and property of the Board become the rights and property of the Crown in right of the Province; and

(b) all debts and obligations of the Board become debts and obligations of the Crown. 1995-96, c. 4, s. 84.

**Execution of documents**

**39** Documents required to be in writing and to which the Board is a party are properly executed if the corporate name is witnessed by the signatures of

(a) the chair of the Board or another person authorized by the Board; and

(b) an officer of the College authorized by the Board. 1995-96, c. 4, s. 85.

**Immunity from liability**

**40** **(1)** No action or other proceeding for damages lies or may be instituted against the Board, a member of the Board, the President or an officer or employee of the College or an agent of the College for an act or omission done in good faith in the execution or intended execution of any power or duty pursuant to this Act or the regulations.

**(2)** No action or other proceeding for damages lies or may be instituted against the President, a member of the Board or any person acting under the direction of the President or a member of the Board for a debt, liability or obligation of the College or the Board.

**(3)** No action or other proceeding for damages lies or may be instituted against the College, the Board or any member of the Board or an administrator, officer or employee of the College, in respect of an act or omission of a student or students, whether organized as a students' association or not, arising out of any association or activity organized, managed, controlled or done, in whole or in part, by a student or students. 1995-96, c. 4, s. 86.

**Transitional provisions respecting employees except teachers**

**41** **(1)** In this Section, "employee at the predecessor College" means a person employed at the predecessor College and appointed in accordance with the *Civil Service Act* or employed by the Minister, excluding teachers employed under a collective agreement in force under the *Teachers Collective Bargaining Act.*

**(2)** On January 7, 1997,

(a) every employee at the predecessor College ceases to be a person appointed in accordance with the *Civil Service Act* or a person employed by the Minister and becomes an employee of the College;

(b) each bargaining unit in the civil service that includes employees of the College is and is deemed to be two separate bargaining units, namely

(i) a non-civil service bargaining unit composed of the members of the bargaining unit who are employees of the College, and

(ii) a civil service bargaining unit composed of the members of the bargaining unit who are not employees of the College,

and the collective agreements so affected are deemed to be amended accordingly and must be given effect as if the bargaining units were always separate;

(c) the *Civil Service Act* and regulations made pursuant to that Act and the *Civil Service Collective Bargaining Act* do not apply to employees of the College;

(d) policies and procedures applicable to civil servants do not apply to employees of the College, except to the extent that they are adopted by the College;

(e) subject to clauses (a) and (b) and notwithstanding clauses (c) and (d), every employee of the College who was an employee at the predecessor College is employed by the College on the same or equal terms and conditions as to salary and benefits as those under which the employee was an employee at the predecessor College and until changed by collective agreement or contract of employment; and

(f) the College and employees of the College covered by a collective agreement concluded pursuant to the *Civil Service Collective Bargaining Act* and their bargaining agent are bound by the collective agreement as if the College were party to the collective agreement as the employer and as if the collective agreement were concluded pursuant to the *Trade Union Act* by a bargaining agent certified pursuant to that Act.

**(3)** In clause (2)(e), "benefits" means benefits contained in a collective agreement or contract of employment.

**(4)** Every employee of the College who was an employee at the predecessor College is deemed to have been employed by the College for the same period of employment that the employee was credited with as an employee at the predecessor College.

**(5)** For greater certainty,

(a) nothing in this Section means or is to be construed to mean that there has been a termination of employment of an employee at the predecessor College; and

(b) benefits accumulated by an employee at the predecessor College during the period of employment that the employee was credited with as an employee at the predecessor College are vested in the employee and the employee is entitled to receive those benefits from the College. 1995-96, c. 4, s. 87.

**Transitional provisions respecting teachers**

**42** **(1)** In this Section, "teacher" means a person employed at the predecessor College by the Minister under a collective agreement in force under the *Teachers Collective Bargaining Act*.

**(2)** On January 7, 1997,

(a) every teacher ceases to be an employee of the Minister and becomes an employee of the College;

(b) the *Teachers Collective Bargaining Act* does not apply to employees of the College;

(c) subject to this Section, every teacher is employed by the College on the same or equal terms and conditions as to salary and benefits as those under which the teacher was an employee of the Minister immediately before January 7, 1997, and until changed by collective agreement; and

(d) the College, teachers and the bargaining agent for teachers are bound by the collective agreement concluded pursuant to the *Teachers Collective Bargaining Act* as if the College were party to the collective agreement as the employer and as if the collective agreement were concluded pursuant to the *Trade Union Act* by a bargaining agent certified pursuant to that Act.

**(3)** In clause (2)(c), "benefits" means benefits contained in a collective agreement or contract of employment.

**(4)** Every teacher of the College who was an employee at the predecessor College is deemed to have been employed by the College for the same period of employment that the teacher was credited with as an employee of the Minister.

**(5)** For greater certainty,

(a) nothing in this Section means or is to be construed to mean that there has been a termination of employment of a teacher at the predecessor College; and

(b) benefits accumulated by a teacher while employed by the Minister at the predecessor College are vested in the teacher and the teacher is entitled to receive those benefits from the College. 1995-96, c. 4, s. 88.

**Further transitional provisions**

**43** **(1)** For greater certainty, the College is a transferee for the purpose of Section 38 of the *Trade Union Act* and, without limiting the generality of the foregoing,

(a) the College is bound by successor rights as determined pursuant to the *Trade Union Act*; and

(b) subject to the *Trade Union Act*, the College and persons previously employed at the predecessor College under collective agreements, are bound by the collective agreements as if the College were a party to those agreements.

**(2)** Where the Labour Board, in applying subsection (1), determines that those employees, of the College, who were not previously included in a bargaining unit that includes employees at the predecessor College are to be included in a bargaining unit of the College, those employees are deemed to have seniority credits with the College equal to the employment service they had with the predecessor College or that they were credited with as employees at the predecessor College.

**(3)** The right of an employee at the predecessor College to employment with the College in a bargaining unit position is not affected by whether that employee was previously employed pursuant to a collective agreement and the employee is deemed to have seniority credits with the College equal to the service that the employee was credited with as an employee at the predecessor College.

**(4)** In subsections (2) and (3), "employee" means an employee as defined in Section 2 of the *Trade Union Act* but, for greater certainty, does not include those described in subsection 2(2) of that Act.

**(5)** Where, in the opinion of the Minister of Labour, Skills and Immigration, the workload of the Labour Board requires additional members, the Governor in Council may, in addition to the Vice-chair appointed pursuant to subsection 24(1) of the *Trade Union Act*, appoint additional members and vice-chairs to the Labour Board for such period of time as is set out in the appointment.

**(6)** An appointment pursuant to subsection (5) does not increase the quorum of the Labour Board. 1995-96, c. 4, s. 89; 2014, c. 3, s. 25.

**Section 119 of Labour Standards Code**

**44** Notwithstanding any other provision of this Act, Section 119 of the *Labour Standards Code* does not apply to a period of employment with the predecessor College. 1995-96, c. 4, s. 90.

**Disability benefits**

**45** Subject to any applicable collective agreement or contract of employment, the College shall provide long-term disability benefits for the employees at the predecessor College who were members of the Nova Scotia Public Service Long-Term Disability Plan immediately before January 7, 1997, such benefits to be the same as or equal to the benefits under the Plan, and the assets and liabilities of the Plan in respect of the employees at the predecessor College must be transferred to the College. 1995-96, c. 4, s. 91.

**Superannuation for employees except teachers**

**46 (1)** In this Section,

"employee at the predecessor College" means an employee who, immediately before this Section comes into force, was an employee within the meaning of the *Public Service Superannuation Act*;

"Fund" means the Public Service Superannuation Fund established pursuant to the *Public Service Superannuation Act*.

**(2)** Notwithstanding anything in this Act,

(a) each employee at the predecessor College is deemed to continue to be a person employed in the public service of the Province for all purposes of the *Public Service Superannuation Act* and service in the employment of the College is deemed to be service in the public service of the Province;

(b) the College shall deduct from the salary of each employee at the predecessor College such amount as is directed by the Governor in Council to be deducted from the salary of employees in the public service of the Province and shall pay the same to the Minister of Finance and Treasury Board, and such amounts when so received must be paid into and form part of the Fund; and

(c) where by the *Public Service Superannuation Act* a matching payment is directed to be made into the Fund by the Government or the Minister of Finance and Treasury Board or where by that Act a superannuation allowance or other sum is directed to be paid out of the General Revenue Fund, then, in respect of an employee at the predecessor College, the payment, superannuation allowance or other sum must be paid by the College and forms part of the annual expenses of the College. 1995-96, c. 4, s. 92; 2010, c. 2, s. 94.

**Superannuation for teachers**

**47** **(1)** In this Section,

"employee at the predecessor College" means an employee who, immediately before this Section comes into force, was a teacher within the meaning of the *Teachers Pension Act*;

"Fund" means the Nova Scotia Teachers' Pension Fund established pursuant to the *Teachers Pension Act*.

**(2)** Notwithstanding anything in this Act,

(a) each employee at the predecessor College is deemed to continue to be a person employed as a teacher for all purposes of the *Teachers Pension Act*;

(b) the College shall deduct from the salary of each employee at the predecessor College such amount as is directed by the Governor in Council to be deducted and shall pay the same to the Minister of Finance and Treasury Board, and such amounts when so received must be paid into and form part of the Fund; and

(c) where by the *Teachers Pension Act* a matching payment is directed to be made into the Fund by the Government or the Minister of Finance and Treasury Board or where by that Act a pension or benefit or other sum is directed to be paid out of the General Revenue Fund, then, in respect of an employee at the predecessor College, the payment, pension or benefit or other sum must be paid by the College and forms part of the annual expenses of the College. 1995-96, c. 4, s. 93; 2010, c. 2, s. 95.

**Membership in Superannuation Plan**

**48** A person who becomes an employee of the College, on or after January 7, 1997, is a member of the Public Service Superannuation Plan unless that person is a teacher as defined in the *Teachers Pension Act*, in which case, that person is a member of the Teachers' Pension Plan and Sections 46 and 47 apply with necessary changes. 1995-96, c. 4, s. 94.

**Membership in pension plan**

**49** **(1)** Notwithstanding Sections 46, 47 and 48, where, after July 31, 1998, in accordance with an agreement between the College and bargaining agents representing employees of the College, the College establishes a pension plan for the employees of the College

(a) a person who becomes an employee of the College after July 31, 1998, is a member of the pension plan;

(b) all employees of the College on July 31, 1998, who are members of the Public Service Superannuation Fund continue to be employees within the meaning of the *Public Service Superannuation Act* unless they elect, in writing in the form approved by the Superintendent of Pensions, to become members of the pension plan; and

(c) all employees of the College on July 31, 1998, who are members of the Teachers' Pension Fund continue to be members of the Teachers' Pension Fund unless they elect, in writing in the form approved by the Superintendent of Pensions, to become members of the pension plan.

**(2)** Where an employee of the College does not make an election pursuant to clause (1)(b) or (c), Sections 46, 47 and 48 continue to apply with respect to that employee after the expiry of the time for making the election.

**(3)** Where an employee at the College elects pursuant to subsection (1) to become a member of the pension plan,

(a) for the purpose of determining the eligibility of the employee to a deferred superannuation allowance or deferred pension under the *Public Service Superannuation Act* or the *Teachers Pension Act*, as the case may be, service with the College is to be recognized; and

(b) for the purpose of determining the eligibility of the employee to a pension under the pension plan, service under the *Public Service Superannuation Act* or the *Teachers Pension Act*, as the case may be, is to be recognized.

**(4)** The College is a successor employer for purposes of the *Pension Benefits Act*. 1995-96, c. 4, s. 95.

**Regulations**

**50** **(1)** The Governor in Council may make regulations

(a) prescribing the powers of the Minister to impose conditions and restrictions and the persons or bodies of persons to whom referrals may be made in relation to

(i) programs of study established pursuant to clause 6(2)(a),

(ii) guidelines established pursuant to clause 6(2)(b), and

(iii) programs of study revised pursuant to subsection 6(3);

(b) respecting the information to be included in the annual stewardship report;

(c) respecting the consultation the Board must have with the Minister for the purpose of developing guidelines for a program of study other than a program of study that pertains to a trade that is within the mandate of the Agency;

(d) respecting the consultation the Board must have with the Minister for the purpose of evaluating a program of study other than a program of study that pertains to a trade that is within the mandate of the Agency;

(e) respecting the appointment by the Minister of persons to a program advisory committee established by the Board for a program of study other than a program of study that pertains to a trade that is within the mandate of the Agency;

(f) defining any word or expression used but not defined in this Act;

(g) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1995-96, c. 4, s. 97; 2014, c. 3, s. 26.

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CHAPTER C-39

# An Act Respecting Community Easements

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Community Easements Act*. 2012, c. 2, s. 1.

## Interpretation

**2** In this Act,

"community easement" means an easement that meets the purpose of subsection 4(2), and includes a recreational-use easement;

"easement holder" means an eligible body under Section 8;

"Minister" means the Minister of Natural Resources and Renewables;

"municipality" means a regional municipality, municipal unit or village as defined by the *Municipal Government Act*;

"owner" means the legal holder of the fee simple interest in land that is subject to a community easement, and includes an heir, executor, administrator, successor, assignee, receiver, receiver manager, liquidator or trustee of the owner;

"recreational-use easement" means an easement that is made for the purpose of subsection 4(3). 2012, c. 2, s. 2.

## Application of Act

**3** **(1)** This Act and the regulations bind the Crown in right of the Province and the Crown's corporations, boards, commissions, agents, administrators, servants and employees.

**(2)** This Act binds the Crown in right of Canada and the Crown's corporations, boards, commissions, agents, administrators, servants and employees.

**(3)** For greater certainty, the persons referred to in subsections (1) and (2) are subject to an order and other remedies pursuant to this Act and the regulations.

**(4)** Nothing in this Act affects a right or a remedy with respect to a community easement under any other Act or under the common law or equity if that right or remedy is not inconsistent with any right or remedy under this Act.

**(5)** An interest in real property in existence at the time a community easement is created is not affected by the community easement unless the owner of the interest is a party to the community easement or consents to it.

**(6)** This Act does not affect the power of a court to modify or terminate a community easement in accordance with the principles of law and equity. 2012, c. 2, s. 3.

**Nature and purpose of community easement**

**4** **(1)** A community easement is an agreement entered into between an owner and an easement holder that

(a) grants rights and privileges to the easement holder over the owner's land that relate to the purposes for which the community easement is granted; and

(b) may impose obligations, either positive or negative, on the owner or the easement holder, or both, respecting the owner's land that relate to the purposes for which the community easement is granted.

**(2)** A community easement other than a recreational-use easement is made for the purpose of

(a) conserving or restoring the natural, scenic or open space values of land;

(b) protecting, restoring or enhancing archaeological, paleontological, historic or cultural values of land;

(c) conserving, preserving or protecting agricultural land;

(d) conserving, preserving or protecting working-forest land;

(e) conserving land composed of restored or enhanced wetlands, including wetlands created for the purpose of compensation;

(f) encouraging the sustainable and responsible use of lands under an easement; or

(g) preserving, conserving, enhancing or restoring land that meets any other purpose prescribed by the regulations.

**(3)** A recreational-use easement is made for the purpose of

(a) preserving, enhancing or managing the access and use of land for outdoor recreation; or

(b) creating, maintaining or managing trails for community use. 2012, c. 2, s. 4.

**Duration and effect of community easement**

**5** **(1)** A community easement may exist for a stated period or in perpetuity.

**(2)** An easement holder may not, by possession, occupation or use of an owner's land, whether in accordance with the terms of the community easement or otherwise, obtain any possessory or prescriptive title in or to the land.

**(3)** An owner is not liable for a breach of a community easement that occurs after the owner ceases to own the land. 2012, c. 2, s. 5.

**Community easement runs with the land**

**6** Subject to this Act, a community easement, whether positive or negative in nature, runs with the land to which it relates for the period, if any, set out in the community easement even though the easement holder owns no other land that would be accommodated or benefited by the community easement. 2012, c. 2, s. 6.

**Contents of community easement**

**7** A community easement must contain

(a) the names and mailing addresses of the parties to the community easement;

(b) the unique parcel identification number that is assigned to a parcel by the Department of Service Nova Scotia and, for parcels that are not land registered, a metes and bounds description of the land to which the community easement applies;

(c) a sketch or plan that depicts the land to which the community easement relates and, where the community easement applies to only a portion of the parcel, a drawing showing the location of the community easement or the parcel;

(d) where the community easement does not exist in perpetuity, the period for which the community easement is to exist;

(e) the specific purpose for which the community easement is granted;

(f) the practices permitted, restricted or prohibited on the land to which the community easement relates and a description of those practices;

(g) the conservation, preservation, protection or enhancement practices that may be undertaken by the easement holder; and

(h) any other information prescribed by the regulations. 2012, c. 2, s. 7.

**Eligible bodies**

**8** **(1)** Any of the following bodies is eligible to hold a community easement other than a recreational-use easement:

(a) the Crown in right of the Province or any agency of the Crown in right of the Province;

(b) the Crown in right of Canada or any agency of the Crown in right of Canada;

(c) a municipality or any agency of a municipality;

(d) any of the 13 Nova Scotia Mi'kmaw bands or any legal organization representing two or more of the bands;

(e) any non-profit organization designated by the Governor in Council as a conservation organization under the *Conservation Easements Act*;

(f) any other non-profit organization, designated pursuant to the regulations, that has as one of its primary purposes a purpose listed in subsection 4(2).

**(2)** Any of the following bodies is eligible to hold a recreational-use easement:

(a) any of the eligible bodies listed in subsection (1);

(b) any non-profit organization, designated pursuant to the regulations, that has as one of its primary purposes a purpose listed in subsection 4(3). 2012, c. 2, s. 8.

**Amendment of community easement**

**9** A community easement may be amended by written agreement between the owner and the easement holder. 2012, c. 2, s. 9.

**Assignment of community easement**

**10** A community easement may, subject to any terms in the community easement, be assigned by the easement holder in writing to any eligible body. 2012, c. 2, s. 10.

**Filing of community easement, amendment or assignment**

**11** **(1)** The easement holder shall submit the community easement and any amendment or assignment of it for filing with the appropriate registry of deeds and shall, within 30 days after filing, forward a copy of the community easement, amendment or assignment to the Minister.

**(2)** A community easement does not create an interest in land until the community easement is filed pursuant to the *Registry of Deeds Act* or the *Land Registration Act*. 2012, c. 2, s. 11.

**Community easement does not lapse**

**12** A community easement does not lapse by reason only of

(a) non-enforcement;

(b) the use of the land to which the community easement relates for a purpose that is inconsistent with the purposes of the community easement; or

(c) a change in the use of land that surrounds or is adjacent to the land to which the community easement relates. 2012, c. 2, s. 12.

**Termination or assumption of community easement**

**13 (1)** A community easement may be terminated by a written agreement between the easement holder and the owner.

**(2)** Where a written agreement is made pursuant to subsection (1), the easement holder shall, within 90 days of the date of the agreement, file a copy of the agreement with the appropriate registry of deeds and send a copy to the Minister.

**(3)** Where an easement holder ceases to exist, the owner shall notify the Minister in writing that the easement holder no longer exists and the Minister shall, within 90 days of receiving the notice, send a copy of the notice to all the eligible bodies.

**(4)** Within 90 days after the notice from the Minister has been sent to the eligible bodies pursuant to subsection (3), any eligible body may notify the Minister in writing of its intention to elect to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the community easement.

**(5)** Where more than one eligible body notifies the Minister pursuant to subsection (4), the Minister shall determine which eligible body will be permitted to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the community easement.

**(6)** The Minister shall notify the eligible body that is permitted to assume the rights, privileges and obligations of the easement holder pursuant to subsection (4) or (5), and the eligible body shall send the owner a written notice advising the owner of the assumption of obligations, rights and privileges.

**(7)** Where no eligible body notifies the Minister of its intention to assume the obligations of an easement holder that has ceased to exist, the Minister may elect to assume the obligations of the easement holder and accept the rights and privileges respecting the community easement by giving the owner a written notice advising of the election within 180 days after the Minister has sent the notices to the eligible bodies pursuant to subsection (3).

**(8)** A written notice referred to in subsection (6) or (7) must be registered with the appropriate registry of deeds.

**(9)** Where neither the Minister nor an eligible body elects to assume the obligations of the easement holder, the community easement is terminated and the Minister shall file a notice of termination with the appropriate registry of deeds and provide a copy of the notice to the owner. 2012, c. 2, s. 13.

**Easement holder no longer eligible body**

**14** Where an easement holder ceases to be an eligible body, the easement holder is deemed to have ceased to exist for all purposes of Section 13. 2012, c. 2, s. 14.

**Enforcement by action in Supreme Court**

**15** **(1)** The obligations in a community easement, whether positive or negative, may be enforced by an action in the Supreme Court of Nova Scotia by the owner or the easement holder.

**(2)** In an action pursuant to subsection (1), the Supreme Court of Nova Scotia may

(a) grant any relief or remedy available at common law to any of the parties referred to in subsection (1);

(b) order the defendant to take any action the Court considers appropriate to restore or remedy any harm to the land to which the community easement relates;

(c) prohibit any activity on the land to which the community easement relates that the Court considers contrary to any of the purposes of the community easement. 2012, c. 2, s. 15.

**Regulations**

**16** **(1)** The Governor in Council may make regulations

(a) prescribing purposes for which a community easement may be granted;

(b) designating organizations for the purpose of clause 8(1)(f) or (2)(b);

(c) respecting the information that must be included in a community easement;

(d) modifying the application of this Act to a recreational-use easement;

(e) defining any word or expression used in but not defined in this Act;

(f) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** There may be different regulations made pursuant to subsection (1) for community easements made for different purposes.

**(3)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2012, c. 2, s. 16.

CHAPTER C-40

# An Act to Establish the Community Economic Development Fund

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Community Economic Development Fund Act*. 2014, c. 9, s. 1; 2022, c. 49, s. 2.

## Interpretation

**2** **(1)** In this Act,

"Department" means the Department of Economic Development;

"economic development incentive" means financial assistance provided pursuant to this Act, including assistance by way of loan, loan guarantee, contribution, indemnity or other contingency, the purchase or guarantee of any bonds, debentures, notes or other debt obligations, the purchase, leasing or other holding of any real or personal property and the improvement or maintenance of any real or personal property, but not including by way of equity investments, and includes an amendment to an economic development incentive;

"Fund" means the Community Economic Development Fund;

"Minister" means the Minister of Economic Development;

"statutory capital authority" means the sums of money made available for the purpose of the Fund pursuant to subsection 4(2).

**(2)** In determining financial authority for the purpose of this Act, the statutory capital authority available from time to time and any budgetary considerations of the Department as may be described by the regulations must be considered. 2014, c. 9, s. 2; 2022, c. 49, s. 3.

**Supervision of Act**

**3** The Minister has the general supervision and management of this Act. 2014, c. 9, s. 3.

## COMMUNITY ECONOMIC DEVELOPMENT FUND

**Fund established**

**4** **(1)** A fund to be known as the Community Economic Development Fund is established.

**(2)** The Governor in Council may authorize the Minister of Finance and Treasury Board to make available such sums of money from the General Revenue Fund as the Governor in Council considers necessary for the purposes of the Fund.

**(3)** All repayments and all recoveries made in respect of any transaction out of the Fund must be paid or credited to the Fund.

**(4)** Any loan guarantee made pursuant to this Act is a charge upon the Fund in the amount of the guarantee authorized. 2014, c. 9, s. 22; 2022, c. 49, s. 6.

**Objects and purposes**

**5** The objects and purposes of the Fund are to foster an economic environment to achieve sustained economic development and growth, with economic development incentives that have broad benefits across sectors, innovation systems or regions, by

(a) developing, promoting or implementing initiatives related to sector development or economic diversification;

(b) focusing on enhanced workforce-skills development to improve competitiveness;

(c) enhancing innovation, including applied research and development, pilot projects, trials and other similar projects;

(d) supporting strategic trade links, gateways or economic infrastructure;

(e) creating economic development opportunities through leveraging investments in significant capital projects such as new technologies or expansions that result in gains in innovation, productivity and competitiveness as well as increased international trade; and

(f) engaging in regional development, with emphasis on high unemployment regions where the support can make a sustainable contribution to the economic and social well-being of the community. 2014, c. 9, s. 23.

**Applications for economic development incentives**

**6** The Department shall review and decide upon applications for economic development incentives, considering the objects and purposes of the Fund and subject to any matters set out in the regulations. 2014, c. 9, s. 25; 2022, c. 49, s. 8.

**When consent of Treasury and Policy Board required**

**7** Where the Department approves an economic development incentive application that is projected by the Department to exceed the financial authority or where required by the regulations, that approval requires the consent of Treasury and Policy Board to be effective. 2014, c. 9, s. 26; 2022, c. 49, s. 9.

**Limit on authority to consent**

**8** Treasury and Policy Board may consent to an economic development incentive that exceeds the financial authority only if the Fund's statutory capital authority is sufficient. 2014, c. 9, s. 27.

**Implementation of economic development incentives**

**9** The Minister shall implement the economic development incentives from the Fund in accordance with the approvals given pursuant to Section 6 and, where applicable, the consents given pursuant to Section 7. 2014, c. 9, s. 28.

**Execution of agreements or other instruments**

**10** The Minister may, for and on behalf of the Crown in right of the Province, and in accordance with the processes and approvals set out in this Act and the regulations, execute all agreements or other instruments that the Minister considers necessary or desirable to provide the economic development incentives from the Fund approved in accordance with this Act. 2014, c. 9, s. 29.

REGULATIONS

**Regulations**

**11** **(1)** The Governor in Council may make regulations

(a) respecting the determination of financial authority for the purpose of this Act;

(b) respecting the manner in which applications for economic development incentives may be made;

(c) respecting the process to be followed when applications for economic development incentives are received by the Department;

(d) prescribing policy guidelines to be adhered to by the Department in considering applications for economic development incentives;

(e) prescribing circumstances when approvals of economic development incentives by the Department require the consent of Treasury and Policy Board;

(f) respecting the process to be followed by the Department when applications for economic development incentives are required to be sent to Treasury and Policy Board for consent;

(g) prescribing terms and conditions upon which economic development incentives may be provided;

(h) respecting any matter authorized by this Act to be done by the regulations;

(i) defining any word or expression used but not defined in this Act;

(j) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2014, c. 9, s. 30; 2022, c. 49, s. 10.

CHAPTER C-41

# An Act Respecting Community Interest Companies

**Table of Contents**

(The table of contents is not part of the statute)



## Short title

**1** This Act may be cited as the *Community Interest Companies Act*. 2012, c. 38, s. 1.

## Interpretation

**2** **(1)** In this Act,

"affiliate" means an affiliate within the meaning of subsection 2(2) of the *Companies Act*;

"community interest company" means a company that has been designated as a community interest company pursuant to Section 5, 6 or 7 of this Act;

"community purpose" means a purpose beneficial to

(a) society at large; or

(b) a segment of society that is broader than the group of persons who are related to the community interest company,

and includes, without limiting the generality of the foregoing, a purpose of providing health, social, environmental, cultural, educational or other services, but does not include a political purpose or a prescribed purpose;

"company" means a company incorporated under the *Companies Act*;

"company to be incorporated" means any one or more persons who have subscribed their names to a memorandum of association and have requested a certificate of incorporation from the Registrar of Joint Stock Companies under the *Companies Act*;

"designation documents" means the prescribed statutory declarations and other documents that must be filed to have an application to be designated as a community interest company considered by the Registrar;

"distributable assets" means, in relation to a community interest company that is to be dissolved, the assets of the community interest company that remain after payment or provision for payment is made of

(a) all of the community interest company's liabilities and the costs, charges and expenses properly incurred in relation to the dissolution; and

(b) any money that, pursuant to the regulations, must be paid to shareholders of the community interest company on dissolution before making a transfer referred to in clause 18(1)(b);

"Minister" means the Minister of Service Nova Scotia;

"prescribed" means prescribed by the regulations;

"qualified entity" means

(a) a non-profit association within the meaning of Section 66 of the *Co-operative Associations Act*;

(b) a society incorporated under the *Societies Act*;

(c) a registered charity within the meaning of subsection 248(1) of the *Income Tax Act* (Canada); or

(d) a prescribed entity;

"Registrar" means the Registrar of Community Interest Companies appointed under Section 4;

"special resolution" means a special resolution within the meaning of Section 103 of the *Companies Act*;

"Supreme Court" means the Supreme Court of Nova Scotia;

"transfer" means to transfer by any method, and includes pay, spend, distribute, dispose, assign, give, sell, grant, charge, convey,

bequeath, devise, lease, divest, release and agree to do any of those things.

**(2)** For the purpose of this Act, a person is related to a community interest company if the person is

(a) a director, officer or shareholder;

(b) a person who beneficially owns shares;

(c) an affiliate; or

(d) a director or officer of another company that is an affiliate,

of the community interest company. 2012, c. 38, s. 2; 2014, c. 34, s. 3.

**Conflict with Companies Act**

**3** Where there is any conflict between this Act and the *Companies Act*, this Act prevails. 2012, c. 38, s. 3.

**Registrar of Community Interest Companies**

**4 (1)** A Registrar of Community Interest Companies must be appointed in accordance with the *Civil Service Act*.

**(2)** The Registrar shall perform such functions and duties relating to community interest companies as are conferred by this Act and the regulations.

**(3)** The Registrar may delegate in writing some or all of the Registrar's functions or duties to one or more persons for the period specified by the Registrar. 2012, c. 38, s. 4.

**Designation of company to be incorporated**

**5 (1)** A company to be incorporated may apply to be designated as a community interest company by filing with the Registrar of Joint Stock Companies

(a) the incorporation documents required under the *Companies Act*;

(b) the designation documents; and

(c) the prescribed fees.

**(2)** Upon receipt of the documents referred to in subsection (1), where the Registrar of Joint Stock Companies is satisfied that the incorporation documents satisfy the requirements to register a memorandum of association and issue a certification of incorporation under the *Companies Act*, the Registrar of Joint Stock Companies shall

(a) forward a copy of each of the documents referred to in subsection (1) to the Registrar; and

(b) pending the Registrar's determination under subsection (3), defer deciding whether to register the memorandum of association and issue a certificate of incorporation.

**(3)** The Registrar shall determine whether the company to be incorporated is eligible to be designated as a community interest company upon incorporation.

**(4)** A company to be incorporated is eligible to be designated as a community interest company if, upon incorporation as a company,

(a) the memorandum of association complies with Section 9;

(b) the name of the company complies with Section 10;

(c) the company has at least three directors; and

(d) the Registrar, having regard to the designation documents and any other considerations the Registrar determines to be relevant, considers that the company has a community purpose.

**(5)** Where the Registrar determines that a company to be incorporated is eligible to be designated as a community interest company upon incorporation, the Registrar shall

(a) notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) upon incorporation, record the designation documents and designate the company to be a community interest company.

**(6)** Upon the Registrar giving notice of a determination to the Registrar of Joint Stock Companies that a company to be incorporated is eligible to be designated as a community interest company, the Registrar of Joint Stock Companies may proceed to register the memorandum of association and issue a certificate of incorporation under subsection 33(1) of the *Companies Act*.

**(7)** Where the Registrar determines that a company to be incorporated is not eligible to be designated as a community interest company,

(a) the Registrar shall notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) the Registrar of Joint Stock Companies shall return the documents and fees filed under subsection (1) to the applicant. 2012, c. 38, s. 5.

**Designation of existing company**

**6** **(1)** A company may apply to be designated as a community interest company by filing with the Registrar of Joint Stock Companies

(a) a resolution, made in accordance with subsection (2), to alter the company's memorandum of association to comply with Section 9 and to change the company's name to comply with Section 10;

(b) a certificate of an officer of the company attesting to the approval, by resolution in accordance with subsection (2), of the name change and the alteration of the memorandum of association;

(c) a copy of the company's memorandum of association as altered by the resolution;

(d) the designation documents; and

(e) the prescribed fees.

**(2)** A resolution referred to in clause (1)(a) must be passed by every member of the company, regardless of whether the shares held by a member carry the right to vote.

**(3)** Upon receipt of the documents referred to in subsection (1), where the Registrar of Joint Stock Companies is satisfied that the documents referred to in clauses (1)(a) to (c) meet the requirements of Sections 18 and 20 of the *Companies Act* and subsection (2), the Registrar of Joint Stock Companies shall

(a) forward a copy of each of the documents referred to in subsection (1) to the Registrar; and

(b) pending the Registrar's determination under subsection (4), defer deciding whether to register the change of name and altered memorandum of association and issue a certificate of change of name and a certificate of memorandum alteration.

**(4)** The Registrar shall determine whether the company is eligible to become a community interest company.

**(5)** A company is eligible to be designated as a community interest company if, upon the alteration of its memorandum of association and the change of its name,

(a) the memorandum of association complies with Section 9;

(b) the change of name complies with Section 10;

(c) the company has at least three directors; and

(d) the Registrar, having regard to the designation documents and any other considerations the Registrar determines to be relevant, considers that the company has a community purpose.

**(6)** Where the Registrar determines that a company is eligible to be designated as a community interest company, the Registrar shall

(a) notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) upon the alteration of the company's memorandum of association and the change of its name, record the designation documents and designate the company to be a community interest company.

**(7)** Upon the Registrar giving notice of a determination to the Registrar of Joint Stock Companies that a company is eligible to be designated as a community interest company, the Registrar of Joint Stock Companies may proceed to register the documents referred to in clauses (1)(a) to (c), issue a certificate of change of name under subsection 18(3) of the *Companies Act* and issue a certificate of memorandum alteration under subsection 20(8) of the *Companies Act*.

**(8)** The alteration of the memorandum of association and the change of name take effect upon the documents referred to in clauses (1)(a) to (c) being registered by the Registrar of Joint Stock Companies.

**(9)** Where the Registrar determines that a company is not eligible to be designated as a community interest company,

(a) the Registrar shall notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) the Registrar of Joint Stock Companies shall return the documents and fees filed under subsection (1) to the applicant. 2012, c. 38, s. 6.

**Designation of company to be formed by amalgamation**

**7 (1)** Two or more companies that are proposing to amalgamate and continue as an amalgamated company may jointly apply to have the amalgamated company designated as a community interest company by filing with the Registrar of Joint Stock Companies

(a) the amalgamation documents required under the *Companies Act*, including the amalgamation agreement;

(b) in respect of each amalgamating company, a certificate of an officer of the company attesting to the approval, by resolution in accordance with subsection (2), of the amalgamation agreement;

(c) the designation documents; and

(d) the prescribed fees.

**(2)** The amalgamation agreement referred to in clause (1)(a) must be approved by a resolution passed by every member of each of the amalgamating companies, regardless of whether the shares held by a member carry the right to vote.

**(3)** Upon receipt of the documents referred to in subsection (1), where the Registrar of Joint Stock Companies is satisfied that the amalgamation documents satisfy the requirements to amalgamate two or more companies under Section 149 of the *Companies Act*, the Registrar of Joint Stock Companies shall

(a) forward a copy of each of the documents referred to in subsection (1) to the Registrar; and

(b) pending the Registrar's determination under subsection (4), defer deciding whether to register the amalgamation documents and issue a certificate of amalgamation.

**(4)** The Registrar shall determine whether the amalgamated company is eligible to be designated as a community interest company upon amalgamation.

**(5)** An amalgamated company is eligible to be designated as a community interest company if, upon amalgamation,

(a) the memorandum of association of the amalgamated company complies with Section 9;

(b) the name of the amalgamated company complies with Section 10;

(c) the amalgamated company has at least three directors; and

(d) the Registrar, having regard to the designation documents and any other considerations the Registrar determines to be relevant, considers that the amalgamated company has a community purpose.

**(6)** Where the Registrar decides that two or more amalgamating companies are eligible to be designated as a community interest company upon amalgamation, the Registrar shall

(a) notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) upon amalgamation, record the designation documents and designate the amalgamated company to be a community interest company.

**(7)** Upon the Registrar giving notice of a determination to the Registrar of Joint Stock Companies that two or more companies are eligible to be designated as a community interest company upon amalgamation, the Registrar of Joint Stock Companies may proceed to register the amalgamation documents referred to in clauses (1)(a) and (b) and issue a certificate of amalgamation under subsection 149(10) of the *Companies Act*.

**(8)** The amalgamation of the two or more amalgamating companies takes effect upon the documents referred to in clauses (1)(a) and (b) being registered by the Registrar of Joint Stock Companies.

**(9)** Where the Registrar determines that two or more amalgamating companies are not eligible to be designated as a community interest company upon amalgamation,

(a) the Registrar shall notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) the Registrar of Joint Stock Companies shall return the documents and fees filed under subsection (1) to the joint applicants.

**(10)** A community interest company may not amalgamate with any other company unless the resulting amalgamated company is a community interest company. 2012, c. 38, s. 7.

**Statement in certificate**

**8** **(1)** Where, pursuant to clause 5(5)(a), 6(6)(a) or 7(6)(a), the Registrar notifies the Registrar of Joint Stock Companies that a company is eligible to be designated as a community interest company, the certificate of incorporation, certificate of memorandum alteration or certificate of amalgamation issued by the Registrar of Joint Stock Companies must state that the company is a community interest company.

**(2)** A statement in a certificate of incorporation, a certificate of memorandum alteration or a certificate of amalgamation that the company to which the certificate relates is designated as a community interest company is conclusive evidence that the company is a community interest company. 2012, c. 38, s. 8.

**Statement in memorandum of association**

**9 (1)** The memorandum of association of a community interest company must include the following statement:

> This company is a community interest company, and as such, has a community purpose. This company is restricted, in accordance with the *Community Interest Companies Act*, in its ability to pay dividends and to distribute its assets on dissolution or otherwise.

**(2)** The memorandum of association of a community interest company must state the community interest company's community purpose. 2012, c. 38, s. 9.

**Company name**

**10 (1)** A community interest company must have the expression "Community Interest Company" or "société d'intérêt communautaire" or the abbreviation "C.I.C.", "CIC", "S.I.C." or "SIC" as the last phrase in each form of the community interest company's name.

**(2)** For the purpose of this Act,

(a) the expression "Community Interest Company" and the abbreviations "C.I.C." and "CIC" are interchangeable; and

(b) the expression "société d'intérêt communautaire" and the abbreviations "S.I.C." and "SIC" are interchangeable.

**(3)** No person shall use the expression "Community Interest Company" or "société d'intérêt communautaire" in any form of the person's name, unless the person is

(a) a community interest company;

(b) a federal corporation entitled or required to use that expression; or

(c) a prescribed person.

**(4)** No person shall use the abbreviation "C.I.C.", "CIC", "S.I.C." or "SIC" in the Province, either alone or in combination with other words, letters or descriptions, to imply that the person is a community interest company, unless that person is

(a) a community interest company;

(b) a federal corporation entitled or required to use that abbreviation; or

(c) a prescribed person.

**(5)** Subclauses 10(a)(i) and 11(a)(i) of the *Companies Act* do not apply to a community interest company. 2012, c. 38, s. 10.

**Directors**

**11** A community interest company must have no fewer than three directors. 2012, c. 38, s. 11.

**Duty of directors and officers**

**12** A director or officer of a community interest company shall, when exercising the powers and performing the functions of a director or officer of the community interest company, act in accordance with the community purpose of the community interest company set out in its memorandum of association and its designation documents. 2012, c. 38, s. 12.

**Restriction on transfer of assets**

**13 (1)** A community interest company shall not transfer any of the community interest company's assets other than

(a) for fair market value;

(b) to a qualified entity;

(c) in furtherance of the community interest company's community purpose;

(d) by a transfer contemplated by this Act and in accordance with this Act and the *Companies Act*, including, without limiting the generality of the foregoing, by a declaration of dividends, distribution on dissolution, a redemption or purchase of shares or any other reduction of capital; or

(e) by a prescribed transfer.

**(2)** A community interest company shall not transfer any of the community interest company's assets by way of financial assistance except in accordance with subsection (1).

**(3)** For greater certainty, nothing in this Section prevents a community interest company from transferring assets in the ordinary course of business if the value of the assets transferred is or could reasonably be expected to be equal to the fair market value of the goods or services acquired in return by the community interest company. 2012, c. 38, s. 13.

**Ownership of property**

**14 (1)** A community interest company may not acquire any property, real or personal, in joint tenancy with any other person.

**(2)** Where a community interest company holds property in joint tenancy with any other person, the community interest company and the other person are deemed to hold the property as tenants in common. 2012, c. 38, s. 14.

**Restrictions on dividends**

**15 (1)** A community interest company shall not declare a dividend unless the declaration is

(a) authorized by the regulations; and

(b) made in accordance with the requirements of the *Companies Act*.

**(2)** A community interest company may, in the community interest company's memorandum of association or articles of association, further constrain the declaration of dividends. 2012, c. 38, s. 15.

**Restrictions on interest payments**

**16** A community interest company shall not pay, in relation to a debenture issued by the community interest company or any of the community interest company's other debts, a rate of interest that is related to the community interest company's profits unless

(a) the regulations authorize payments of that type; and

(b) the payment is in accordance with the regulations. 2012, c. 38, s. 16.

**Restrictions on payments respecting shares**

**17** A community interest company shall not make a payment to redeem or purchase the community interest company's own shares, or to otherwise reduce the community interest company's capital attributable to shares, unless the payment is

(a) authorized by the regulations; and

(b) in accordance with the company's articles of association and the *Companies Act*. 2012, c. 38, s. 17.

**Distribution of assets on dissolution**

**18 (1)** Before a community interest company is dissolved, the liquidator of the company shall

(a) comply with the prescribed dissolution requirements, if any; and

(b) subject to subsections (2) and (3), transfer to one or more qualified entities all or the prescribed percentage of the community interest company's distributable assets.

**(2)** Subject to subsection (3), where, upon the dissolution of a community interest company, the memorandum of association of the community interest company specifies one or more qualified entities for the purpose of this Section, the liquidator shall transfer all or the prescribed percentage of the community interest company's distributable assets to the qualified entities in accordance with the directions, if any, respecting the distribution set out in the memorandum of association.

**(3)** Where the shareholders of the community interest company have passed a special resolution specifying one or more qualified entities for the purpose of this Section, the liquidator shall, notwithstanding anything in the memorandum of association, transfer all or the prescribed percentage of the community interest company's distributable assets to the qualified entities in accordance with the directions respecting the distribution set out in the special resolution of the shareholders. 2012, c. 38, s. 18.

**Eligibility of qualified entity to receive distributable assets**

**19 (1)** Notwithstanding Section 18, before making a distribution under clause 18(1)(b), the liquidator of a community interest company shall confirm with the Registrar that a qualified entity that is to receive distributable assets from the community interest company is eligible to receive such assets.

**(2)** A qualified entity is eligible to receive distributable assets from a community interest company that is being dissolved if the Registrar determines, in accordance with the prescribed criteria, that the qualified entity has a community purpose similar to that of the community interest company. 2012, c. 38, s. 19.

**Designation of qualified entity if none specified**

**20** Where a community interest company does not specify a qualifying entity to receive its distributable assets upon the dissolution of the community interest company, the Registrar shall designate, in accordance with the prescribed criteria, a qualified entity to receive the distributable assets. 2012, c. 38, s. 20.

**Community interest report**

**21 (1)** A community interest company shall produce annually, at or before the date in each year by which the annual general meeting is held, a community interest report, in the prescribed manner, that describes the following in relation to the community interest company's most recently completed financial year:

(a) a fair and accurate description of the manner in which the community interest company's activities during that financial year benefited society or advanced the community purpose of the community interest company;

(b) the assets, including the amounts of money, that were transferred during that financial year in furtherance of the community interest company's community purpose;

(c) the purpose for which the transfers referred to in clause (b) were made;

(d) the amounts of any dividends that were declared during that financial year;

(e) the assets that were transferred during that financial year for redemptions or purchases of shares or other reductions of capital;

(f) where, during that financial year, the community interest company has transferred, in accordance with Section 13, any assets

(i) with a fair market value that exceeds the prescribed amount,

(ii) to a qualified entity,

(iii) by way of financial assistance, or

(iv) to a person related to the company,

the details of that transfer, including the identity of the transferee, the purpose of the transfer and the amount, or a fair estimate of the amount, transferred;

(g) any prescribed information.

**(2)** The annual community interest report must be placed before the shareholders of the community interest company at the annual general meeting.

**(3)** Before a community interest report is placed before the shareholders of a community interest company, the community interest report must, by resolution, be approved by the directors of the community interest company.

**(4)** A community interest company shall file a copy of the community interest report with the Registrar within the prescribed period. 2012, c. 38, s. 21.

**Financial statements**

**22 (1)** A community interest company shall file a copy of its financial statements in respect of a financial year with the Registrar at the same time as the community interest company files the community interest report in relation to that financial year pursuant to subsection 21(4).

**(2)** A community interest company may not, by order of the Nova Scotia Securities Commission or the Registrar of Joint Stock Companies, be exempted from the requirements of Sections 140 and 141 of the *Companies Act* that relate to the production, content and approval of financial statements. 2012, c. 38, s. 22.

**Finality of determination or designation**

**23** A determination of the Registrar under subsection 5(3), 6(4), 7(4) or 19(2) and a designation of the Registrar under Section 20 is final and is not subject to appeal. 2012, c. 38, s. 23.

**Documents available to public**

**24** Section 4 of the *Companies Act* applies with necessary changes to

(a) a designation document recorded by the Registrar pursuant to this Act;

(b) a community interest report filed with the Registrar pursuant to subsection 21(4);

(c) an order issued pursuant to clause 26(b); and

(d) a prescribed document. 2012, c. 38, s. 24.

**Review of designation**

**25 (1)** A community interest company shall, upon being requested to do so by the Registrar, provide the Registrar with such information as the Registrar specifies to satisfy the Registrar that the community interest company continues to be eligible to be designated as a community interest company.

**(2)** Information provided pursuant to subsection (1) must be in the form specified by the Registrar.

**(3)** A community interest company that receives a request pursuant to subsection (1) may also provide the Registrar with written submissions respecting its continued eligibility to be designated as a community interest company. 2012, c. 38, s. 25.

**Dissolution order**

**26** Where, upon reviewing any information provided to the Registrar pursuant to Section 25, the information contained in the annual report and such other information as the Registrar considers relevant, the Registrar is no longer satisfied that a community interest company is eligible to be designated as a community interest company, the Registrar shall

(a) notify the community interest company and the Registrar of Joint Stock Companies; and

(b) order that community interest company be dissolved within 60 days in accordance with this Act and the *Companies Act*. 2012, c. 38, s. 26.

**Appeal of dissolution order**

**27** **(1)** An order issued pursuant to Section 26 may be appealed to the Supreme Court within 30 days of being issued by the Registrar.

**(2)** Where an order is appealed pursuant to subsection (1), the order is stayed pending the disposition of the appeal by the Supreme Court.

**(3)** On an appeal pursuant to subsection (1), the Supreme Court may consider any information that was before the Registrar in making a decision under Section 26 and may

(a) affirm the order;

(b) set aside the order; or

(c) order the matter to be reconsidered by the Registrar. 2012, c. 38, s. 27.

**Regulations**

**28** **(1)** The Minister may make regulations respecting the designation and operation of community interest companies, including regulations

(a) prescribing purposes not included in the definition of "community purpose";

(b) prescribing statutory declarations and other documents as designation documents;

(c) prescribing entities that are qualified entities;

(d) prescribing the duties and functions of the Registrar;

(e) prescribing persons who may use the expression "community interest company" or the abbreviation "C.I.C." as the last phrase in any form of the person's name;

(f) respecting transfers contemplated pursuant to clause 13(1)(d);

(g) prescribing transfers for the purpose of clause 13(1)(e);

(h) respecting the dividends that may be declared by a community interest company, including regulations respecting the amount and frequency of dividends;

(i) authorizing the payment by a community interest company, in relation to a debenture issued by the community interest company or any of the community interest company's other debts, of a rate of interest that is related to the community interest company's profits and respecting the payment of such interest, if authorized;

(j) authorizing payments by a community interest company to redeem or purchase the community interest company's own shares, or to otherwise reduce the community interest company's capital attributable to shares, and respecting such payments, if authorized;

(k) respecting the dissolution of a community interest company, including prescribing

(i) the percentage of the distributable assets of a community interest company that may be transferred to one or more qualified entities pursuant to Section 18,

(ii) the amounts that must be paid to shareholders of a community interest company upon dissolution before transferring any of the community interest company's distributable assets, and

(iii) the duties that a liquidator of a community interest company must perform;

(l) prescribing criteria for the purpose of determining whether a qualified entity is eligible to receive distributable assets from a community interest company that is being dissolved;

(m) prescribing criteria for the purpose of designating a qualified entity to receive distributable assets from a community interest company that is being dissolved if the community interest company has not specified a qualified entity to receive such assets;

(n) for the purpose of Section 21,

(i) respecting the manner in which a community interest report must disclose the information specified by subsection 21(1),

(ii) prescribing an amount for the purpose of subclause 21(1)(f)(i), and

(iii) prescribing the information that must be included in a community interest report;

(o) prescribing the period within which a community interest company is required to file a copy of the community interest report with the Registrar;

(p) prescribing documents for the purpose of clause 24(d);

(q) prescribing fees for any application made to or service provided by the Registrar or any other person under this Act;

(r) respecting any matter or thing the Minister considers necessary or advisable to effectively carry out the intent and purpose of this Act.

**(2)** The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2012, c. 38, s. 28.

CHAPTER C-42

# An Act to Promote Community Spirit

**Table of Contents**

(The table of contents is not part of the statute)



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**Short title**

**1** This Act may be cited as the *Community Spirit Act*. 2011, c. 33, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to facilitate the adoption of declarations that express community spirit by

(a) providing clear authority for municipalities and villages to adopt community declarations that portray their distinguishing qualities, characteristics and identities; and

(b) establishing a registry in which the declarations may be registered. 2011, c. 33, s. 2.

**Interpretation**

**3** In this Act,

"community declaration" means an expression that represents a distinguishing quality, characteristic or identity of a particular municipality or village, or a geographic area or community within a particular municipality or village;

"Minister" means the Minister of Communities, Culture, Tourism and Heritage;

"municipality" means a municipality as defined in the *Municipal Government Act*;

"register" means add to the Registry;

"Registry" means the Registry of Community Declarations established pursuant to this Act;

"village" means a village as defined in the *Municipal Government Act*. 2011, c. 33, s. 3.

**Registry**

**4** The Minister shall establish and maintain a Registry of Community Declarations. 2011, c. 33, s. 4.

**Resolutions**

**5** **(1)** The council of a municipality or the commission for a village may, by resolution, adopt, amend or retract a community declaration for the municipality or the village, or for a geographic area or community within the municipality or the village.

**(2)** The council of a municipality or the commission for a village may request that the Minister

(a) register a community declaration adopted by the council or commission;

(b) amend a registered community declaration adopted by the council or commission; or

(c) remove a registered community declaration adopted by the council or commission from the Registry.

**(3)** Upon receiving a resolution from a council or commission, the Minister may

(a) register a community declaration;

(b) amend a registered community declaration; or

(c) remove a registered community declaration from the Registry. 2011, c. 33, s. 5.

**Removal from Registry**

**6** The Minister may remove a community declaration from the Registry at any time. 2011, c. 33, s. 6.

CHAPTER C-43

# An Act Respecting Joint Stock Companies

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(The table of contents is not part of the statute)

Articles of Association



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PART VI

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PART VII

Companies Authorized to Register Under This Act



PART VIII

Penalties and Legal Proceedings



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**Short title**

**1** This Act may be cited as the *Companies Act*. R.S., c. 81, s. 1.

PART I

INTERPRETATION

**Interpretation**

**2** **(1)** In this Act,

"articles" means the articles of association of a company, as originally framed or as altered by special resolution, and includes, so far as they apply to the company, the regulations made pursuant to this Act respecting the management of a company limited by shares or contained, as the case may be, in Table A in the First Schedule to Chapter 128 of the Revised Statutes, 1900, in Table A in the First Schedule to Chapter 19 of the Acts of 1921, in Table A in the First Schedule to Chapter 174 of the Revised Statutes, 1923, in Table A in the First Schedule to Chapter 6 of the Acts of 1935, in Table A in the First Schedule to Chapter 41 of the Revised Statutes, 1954 or in Table A in the First Schedule to Chapter 42 of the Revised Statutes, 1967;

"auditor" includes a partnership of auditors;

"body corporate" includes a company or other body corporate wherever or however incorporated;

"books and papers" and "books or papers" includes accounts, deeds, writings and documents;

"class", in relation to shares, means shares that are issued with preferred, deferred or other special rights or restrictions, whether in regard to dividends, voting, return of share capital or otherwise;

"Commission" means the Nova Scotia Securities Commission;

"company" means a company formed and registered or continued under this Act, or an existing company, that has not been discontinued under this Act;

"court" means the Supreme Court of Nova Scotia, or a judge thereof;

"debenture" includes debenture stock and bonds and any other securities of a company whether constituting a charge on the assets of the company or not, but does not include shares in the capital stock of a company or bills of exchange, promissory notes, cheques or other like negotiable documents;

"director" includes any person occupying the position of director by whatever name called;

"document" includes summons, notice, order and other legal process and registers;

"existing company" means a company registered under Chapter 128 of the Revised Statutes, 1900, Chapter 19 of the Acts of 1921 or Chapter 174 of the Revised Statutes, 1923, and still so registered in the office of the Registrar on August 1, 1935;

"general rules" means general rules made under this Act, and includes forms;

"loan company" means and is deemed always to have meant a company carrying on the business of a loan company as defined in the *Trust and Loan Companies Act*;

"memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of this Act;

"printed" means printed, typewritten or otherwise mechanically reproduced;

"prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription for or purchase of any shares or debentures of a company;

"Registrar" means the Registrar of Joint Stock Companies appointed under this Act, and includes the Deputy Registrar or any person authorized by the Governor in Council to perform the duties of the Registrar in the Registrar's absence;

"reporting company" means a company, other than a reporting issuer, that has filed a prospectus pursuant to this Act for registration

with the Registrar in respect of which any shares or debentures of the company were subscribed and such shares or debentures or shares or debentures into which such shares or debentures were converted are outstanding except that where, upon the application of a company that has fewer than 15 members and debenture holders, in aggregate, the Commission is satisfied, in its discretion, that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as the Commission may impose, that the company is not a reporting company;

"reporting issuer" means a company that is a reporting issuer within the meaning of the *Securities Act*;

"security" means, collectively, any security, as such term is defined in the *Securities Transfer Act*, and any debenture;

"security certificate" means a certificate evidencing a security;

"series", in relation to shares, means a division of a class of shares;

"share" means a share in the share capital of the company and also shares without nominal or par value except where a distinction between shares with nominal or par value and shares without nominal or par value is expressed or implied, and includes stock, except where a distinction between stock and shares is expressed or implied;

"trust company" means, and is deemed always to have meant, a company carrying on the business of a trust company as defined in the *Trust and Loan Companies Act*;

"voting securities" means any security other than a debt security of a company carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

**(2)** A body corporate is an affiliate of another body corporate if one of them is the subsidiary of the other, if both are subsidiaries of the same body corporate or if each of them is controlled by the same person.

**(3)** A body corporate is controlled by another person or by two or more bodies corporate if

(a) voting securities of the first-mentioned body corporate carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or by or for the benefit of the other bodies corporate; and

(b) the votes carried by such securities are entitled, where exercised, to elect a majority of the directors of the first-mentioned body corporate.

**(4)** A body corporate is a subsidiary of another body corporate if

(a) it is controlled by

(i) that other, or

(ii) that other and one or more bodies corporate each of which is controlled by that other, or

(iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

**(5)** A body corporate is the holding body corporate of another body corporate if that other body corporate is a subsidiary of that body corporate. R.S., c. 81, s. 2; 1990, c. 15, s. 2; 2007, c. 34, s. 1; 2010, c. 8, s. 106; 2019, c. 27, s. 1.

REGISTRAR

**Registrar of Joint Stock Companies and Deputy Registrar**

**3 (1)** The Governor in Council may appoint a person to be Registrar of Joint Stock Companies for the purpose of this Act.

**(2)** Such person holds office during pleasure, and shall be paid such salary as the Governor in Council determines.

**(3)** The Governor in Council may also appoint a Deputy Registrar and may make regulations with respect to the Deputy Registrar's duties and may remove any person so appointed.

**(4)** It is the duty of the Registrar to enforce compliance with the several provisions, regulations and stipulations in this Act contained, or any regulations or stipulations made thereunder, but such duty does not affect the right of any other person to compel compliance with the same.

**(5)** The Governor in Council may direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies, and until the Governor in Council otherwise orders, the seal in use on August 1, 1935, must continue to be used.

**(6)** Whenever any act is by this Act directed to be done to or by the Registrar, it must, until the Governor in Council otherwise directs, be done to or by the existing Registrar, or in the Registrar's absence, to or by the Deputy Registrar or such person as the Governor in Council may for the time being authorize. R.S., c. 81, s. 3.

**Documents available to public**

**4 (1)** Any person may inspect the documents kept by the Registrar and such person must pay for such inspection such fees as are directed by the Governor in Council, not exceeding 50¢ for each inspection.

**(2)** Any person may require a certificate of the incorporation of any company or a copy or extract of any other document, or any part of any other document, to be certified by the Registrar and such person must pay for the certificate of incorporation, certified copy or extract such fees as the Governor in Council directs. R.S., c. 81, s. 4.

FEES

**Fees and taxes**

**5** **(1)** Subject to subsections (2) and (3), there must be paid to the Registrar in respect to the several matters mentioned in the regulations made pursuant to this Act the several fees therein specified, or such other fees as the Governor in Council may direct.

**(2)** An incorporation tax in the amount of $1,144.90 must be paid to the Registrar for the incorporation of an unlimited company and that tax is in substitution for the incorporation fee contained in the regulations.

**(3)** An amalgamation tax in the amount of $1,144.90 must be paid to the Registrar for filing documents in support of an amalgamation if the amalgamated company is an unlimited company, and that tax is in substitution for the amalgamation fee contained in the regulations.

**(4)** A continuance tax in the amount of $1,144.90 must be paid to the Registrar for filing documents in support of a continuance if the continued company is an unlimited company, and that tax is in substitution for the continuance fee contained in the regulations.

**(5)** A conversion tax in the amount of $1,144.90 must be paid to the Registrar for filing documents in support of an alteration of the memorandum if the effect of the alteration is to convert the company to an unlimited company. R.S., c. 81, s. 5; 2002, c. 5, s. 5; 2004, c. 3, s. 2; 2007, c. 9, s. 4; 2007, c. 34, s. 2; 2009, c. 5, s. 2; 2011, c. 8, s. 2; 2013, c. 3, s. 2; 2015, c. 6, s. 3; 2019, c. 27, s. 2.

**Fees part of general revenue**

**6** All fees paid to the Registrar in pursuance of this Act must be paid to the Minister of Finance and Treasury Board and form part of the General Revenue Fund. R.S., c. 81, s. 6.

GENERAL RULES AND FORMS

**Rules**

**7** **(1)** The Governor in Council may by order in council make and establish such general rules and orders not inconsistent with this Act, as appear necessary or expedient for the purpose of giving full effect to the provisions of this Act, or any of them, and for prescribing the course to be adopted in the course of official business under this Act, and the forms to be used therein.

**(2)** All such general rules and orders must, after the making thereof, be published in the Royal Gazette, and thereupon have the force of law until amended, altered or revoked. R.S., c. 81, s. 7.

**Forms**

**8** **(1)** The forms set forth in the regulations made pursuant to this Act, or forms as near thereto as circumstances admit, must be used in all matters to which those forms refer.

**(2)** The Governor in Council may make alterations in the tables and forms in the regulations made pursuant to this Act, including the fees to be paid to the Registrar for registration or otherwise of a company all or part of whose shares are of no par value.

**(3)** No alterations or repeals made by the Governor in Council to the tables and forms contained in the regulations made pursuant to this Act affect any company registered before the alteration or repeal comes into force. R.S., c. 81, s. 8; 2019, c. 27, s. 3.

## PART II

## CONSTITUTION AND INCORPORATION

### MEMORANDUM OF ASSOCIATION

**Who may incorporate**

**9** Any one or more persons associated for any lawful purpose other than a banking, loan, trust or insurance company, may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without liability, that is to say, either

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, in this Act termed a "company limited by shares";

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up, in this Act termed a "company limited by guarantee"; or

(c) a company not having any limit on the liability of its members, in this Act termed an "unlimited company". R.S., c. 81, s. 9.

**Shared companies**

**10** In the case of a company limited by shares,

(a) the memorandum must state

(i) the name in all its language forms of the company, with "Incorporated", "Incorporée", "Limited", "Limitée", "Inc.", "Ltd." or "Ltée" as the last word in each form of its name,

(ii) the restrictions, if any, on the objects and powers of the company,

(iii) that the liability of the members is limited,

(iv) in the case of a company having par value shares, the amount of share capital of each class of such shares with which the company proposes to be registered and the division thereof into shares of a fixed amount,

(v) in the case of a company having shares without nominal or par value, the maximum number of shares of each class of such shares that the company is authorized to issue or, where there is no

limit on the number of shares of any such class, a statement to that effect, and

(vi) in the case of a company having both par value shares and shares without nominal or par value, the particulars thereof in accordance with subclauses (iv) and (v);

(b) no subscriber of the memorandum may take less than one share; and

(c) each subscriber shall indicate opposite to the subscriber's name the number of shares the subscriber takes, together with the subscriber's address. R.S., c. 81, s. 10; 1998, c. 8, s. 16; 2007, c. 34, s. 3.

**Guaranteed companies**

**11** In the case of a company limited by guarantee,

(a) the memorandum must state

(i) the name in all its language forms of the company, with "Incorporated", "Incorporée", "Limited", "Limitée", "Inc.", "Ltd." or "Ltée" as the last word in each form of its name,

(ii) the restrictions, if any, on the objects and powers of the company,

(iii) that the liability of the members is limited, and

(iv) that each member undertakes to contribute to the assets of the company in the event of its being wound up while the member is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the member ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves such amount as may be required, not exceeding a specified amount; and

(b) where the company has a share capital,

(i) the memorandum must also state

(A) in the case of a company having par value shares, the amount of share capital of each class of such shares with which the company proposes to be registered and the division thereof into shares of a fixed amount,

(B) in the case of a company having shares without nominal or par value, the maximum number of shares of each class of such shares that the company is authorized to issue or, where there is no limit on the number of shares of any such class, a statement to that effect, and

(C) in the case of a company having both par value shares and shares without nominal or par value, the particulars thereof in accordance with paragraphs (A) and (B),

(ii) no subscriber of the memorandum may take less than one share, and

(iii) each subscriber shall indicate opposite to the subscriber's name the number of shares the subscriber takes, together with the subscriber's address. R.S., c. 81, s. 11; 1998, c. 8, s. 17; 2007, c. 34, s. 4.

**Unlimited companies**

**12** In the case of an unlimited company,

(a) the memorandum must state

(i) the name in all its language forms of the company, and

(ii) the restrictions, if any, on the objects and powers of the company; and

(b) where the company has a share capital,

(i) no subscriber of the memorandum may take less than one share, and

(ii) each subscriber shall indicate opposite to the subscriber's name the number of shares the subscriber takes, together with the subscriber's address. R.S., c. 81, s. 12; 1998, c. 8, s. 18.

**Content of memorandum**

**13** Subject to Sections 10, 11 and 12, the memorandum may set out any provisions permitted by this Act or by law to be set out in the articles of the company. 2007, c. 34, s. 5.

**Signatures**

**14** The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature. R.S., c. 81, s. 13.

**Alteration of conditions**

**15** A company may not alter the provisions contained in its memorandum, except in the cases and in the mode and to the extent for which express provision is made in this Act. R.S., c. 81, s. 14; 2007, c. 34, s. 6.

NAME

**Language of name**

**16** Subject to subclauses 10(a)(i) and 11(a)(i), a company may have its name in more than one language form. R.S., c. 81, s. 15.

**Restrictions on name**

**17** **(1)** No company may be registered under a name

(a) identical with that of any other subsisting company, incorporated or unincorporated, or so nearly resembling the same as to be calculated to deceive, except under a name resembling that of the subsisting company if the subsisting company testifies its consent in such manner as the Registrar requires;

(b) that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of the Crown or of any member of the Royal Family or connection with the Crown's Government or any department thereof;

(c) otherwise objectionable; or

(d) otherwise prohibited by regulation.

**(2)** Where any company, through inadvertence or otherwise, is or has been registered by a name

(a) identical with that of any other subsisting company, incorporated or unincorporated, or that the Registrar considers to so nearly resemble the name as to be calculated to deceive, or contains any words prohibited under clause (1)(b) except in a case in which such consent as aforesaid has been given; or

(b) that the Registrar considers to be otherwise objectionable by reason of this Section or otherwise,

the first mentioned company shall, upon the direction of the Registrar, change its name and, where any company fails to change its name within two months after being so directed, the Registrar may change its name to any name the Registrar considers to be unobjectionable and, upon the change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of change of name to meet the circumstances of the case.

**(3)** Where any company or member thereof feels aggrieved by the company having been directed by the Registrar to change its name, or by the Registrar having changed its name, the company or member may apply to the court, and the court, where satisfied that it is just to do so, may order that the name of the company may not be changed or that its former name be restored to the register, as the case may be, and may, by the order, give such directions and make such provisions as seem just for placing the company and all persons in the same position, as nearly as may be, as if such direction had never been given, or as if the name of the company had never been changed, as the case may be, and, when the former name of a company is so restored to the register, the Registrar shall issue a certificate of incorporation altered to meet the circumstances of the case.

**(4)** The Registrar may refuse to register any company under a name that the Registrar considers to be objectionable.

**(5)** Notwithstanding any other provisions of this Act or of any law to the contrary, whether statutory or otherwise, the Registrar may, with the approval of the Governor in Council, refuse to register any company. R.S., c. 81, s. 16; 1992, c. 10, s. 34; 2007, c. 34, s. 7.

**Change of name**

**18 (1)** Subject to Section 17, a company may by special resolution change its name.

**(2)** A change of name is effective on such day as the Registrar determines.

**(3)** The Registrar shall issue to the company a certificate of change of name.

**(4)** The Registrar shall cause to be published in the Royal Gazette a notice of the change of name. R.S., c. 81, s. 17.

**Effect of name change**

**19** No alteration of the name of a company affects any rights or obligations of the company or renders defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. R.S., c. 81, s. 18.

ALTERATION OF MEMORANDUM

**Alteration by special resolution**

**20 (1)** Subject to subsections (2) and (4), a company may, by resolution of its shareholders, add, change or remove any provision of its memorandum to

(a) in the case of a company limited by shares or by guarantee, where authorized by its articles,

(i) increase its share capital by the creation of new shares of such amount as it thinks expedient,

(ii) increase its share capital to authorize a new class of shares without nominal or par value, either stating the maximum number of shares of such class that the company is authorized to issue or, where there is no limit on the number of shares of such class, a statement to that effect,

(iii) change the maximum number of shares of a class of shares without nominal or par value, that the company is authorized to issue, which may include a change to or from an unlimited number of shares of that class,

(iv) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares,

(v) change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or different number of shares of another class,

(vi) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination or into shares without nominal or par value,

(vii) subdivide its shares, or any of them, into shares of smaller amounts than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived,

(viii) exchange shares of one denomination for another, including shares without nominal or par value,

(ix) cancel shares that at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled,

(x) convert any part of its issued or unissued share capital into preference shares redeemable or purchasable by the company,

(xi) except in the case of preferred shares, convert all or any of its previously authorized unissued or issued and fully paid-up shares with nominal or par value into the same number of shares without any nominal or par value and reduce, maintain or increase accordingly its liability on any of its shares so converted, but the power to reduce its liability on any of its shares so converted where it results in a reduction of paid-up capital may only be exercised in accordance with Section 67,

(xii) convert all or any of its previously authorized unissued or issued and fully paid-up shares without nominal or par value into the same or a different number of shares with nominal or par value and for such purpose the shares issued without nominal or par value and replaced by shares with a nominal or par value are considered as fully paid, but their aggregate par value must not exceed the value of the net assets of the company as represented by the shares without par value issued before the conversion, or

(xiii) change the designation of all or any of its shares and add, change or remove any rights, privileges, restrictions or conditions, including rights to accrued dividends, in respect of all or any of the shares, whether issued or unissued;

(b) add, change or remove any provision of the memorandum that limits the liability of the members, the effect of which is to convert a company limited by shares or by guarantee to an unlimited company;

(c) in the case of a company that was incorporated before September 1, 1982, and that has not previously altered its memorandum pursuant to this Act, to add, change or remove any provision to enable it to change to a company that has, pursuant to subsection 33(8), the capacity, rights, powers and privileges of a natural person;

(d) add, change or remove any provision in respect of the objects or powers of the company; and

(e) add, change or remove any other provision that is permitted by this Act or in law to be set out in the memorandum.

**(2)** Subject to subsections (3) and (4), the powers in subclauses (1)(a)(ii) to (viii) and (x) to (xiii) and clauses (1)(c) to (e) must be exercised by special resolution.

**(3)** Subject to subsection (4), the power to add, change or remove any provision of the memorandum pursuant to

(a) clause (1)(b); or

(b) in the case of a company incorporated before September 1, 1982, and that has not altered its memorandum of association pursuant to clause (1)(c), clause (1)(c), (d) or (e),

must be exercised with the approval of all members of the company, whether or not the shares held by them otherwise carry the right to vote, and

(c) a certificate of an officer of the company attesting to the approval of the alteration by members of the company in accordance with this subsection together with a copy of the memorandum as altered must be delivered by the company to the Registrar, who shall register the same and certify the registration;

(d) the certificate of the Registrar is conclusive evidence that all the requirements of this Act with respect to the alteration and its approval have been complied with;

(e) the memorandum so altered is the memorandum of the company;

(f) before the issuance of the certificate in accordance with this subsection, the Registrar must be satisfied that all persons who will be members of the company at the time of or immediately after the alteration have consented to the alteration; and

(g) for such purpose, the Registrar may rely upon a certificate of an officer of the company attesting to the approval.

**(4)** In the case of a proposed change or removal of a provision in the memorandum that is stated to be unalterable without court order, the provision may not be changed or removed pursuant to subsections (1) and (2) until and to the extent that it is confirmed on petition to the court.

**(5)** In the case of a proposed change or removal of a provision in the memorandum that is stated to be, or can reasonably be concluded to be, for the benefit of a person or class of persons, including creditors or holders of debentures of the company, but not including members of the company generally in their capacity as members, hereinafter in this Section referred to as "interested persons", or each individually an "interested person", the provision may not be changed or removed pursuant to subsections (1) and (2) until and to the extent that it is confirmed on petition to the court or approved in writing by each interested person.

**(6)** Before confirming the change or removal, the court must be satisfied that

(a) sufficient notice has been given to every interested person; and

(b) with respect to every interested person who, in the opinion of the court, is entitled to object, and who signifies the person's objection in the manner directed by the court, either the person's consent to the change or removal has been obtained or the person's debt or claim, if any, has been discharged or has been determined, or has been secured to the satisfaction of the court,

but the court may, in the case of any interested person or class of interested persons, for special reasons, dispense with the notice required by this Section.

**(7)** The court may make an order confirming the change or removal, either wholly or in part, and on such terms and conditions as the court thinks fit, and the court shall, in exercising its discretion under this subsection, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of interested persons, and may, where it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of interests of dissentient members, and may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement, but no part of the capital of the company may be expended in any such purchase without complying with Section 66.

**(8)** A certified copy of the order confirming the alteration under subsection (7) or a certificate of the officer of the company attesting to the approval of the alteration by the members of the company in accordance with subsection (3), as the case may be, together with a printed, typewritten or otherwise mechanically reproduced copy of the memorandum as altered must, within 15 days from the date of the order or approval, be delivered by the company to the Registrar, and

(a) the Registrar shall register the same, and shall certify the registration;

(b) the certificate of the Registrar is conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation or approval thereof have been complied with; and

(c) thenceforth the memorandum so altered is the memorandum of the company.

**(9)** The court may by order at any time extend the time for the delivery of documents to the Registrar under this Section for such period as the court may think proper.

**(10)** Where a company makes default in delivering to the Registrar any document required by this Section to be delivered to the Registrar, the company is liable to a penalty not exceeding $50 for every day during which it is in default.

**(11)** Where an alteration of a memorandum has been made under this Section,

(a) every copy of the memorandum issued after the date of the alteration must be in accordance with the alteration;

(b) where a company fails to comply with this provision, it is liable to a penalty not exceeding five dollars for each copy in respect of which default is made; and

(c) every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty.

**(12)** Where shares of a class are issued in series, and any designation, rights, privileges, restrictions or conditions attaching to any series of such shares are set out in the memorandum, all provisions of this Section respecting the creation, amendment, exchange, cancellation or other change of shares of any class apply. R.S., c. 81, s. 19; 2007, c. 34, s. 8; 2019, c. 27, s. 4.

**Restriction on issue of shares**

**21 (1)** Where the memorandum so provides, no shares of a class may be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

**(2)** Notwithstanding that the memorandum provides the pre-emptive right referred to in subsection (1), shareholders have no pre-emptive right in respect of shares to be issued

(a) for consideration other than money;

(b) as a share dividend; or

(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the company. 2007, c. 34, s. 9.

**Convertible preferred shares or debentures**

**22 (1)** Notwithstanding anything contained in this Act, preferred shares and debentures may be issued as convertible into shares of any class or classes as fully or partly paid up, or may, by special resolution, be made convertible into shares of any class or classes as fully or partly paid up.

**(2)** Where preferred shares or debentures to which subsection (1) applies are converted, it is not necessary to comply with Section 125. 2007, c. 34, s. 9.

**Notice to Registrar of consolidation, conversion, etc.**

**23** Where a company having a share capital has

(a) consolidated and divided its share capital into shares of a larger amount than its existing shares;

(b) converted any of its shares into stock;

(c) reconverted stock into shares; or

(d) cancelled shares that have not been taken or agreed to be taken by any person at the date of the passing of the resolution in that behalf and diminished the amount of its share capital by the amount of the shares so cancelled,

it shall give notice to the Registrar of the consolidation, division, conversion, reconversion or cancellation, specifying the shares consolidated, divided, converted or cancelled or of the stock reconverted. 2007, c. 34, s, 9.

**Where conversion of shares**

**24** Where a company has converted any of its shares into stock and has given notice of the conversion to the Registrar, the register of members of the company must show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares required by this Act. 2007, c. 34, s. 9.

**Notice to Registrar of increased share capital or members**

**25 (1)** Where a company that has authorized the issue of shares, whether its shares have or have not been converted into stock, has increased its

share capital beyond the registered capital or the number of its authorized shares of any class, the company shall give to the Registrar, within 15 days after the passing of the resolution authorizing the increase, notice of the increase of capital and the Registrar shall record the increase.

**(2)** Where a company not having authorized the issuance of shares has increased the number of its members beyond the registered number, the company shall give to the Registrar, within 15 days after the increase was resolved on or took place, notice of the increase of members and the Registrar shall record the increase.

**(3)** Where a company fails to comply with this Section, it is liable to a penalty not exceeding $25 for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty. 2007, c. 34, s. 9.

**Construction of works or building**

**26 (1)** Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or building or the provision of any plant that cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this Section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant, but

(a) no such payment may be made unless it is authorized by the articles or by special resolution;

(b) the rate of interest must in no case exceed six per cent per year;

(c) the payment of the interest must not operate as a reduction of the amount paid up on the shares in respect of which it is paid; and

(d) the accounts of the company must show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

**(2)** Where default is made in complying with clause (1)(d), the company and every officer of the company who is in default is liable to a penalty not exceeding $100. 2007, c. 34, s. 9.

ARTICLES OF ASSOCIATION

**Articles and regulations**

**27 (1)** There may, in the case of a company limited by shares, and there must, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

**(2)** Articles of association may adopt all or any of the regulations contained in the regulations made pursuant to this Act respecting the management of a company limited by shares.

**(3)** In the case of an unlimited company, the articles must state

(a) in the case of a company having par value shares, the amount of share capital of each class of such shares with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) in the case of a company having shares without nominal or par value, the maximum number of shares of each class of such shares that the company is authorized to issue or, where there is no limit on the number of shares of any such class, a statement to that effect; and

(c) in the case of a company having both par value shares and shares without nominal or par value, the particulars thereof in accordance with clauses (a) and (b). R.S., c. 81, s. 20; 2007, c. 34, s. 10; 2019, c. 27, s. 5.

**Regulations of company**

**28** In the case of a company limited by shares and registered on or after August 1, 1935, where articles are not registered, or, where articles are registered, in so far as the articles do not exclude or modify the regulations made pursuant to this Act respecting the management of a company limited by shares, those regulations must, so far as applicable, be the regulations of the company in the same manner and to the same extent, and capable of being changed by the company in the same manner, as if they were contained in duly registered articles. R.S., c. 81, s. 21; 2019, c. 27, s. 6.

**Form of articles**

**29** Articles must be

(a) printed, typewritten or otherwise mechanically reproduced;

(b) divided into paragraphs numbered consecutively; and

(c) signed by each subscriber of the memorandum of association in the presence of at least one witness, who must attest the signature. R.S., c. 81, s. 22.

**Alteration of articles or regulations**

**30 (1)** Subject to this Act and to the provisions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made is as valid as if originally contained in the articles and subject in like manner to alteration by special resolution.

**(2)** The power of altering articles under this Section must, in the case of an unlimited company formed and registered under this Act, extend to altering any regulations relating to the amount of capital or its distribution into shares and relating to the number of shares without nominal or par value, notwithstanding that those regulations are contained in the memorandum. R.S., c. 81, s. 23; 2007, c. 34, s. 11.

GENERAL PROVISIONS

**Binding effect of articles**

**31 (1)** The memorandum and articles, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, and the member's heirs, executors and administrators, to observe, subject to this Act, all the provisions of the memorandum and of the articles.

**(2)** All money payable by any member to the company under the memorandum or articles is a debt due from the member to the company, and is of the nature of a specialty debt. R.S., c. 81, s. 24.

**Registration of documents**

**32** The memorandum and the articles, if any, must be delivered to the Registrar, and the Registrar shall retain the same and register the memorandum and articles, if any, but, where the Registrar thinks fit, the Registrar may refuse to register any memorandum or articles until the Governor in Council has approved thereof. R.S., c. 81, s. 25.

**Incorporation and powers of company**

**33 (1)** On the registration of the memorandum of a company the Registrar shall certify that the company is incorporated, and in the case of a limited company, that the company is limited.

**(2)** From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may become members of the company, are a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

**(3)** Subsections (4) to (6) apply to a company that was incorporated before September 1, 1982, and that has not altered its memorandum of association pursuant to clause 20(1)(c) and subsection 20(2).

**(4)** Every company limited by shares and formed and registered under this Act, has, in like manner as if the same were included among the objects set out in its memorandum, all corporate powers, and all corporate capacity, necessary to enable it to do, in addition to the acts and things included in the objects set out in its memorandum, all or any of the following acts or things, to

(a) carry on any other business, whether manufacturing or otherwise, capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;

(b) acquire or undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the company is authorized to carry on, or possessed of property suitable for the purposes of the company;

(c) apply for, purchase or otherwise acquire any patents, trademarks, licences, concessions and the like, conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention, that may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property, rights or information so acquired;

(d) enter into any arrangements for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction capable of being conducted so as directly or indirectly to benefit the company, and to lend money to, guarantee the contracts of or otherwise assist any such person or company;

(e) promote any company or companies for the purpose of acquiring or taking over all or any of the property and liabilities of the company, or for any other purpose that may seem directly or indirectly calculated to benefit the company;

(f) with the sanction of a special resolution, sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company;

(g) with the sanction of a special resolution, subscribe for, take or otherwise acquire and hold, shares and securities of any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company;

(h) subject to the provisions of this Act with respect to reduction of capital, distribute among the members of the company *in specie* any property of the company, and in particular any shares, debentures or securities of any other company belonging to the company, or which the company may have power to dispose of;

(i) invest the money of the company not immediately required in the business of the company in such manner as may be determined by the company in general meeting but, where such investment consists of the purchase of shares, debentures or securities of any other company, only with the sanction of a special resolution;

(j) lend money to customers and others having dealings with the company and guarantee the performance of contracts by any such person;

(k) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;

(l) purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges that the company may think necessary or convenient for the

purposes of its business, and in particular, any lands, buildings, easements, machinery, plant and stock-in-trade;

(m) issue fully paid shares, debentures or other securities of the company in payment or part payment of any property or rights that may be required by the company, or for any services or work done for the company, or in or towards the payment or satisfaction of debts or liabilities owing by the company;

(n) enter into arrangements with any authorities, governmental, municipal, local or otherwise, that may seem conducive to the attainment of the company's objects, or any of them, and obtain from any such authority any rights, privileges and concessions that the company may have capacity to receive and may think desirable to obtain, and carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

(o) establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or its predecessors in business, or the dependents or relatives of such persons, and grant pensions and allowances, and make payments towards insurance, and subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;

(p) construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches, sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores, and other works and conveniences that may seem calculated directly or indirectly to advance the company's interests, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;

(q) adopt such means of making known the business and products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of interest or of art, by publication of books, pamphlets or periodicals and by granting prizes, rewards and donations;

(r) do all or any of the acts or things stated in clauses (a) to (q) and all things authorized by the memorandum of the company as principals, agents or contractors and either alone or in conjunction with others; and

(s) do all such other acts and things as are incidental or conducive to or consequential upon the attainment of the above objects and of the objects set out in the memorandum of the company.

**(5)** All or any of the rights and powers set out in subsection (4) may be excluded or modified by express provision in the memorandum of the company, either as originally framed or as altered in accordance with this Act.

**(6)** Any company limited by shares and formed and registered under Chapter 128 of the Revised Statutes, 1900, Chapter 19 of the Acts of 1921 or Chapter 174 of the Revised Statutes, 1923, may by complying with the provisions

of this Act respecting alteration of memorandum, alter its memorandum to include all or any of the rights and powers set out in subsection (4).

**(7)** Subsections (8) to (11) apply to a company that is incorporated on or after September 1, 1982, or that has altered its memorandum of association pursuant to clause 20(1)(c) and subsection 20(2).

**(8)** Subject to this Act, a company has the capacity, rights, powers and privileges of a natural person.

**(9)** A company may not

(a) sell or dispose of its undertaking, or a substantial part thereof;

(b) distribute any of its property *in specie* among its members, except in accordance with the provisions of this Act respecting reduction of capital; or

(c) amalgamate with any company or other body of persons,

unless approved by special resolution filed with the Registrar.

**(10)** Subsection (9) does not apply where the powers set out in that subsection are expressly conferred upon the company in its memorandum of association.

**(11)** A company may not carry out any object or exercise any power that is restricted by its memorandum of association from carrying out or exercising, nor may the company carry out any of its objects or exercise any of its powers in a manner contrary to the memorandum. R.S., c. 81, s. 26; 2007, c. 34, s. 12; 2019, c. 27, s. 7.

**Extra-provincial existence, rights and powers**

**34 (1)** Subject to this Act, any company to which this Act applies, whether incorporated before, on or after August 1, 1935, does not have its corporate existence and capacity limited to corporate existence and capacity within the Province, but every such company, subject to this Act, has and is deemed from its incorporation to have had corporate existence and capacity anywhere outside of the Province, and is capable

(a) of exercising all its functions as an incorporated company anywhere outside of the Province; and

(b) of accepting and receiving from any competent authority outside of the Province all or any rights and powers necessary to enable it to do outside of the Province any act or thing that under its memorandum and this Act it has right or power to do within the Province.

**(2)** Subsection (1) applies to a company notwithstanding that there is no express provision in its memorandum allowing it to exist for the purpose of carrying on business outside of the Province or allowing it to accept and receive extra-provincial rights and powers, and notwithstanding any inference to be derived from the name of the company.

**(3)** No company to which this Act applies, whether incorporated before, on or after August 1, 1935, has corporate existence or capacity outside of the Province

(a) to exercise outside of the Province any of its functions as an incorporated company that is required by this Act, to be exercised in the Province; or

(b) to accept or receive from any authority outside of the Province the right or power to do outside of the Province any act or thing that it is by this Act required to do in the Province. R.S., c. 81, s. 26.

**Shares**

**35 (1)** Subject to the preferences, privileges and voting powers or restrictions or qualifications granted or imposed in respect to any class of shares, each share without nominal or par value is equal to every other share of the same class.

**(2)** In the case of a company with shares of a class or series, the company shall maintain or be deemed to maintain a capital account for each class or series and, except to the extent that this Act or other law permits the addition of a lesser amount, there must be added or deemed to have been added to the capital account maintained or deemed to be maintained for each class or series, at the time of issuance of the shares, whether issued before, on or after June 1, 2008,

(a) in the case of a class or series of shares without nominal or par value, the total amount of the consideration for the issue and allotment of the shares of that class or series; and

(b) in the case of a class or series of shares with a nominal or par value, except to the extent that the shares are not fully paid, the total par value of the shares of that class or series that have been issued.

**(3)** Notwithstanding subsection (2), a company may, in respect of the issuance of shares of a class or series without nominal or par value, add to the capital account maintained for shares of such class or series, the whole or any part of the amount of the consideration that it receives for such shares if the company issues shares

(a) in exchange for

(i) property of a person who immediately before the exchange did not deal with the company at arm's length within the meaning of that expression in the *Income Tax Act* (Canada), or

(ii) shares of or another interest in a body corporate that immediately before the exchange, or because of the exchange, did not deal with the company at arm's length within the meaning of that expression in the *Income Tax Act* (Canada); or

(b) pursuant to an arrangement referred to in Section 145 or 146 or an agreement referred to in subsection 149(2) or to share-

holders of an amalgamating company who receive the shares in addition to or instead of securities of the amalgamated company; or

(c) in any other case, where permitted by law, if the person, the company and all the holders of shares in the class or series of shares so issued consent to the amount so added.

**(4)** Subject to subsection (5), a company may, at any time, including upon continuance under this Act, add to a capital account of a class or series of shares any amount it credited to retained earnings, share premium, contributed surplus or other surplus account, but, in the event such class or series of shares has a nominal or par value, the amount so added cannot cause the total amount of the capital account for such class or series of shares to exceed the total par value of all issued and outstanding shares of that class or series.

**(5)** Where a company proposes to add, pursuant to subsection (4), any amount to a capital account it maintains in respect of a class or series of shares, the addition to the capital account of such class or series of shares must be approved by special resolution if

(a) the amount to be added was not received by the company as consideration for the issue of shares of the class or series; and

(b) the company has issued any outstanding shares of more than one class or series.

**(6)** Where a body corporate is continued under this Act, subsections (2) and (3) do not apply to the consideration received by it before it was so continued, except in so far as any share in respect of which the consideration is received is issued after the company is so continued.

**(7)** Where a body corporate is continued under this Act, any amount unpaid in respect of a share of a class or series of shares issued by it before it was continued and paid after it was continued must be added to the capital account maintained for such class or series of shares, unless already included therein, but, where such share has a nominal or par value, the amount so added will be the lesser of the amount so paid and the difference between the nominal or par value of that share and the amounts previously paid in respect of that share that have been previously credited to such capital account on or before continuance.

**(8)** Where a body corporate is continued under this Act, the capital account of each class and series of shares of the company immediately following its continuance is deemed to have been credited with an amount equal to

(a) in the case of shares of a class or series without nominal or par value, the amount of the capital of the body corporate, whether referred to as stated capital, paid-up capital or otherwise, or such other amount as would be the nearest equivalent thereto in respect of such class or series of shares before its continuance under the laws by which it was then governed; and

(b) in the case of shares of a class or series with nominal or par value, the lesser of the amount of the capital of the body corporate, whether referred to as stated capital, paid-up capital or otherwise, or such other amount as would be the nearest equivalent thereto in respect of such class or series of shares prior to its continuance

under the laws by which it was then governed, and the par value of the shares. R.S., c. 81, s. 26; 2007, c. 34, s. 12; 2008, c. 4, s. 4.

**Members not bound by alteration**

**36 (1)** Notwithstanding anything in the memorandum or articles of a company, but subject to subclause 20(1)(a)(xii), no member of the company is bound by an alteration made in the memorandum or articles after the date on which the member became a member, if and so far as the alteration requires the member to take or subscribe for more shares than the number held by the member at the date on which the alteration is made, or in any way increases the member's liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company.

**(2)** This Section does not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby. R.S., c. 81, s. 27; 2007, c. 34, s. 13.

**Evidence of registration and compliance**

**37 (1)** A certificate of incorporation given by the Registrar in respect of any company is conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company is authorized to be registered and is duly registered under this Act.

**(2)** A statutory declaration by a solicitor of the court engaged in the formation of the company or by a person signing the memorandum of association of the company, of compliance with all or any of the requirements must be filed with the Registrar at the time of the filing of the memorandum and articles, if any, of association and the Registrar may accept such a declaration as sufficient evidence of compliance. R.S., c. 81, s. 28.

**Duty to send memorandum**

**38 (1)** Every company shall send to every member, at the member's request, and on payment of 50¢ or such less sum as the company may prescribe, a copy of the memorandum and of the articles, if any.

**(2)** Where a company makes default in complying with the requirements of this Section, it is liable for each offence to a penalty not exceeding five dollars. R.S., c. 81, s. 29.

**Assertions by guarantor**

**39** A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company that

(a) the memorandum of association or any articles of association have not been complied with;

(b) the persons named in the most recent notice sent to the Registrar under subsection 118(1) are not the directors and officers of the company;

(c) the place named in the most recent notice sent to the Registrar under subsection 88(1) is not the registered office of the company;

(d) a person held out by the company as a director, an officer or an agent of the company has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for the director, officer or agent; or

(e) a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

except where the person has or ought to have, by virtue of the person's position with or relationship to the company, knowledge to the contrary. R.S., c. 81, s. 30.

**Registration not notice**

**40** No person is affected by or deemed to have notice or knowledge of the contents of a document concerning a company by reason only that the document is filed or registered pursuant to this Act with the Registrar or is available for inspection at an office of the company. 1982, c. 81, s. 31.

## PART III

## DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED

### SHARES AND SHARE REGISTER

**Shares are personal property**

**41** The shares or other interest of any member in a company are personal property, transferable in the manner provided by the articles of the company, and are not of the nature of real property. R.S., c. 81, s. 32.

**Securities Transfer Act**

**42** Except as otherwise provided in this Act, the transfer or transmission of a security is governed by the *Securities Transfer Act*. 2010, c. 8, s. 107.

**Members of company**

**43 (1)** The subscribers to the memorandum of a company are deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

**(2)** Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company. R.S., c. 81, s. 35.

**Trust not registered**

**44** No notice of any trust, expressed, implied or constructive, may be entered on the register, or be receivable by the Registrar. R.S., c. 81, s. 36.

**Notice of refusal to register**

**45 (1)** Where a company refuses to register a transfer of any shares or debentures, the company shall, within one week after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

**(2)** Where default is made in complying with this Section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is liable to a penalty not exceeding $25 for every day during which the default continues. R.S., c. 81, s. 39.

**Time for preparation of certificates**

**46 (1)** Every company shall, within one week after the allotment of any of its shares, debentures or debenture stock, and within one week after the date on which a transfer of any such shares, debentures or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

**(2)** Where default is made in complying with this Section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is liable to a penalty not exceeding $25 for every day during which the default continues.

**(3)** Where any company on whom a notice has been served requiring the company to make good any default in complying with subsection (1) fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to the person, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and the order may provide that all costs of and incidental to the application must be borne by the company or by any officer of the company responsible for the default. R.S., c. 81, s. 40.

**Acting on behalf of security holder**

**47 (1)** A company whose memorandum of association or articles of association restrict the right to transfer its securities shall, and any other company may, treat a person referred to in clause (a), (b) or (c) as a security holder entitled to exercise all of the rights of the security holder that the person represents if that person furnishes evidence as described in Section 87 of the *Securities Transfer Act* to the company that the person is

(a) the executor, administrator, heir or legal representative of the heirs, of the estate of a deceased security holder;

(b) a guardian, representative with the authority to exercise the rights of a security holder, trustee or broker representing a registered security holder who is a minor, an incompetent person or a missing person; or

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

**(2)** Where a person upon whom the ownership of a security devolves by operation of law, other than a person referred to in clause (1)(a), furnishes proof of the person's authority to exercise rights or privileges in respect of a security of the company that is not registered in the person's name, the company shall treat the person as entitled to exercise those rights and privileges.

**(3)** Notwithstanding subsection (2), where the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled subject to any applicable law of Canada or a province of Canada relating to the collection of taxes, to become a registered holder or to designate a registered holder, if the legal representative deposits with the corporation or its transfer agent

(a) any security certificate that was owned by the deceased holder; and

(b) reasonable proof of the governing laws, the deceased holder's interest in the security and the right of the legal representative or the person the legal representative designates to become the registered holder.

**(4)** Deposit of the documents required by subsection (2) or (3) empowers a company or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in clause (1)(a) or to such person as that person may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of those securities.

**(5)** When a security is issued to several persons as joint holders, upon satisfactory proof of the death of one joint holder, the company may treat the surviving joint holders as owners of the security. 2010, c. 8, s. 111; 2017, c. 4, s. 76.

**Register of members**

**48 (1)** Every company shall keep in one or more books or in any other manner a register of its members and enter therein the following particulars:

(a) the names and addresses of the members, and in the case of a company having a share capital, a statement of the shares held by each member and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member; and

(c) the date at which any person ceased to be a member.

**(2)** Where a company fails to comply with this Section, it is liable to a penalty not exceeding $25 for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty. R.S., c. 81, s. 42; 2019, c. 27, s. 8.

**Access to register of members**

**49** **(1)** The register of members, commencing from the date of the registration of the company, must be kept at the registered office of the company or such other location as is designated by the directors of the company.

**(2)** The register or information contained in the register must be available for inspection and copying by

(a) any member of the company, in the case of a company that is not a reporting issuer; and

(b) by any person, in the case of a reporting issuer,

at the registered office, physically or by means of a computer terminal or other electronic technology during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that no less than two hours in each day is allowed for inspection.

**(3)** The register or information contained in the register must be available for inspection by any member of a company without charge and by any person referred to in clause (2)(b) on payment of $5.30, or such lesser sum as the company may prescribe, for each inspection.

**(4)** Any person entitled to inspect the register or information contained in the register may require a copy of the register, or any part thereof, on payment of one dollar, or such lesser sum as the company may prescribe, for every page or part thereof required to be copied.

**(5)** A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole 30 days in each year.

**(6)** A person who claims to be entitled to inspect or receive a copy of the register, and who is not permitted to inspect or be furnished with a copy of the register, or any part thereof, as set out in this Section, may apply in writing to the Registrar for an order under subsection (7).

**(7)** Where, on application of a person referred to in subsection (6), it appears to the Registrar that the company failed to allow the inspection or provide a copy of the register, or part thereof, to the applicant, the Registrar may order the company to provide, within 15 days from the date of the order, an affidavit or sworn declaration of a director or officer of the company stating the reasons why the company believes the applicant should not be permitted to inspect the register or be provided with a copy of the register, or part thereof.

**(8)** Following receipt of the affidavit or sworn declaration referred to in subsection (7), the Registrar shall provide a copy of the affidavit or sworn declaration to the applicant and shall either

(a) order the company to permit the applicant to inspect the register or provide the applicant with a copy of the register, or part thereof, on such terms and conditions as may be ordered by the Registrar; or

(b) refuse the applicant's request to inspect the register or receive a copy of the register, or part thereof.

**(9)** Where the company fails to provide the affidavit or sworn declaration within the time required under subsection (7), the Registrar may make an order under subsection (8).

**(10)** An applicant or the company may, on written notice to the other party and the Registrar, apply to the court for a review of a decision of the Registrar under this Section, and the court may make such order as it considers just. R.S., c. 81, s. 43; 2007, c. 34, s. 15.

**Mistakes or rectifications or damages**

**50 (1)** Where

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court by motion for rectification of the register, and the court may either refuse the application or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

**(2)** On application under this Section the court may decide any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register. R.S., c. 81, s. 44.

**Register as evidence**

**51** The register of members is prima facie evidence of any matters by this Act directed or authorized to be inserted therein. R.S., c. 81, s. 45.

**Branch register of members**

**52 (1)** A company having a share capital may, where so authorized by its articles or by the directors, cause to be kept in any place outside of the Province a branch register of members, hereinafter in this Section called a "branch register of members".

**(2)** The company shall give to the Registrar notice of the situation of the office where any branch register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

**(3)** A branch register of members is deemed to be part of the company's register of members, hereinafter in this Section called the "principal register of members".

**(4)** A branch register of members must be kept in the same manner in which the principal register of members is by this Act required to be kept, except that the advertisement before closing the register must be inserted in some newspaper circulated in the district wherein the branch register of members is kept.

**(5)** The company shall transmit to the location of its principal register a copy of every entry in its branch register of members as soon as may be after the entry is made, and shall cause to be kept at that location, duly entered up, a duplicate of its branch register of members, and the duplicate is for all the purposes of this Act deemed part of the principal register of members.

**(6)** Subject to the provisions of this Section with respect to the duplicate of the branch register, the shares registered in a branch register of members must be distinguished from the shares registered in the principal register of members, and no transaction with respect to any shares registered in a branch register of members may, during the continuance of that registration, be registered in any other register.

**(7)** On the death of a member registered in a branch register of members, the shares of the deceased member are transferable on the duplicate of the branch register at the location of the principal register and not elsewhere.

**(8)** The company may discontinue to keep any branch register of members, and thereupon all entries in that register must be transferred to some other branch register of members kept by the company in the same country, or to the principal register of members.

**(9)** Subject to this Act, any company may by its articles make such provisions as it may think fit respecting the keeping of branch registers of members.

**(10)** The provisions of Section 49 relating to the provision of access to the principal register of members apply with necessary changes to any branch register authorized by this Section. R.S., c. 81, s. 46; 2007, c. 34, s. 16.

## REGISTER OF INDIVIDUALS WITH SIGNIFICANT CONTROL

**Significant number of shares**

**53** **(1)** In this Section, "significant number of shares" means, in respect of a company,

(a) any number of shares that carry 25% or more of the voting rights attached to all of the company's outstanding voting shares; or

(b) any number of shares that is equal to 25% or more of all of the company's outstanding shares as measured by fair market value.

**(2)** For the purpose of this Section and Sections 54 to 60, each of the following individuals is an individual with significant control over a company:

(a) an individual who has any of the following interests or rights, or any combination of them, in a significant number of shares of the company:

(i) an interest as a registered owner of the shares,

(ii) an interest as a beneficial owner of the shares, or

(iii) direct or indirect control over the shares;

(b) an individual who has direct or indirect influence that, where exercised, would result in control in fact of the company;

(c) an individual to whom prescribed circumstances apply.

**(3)** Two or more individuals are each an individual with significant control over a company if, in respect of a significant number of shares of the company,

(a) an interest, right or a combination of interests or rights referred to in clause (2)(a) is held jointly by those individuals; or

(b) a right or a combination of rights referred to in clause (2)(a) is subject to any agreement or arrangement under which the right or rights are to be exercised jointly or in concert by those individuals. 2020, c. 7, s. 1.

**Register required**

**54 (1)** A company shall prepare and maintain, at its registered office or at any other place in the Province designated by the directors and in the form and in the manner prescribed by the regulations, a register of individuals with significant control over the company that contains

(a) the name, date of birth and last known address of each individual with significant control;

(b) the jurisdiction of residence for income tax purposes of each individual with significant control;

(c) the day on which each individual became or ceased to be an individual with significant control;

(d) a description of how each individual is an individual with significant control over the company, including, as applicable, a description of the individual's interests and rights in respect of shares of the company;

(e) prescribed information, if any; and

(f) a description of each step taken in accordance with subsection (2).

**(2)** At least once during each financial year of the company, the company shall take reasonable steps, including any prescribed steps, to ensure that it has identified all individuals with significant control over the company and that the information in the register is accurate, complete and up-to-date.

**(3)** Where the company becomes aware of any information referred to in clauses (1)(a) to (e) as a result of steps taken in accordance with subsection (2) or through any other means, the company shall record that information in the register within 15 days of becoming aware of it.

**(4)** Where the company requests information referred to in any of clauses (1)(a) to (e) from one of its shareholders, the shareholder shall, to the best of the shareholder's knowledge, reply accurately and completely as soon as feasible.

**(5)** Within one year after the sixth anniversary of the day on which an individual ceases to be an individual with significant control over the company, the company shall, subject to any Act of the Parliament of Canada or of the Legislature that provides for a longer retention period, dispose of that individual's personal information, as defined in subsection 2(1) of the *Personal Information Protection and Electronic Documents Act* (Canada), that is recorded in the register.

**(6)** A company that, without reasonable cause, contravenes this Section is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000.

**(7)** This Section does not apply to a company that is

(a) a reporting issuer under the *Securities Act*;

(b) listed on a designated stock exchange, as defined in subsection 248(1) of the *Income Tax Act* (Canada); or

(c) a member of a prescribed class. 2020, c. 7, s. 1.

**Identifying individuals with significant control**

**55** A company to which Section 54 applies shall take the prescribed steps if it is unable to identify any individuals with significant control over the company. 2020, c. 7, s. 1.

**Information must be disclosed upon request of Registrar**

**56** A company to which Section 54 applies shall disclose to the Registrar, upon request, any information in its register of individuals with significant control over the company. 2020, c. 7, s. 1.

**Application for access to register**

**57 (1)** Shareholders and creditors of the company or their personal representatives, on sending to the company or its agent an affidavit in accordance with subsection (2), may on application require the company or its agent to allow the applicant access to the register of the company referred to in subsection 54(1) during the usual business hours of the company and, on payment of a reasonable fee, provide the applicant with an extract from that register.

**(2)** The affidavit required under subsection (1) must contain

(a) the name and address of the applicant;

(b) the name and address for service of the body corporate, if the applicant is a body corporate; and

(c) a statement that any information obtained under subsection (1) will not be used except as permitted under subsection (4).

**(3)** Where the applicant is a body corporate, the affidavit must be made by a director or officer of the body corporate.

**(4)** Information obtained under subsection (1) must not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the company;

(b) an offer to acquire securities of the company; or

(c) any other matter relating to the affairs of the company.

**(5)** A person who, without reasonable cause, contravenes subsection (4) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding six months, or to both. 2020, c. 7, s. 1.

**Request for access to register for investigation purposes**

**58** **(1)** In this Section,

"investigative body" means a police force, taxing authority or regulator;

"police force" means the Provincial Police, the Royal Canadian Mounted Police, a municipal police department or another police department providing policing services in the Province;

"regulator" means

(a) the Nova Scotia Securities Commission continued under the *Securities Act*;

(b) the Financial Transactions and Reports Analysis Centre of Canada established under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada); or

(c) a prescribed public officer, corporation, agency or other entity whose authority to regulate is based on a law of the Province or of Canada;

"taxing authority" means the part of the Government of the Province or of Canada responsible for administering or enforcing

(a) a law of the Province or of Canada that provides for the imposition or collection of a tax, royalty or duty; or

(b) a prescribed law of the Province or of Canada that is related to a law referred to in clause (a).

**(2)** On request by an investigative body, a company to which Section 54 applies shall, as soon as feasible after a request is served on the company or is received by it, and in the manner specified by the investigative body,

(a) provide the investigative body with a copy of the company's register of individuals with significant control over the company; or

(b) disclose to the investigative body any information specified by the investigative body that is in the company's register of individuals with significant control over the company.

**(3)** A taxing authority may make a request under subsection (2) only for the following purposes:

(a) administering or enforcing

(i) a law of the Province or of Canada that provides for the imposition or collection of a tax, royalty or duty, or

(ii) a prescribed law of the Province or of Canada that is related to a law referred to in subclause (i);

(b) providing information contained in the register to another jurisdiction inside or outside of Canada to assist the jurisdiction in the administration or enforcement of a law of that jurisdiction that provides for the imposition or collection of a tax, royalty or duty, if the assistance is authorized under an arrangement, written agreement, treaty or law of the Province or of Canada.

**(4)** A police force may make a request under subsection (2) only for the following purposes:

(a) conducting an investigation in Canada

(i) that is undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result;

(b) policing and criminal intelligence operations in Canada;

(c) assisting another law enforcement agency in Canada for a purpose described in clause (a) or (b);

(d) providing information contained in the register to a law enforcement agency in a jurisdiction outside of Canada to assist the agency in a law enforcement proceeding if the assistance is authorized under an arrangement, written agreement, treaty or law of the Province or of Canada.

**(5)** A regulator may make a request under subsection (2) only for the following purposes:

(a) administering or enforcing a law for which the regulator is responsible;

(b) assisting another agency in Canada in the administration or enforcement of a law that is similar to a law for which the regulator is responsible;

(c) providing information contained in the register to an agency outside of Canada to assist the agency in the administration or enforcement of a law that is similar to a law for which the regulator is responsible if the assistance is authorized under an arrangement, written agreement, treaty or law of the Province or of Canada.

**(6)** A request by an investigative body under subsection (2) must be served on the company by leaving the request at the company's registered office as shown in the last notice filed under Section 88 or sent to the company by registered mail to that registered office.

**(7)** Where the request is sent to the company by registered mail, the request is deemed to be received at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the company did not receive the request at that time or at all.

**(8)** A company that, without reasonable cause, fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000. 2020, c. 7, s. 1.

**Offence**

**59** **(1)** Every director or officer of a company who knowingly authorizes, permits or acquiesces in the contravention of subsection 54(1) by that company commits an offence, whether or not the company has been prosecuted or convicted.

**(2)** Every director or officer of a company who knowingly records or knowingly authorizes, permits or acquiesces in the recording of false or misleading information in the register of the company referred to in subsection 54(1) commits an offence.

**(3)** Every director or officer of a company who knowingly provides or knowingly authorizes, permits or acquiesces in the provision to any person or entity of false or misleading information in relation to the register of the company referred to in subsection 54(1) commits an offence.

**(4)** Every shareholder who knowingly contravenes subsection 54(4) commits an offence.

**(5)** A person who commits an offence under this Section is liable on summary conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding six months, or to both. 2020, c. 7, s. 1.

**Regulations**

**60** **(1)** The Governor in Council may make regulations

(a) prescribing anything that is to be prescribed pursuant to Sections 53 to 59;

(b) defining any word or expression used but not defined in Sections 53 to 59;

(c) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of Sections 53 to 59.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2020, c. 7, s. 1.

SHARE WARRANTS

**Warrant for shares or stock**

**61 (1)** A company limited by shares, where so authorized by its articles, may, with respect to any fully paid-up shares or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

**(2)** A share warrant entitles the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

**(3)** The bearer of a share warrant is, subject to the memorandum of association or articles of association of the company, entitled, on surrendering it for cancellation, to have the bearer's name entered as a member in the register of members.

**(4)** The bearer of a share warrant may, where the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that the bearer is not qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company in cases where such a qualification is required by the articles.

**(5)** On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if the member had ceased to be a member, and shall enter in the register the following particulars:

(a) the fact of the issue of the warrant;

(b) a statement of the issue of the shares or stock included in the warrant; and

(c) the date of the issue of the warrant.

**(6)** Until the warrant is surrendered, the above particulars are deemed to be the particulars required by this Act to be entered in the register of members and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member. R.S., c. 81, s. 47; 2010, c. 8, s. 112.

**No share warrants after July 1, 2019**

**62 (1)** Notwithstanding Section 61, no share warrants may be issued after July 1, 2019.

**(2)** Any share warrant issued prior to July 1, 2019, must be converted to shares or stock before July 1, 2024. 2019, c. 4, s. 12.

## CALLS AND ACCUMULATED PROFITS

**Payment and dividend arrangements**

**63** A company, where so authorized by its articles, may do any one or more of the following things:

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by the member, although no part of that amount has been called up;

(c) pay a dividend in proportion to the amount paid up on each share if a larger amount is paid up on some shares than on others. R.S., c. 81, s. 48.

## DISTRIBUTION OF PROFITS

**Reduction of paid-up capital**

**64 (1)** When a company limited by shares has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

**(2)** The resolution does not take effect until a statement showing the particulars required by this Act in the case of a reduction of share capital has been produced to and registered by the Registrar, but the other provisions of this Act with respect to reduction of share capital do not apply to a reduction of paid-up capital under this Section.

**(3)** On a reduction of paid-up capital in pursuance of this Section, any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by the shareholder either alone or jointly with any other person, that, in consequence of the reduction, would otherwise be returned to the shareholder or shareholders, and thereupon these shares are, as regards the payment of dividend, deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital.

**(4)** The company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the company may determine, and on the money so invested or on so much thereof as exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received on the securities.

**(5)** The amount retained and invested must be held to represent the calls that may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such portion thereof as represents the amount of any call when made produces more or less than the amount of the call.

**(6)** On a reduction of paid-up share capital in pursuance of this Section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares extends to the amount of the unpaid share capital as augmented by the reduction.

**(7)** After any reduction of share capital under this Section, the company shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this Section. R.S., c. 81, s. 49; 2007, c. 34, s. 17.

## ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

**Preference shares**

**65 (1)** Subject to this Section and the provisions contained in its articles of association, a company limited by shares may issue preference shares that are, or at the option of the company are to be liable, to be redeemed or purchased by the company.

**(2)** There must be included in every balance sheet of a company that has issued preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed or purchased by the company.

**(3)** Where any company has issued preference shares that by the provisions attaching thereto may be redeemed or purchased by the company, the company may, subject to subsections 66(5) to (13), redeem or purchase such shares on such terms and in such manner as may be provided by the articles of association of the company and by the provisions attaching to the said shares.

**(4)** Any term or provision in the memorandum or articles of association of a company whereby the rights of holders of such preferred shares are limited or restricted must be fully set out in or endorsed on the certificate of the shares and, in the event of such limitation or restriction not being so set out or endorsed, they are not deemed to qualify the rights of the holders thereof.

**(5)** Where any such preference shares have been redeemed or purchased by the company, it shall, within one month after so doing, give notice thereof to the Registrar, specifying the number and value of the shares so redeemed or purchased and the amount at which each share was so redeemed or purchased. R.S., c. 81, s. 50; 2007, c. 34, s. 18.

INCREASE OF SHARE CAPITAL, CONSOLIDATION AND CONVERSION OF SHARES

**Alteration of memorandum**

**66** **(1)** Subject to subsection (9), a cancellation of shares in pursuance of this Section is not deemed to be a reduction of share capital within the meaning of this Act.

**(2)** Subject to subsection (3) and to its memorandum of association, a company limited by shares or by guarantee may, where authorized by special resolution, purchase or otherwise acquire shares issued by it.

**(3)** A company limited by shares or by guarantee may not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and paid up capital of all classes.

**(4)** Notwithstanding subsection (3) but subject to subsection (5) and its memorandum, a company limited by shares or by guarantee may, where authorized by special resolution, purchase or otherwise acquire shares issued by it to

(a) settle or compromise a debt or claim asserted by or against the company;

(b) eliminate fractional shares; or

(c) fulfill the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a director, an officer or an employee of the company.

**(5)** A company limited by shares or by guarantee may not make any payment to purchase or acquire under subsection (4) shares issued by it if there are reasonable grounds for believing that

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to the holders of the shares to be purchased or acquired.

**(6)** Notwithstanding subsections (3) and (5) but subject to subsection (7) and its memorandum, a company limited by shares or by guarantee may purchase, redeem or otherwise acquire redeemable shares issued by it for an amount not exceeding the redemption price thereof.

**(7)** A company limited by shares or by guarantee may not make any payment to purchase, redeem or acquire, under subsection (6), shares issued by it if there are reasonable grounds for believing that

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to or rateably with the holders of the shares to be purchased, redeemed or acquired.

**(8)** Where a company makes a payment to purchase, redeem or otherwise acquire shares issued by it pursuant to this Section, the company shall, within one month after so doing, give notice thereof to the Registrar, specifying the number and value of the shares so redeemed, purchased or otherwise acquired and the amount at which each share was so redeemed, purchased or otherwise acquired.

**(9)** Shares purchased, redeemed or acquired pursuant to subsection (2), (4) or (6) are cancelled and the authorized and issued capital is thereby decreased and, in the case of a company limited by shares or by guarantee the memorandum of association is amended accordingly.

**(10)** Upon the purchase, redemption or acquisition of shares under subsection (2), (4) or (6), the company shall deduct from the capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

**(11)** Notwithstanding subsections (2), (4) and (6), a company limited by shares or by guarantee may redeem or purchase any preference shares that are, or at the option of the company are to be liable, to be redeemed or purchased by the company, provided that

(a) no such shares are redeemed or purchased by the company except out of profits of the company that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase;

(b) no such shares are redeemed or purchased by the company unless they are fully paid;

(c) where any such shares are redeemed or purchased by the company otherwise than out of the proceeds of a fresh issue, there must, out of profits that would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming or purchasing the shares, and the provisions of this Act, including the provisions of this Section, relating to the reduction of the share capital of a company apply with necessary changes as if the

capital redemption reserve fund were paid-up share capital of the company; and

(d) where any such shares are redeemed or purchased by the company out of the proceeds of a fresh issue, the premium, if any, payable on redemption or purchases, must be provided for out of the profits of the company before the shares are redeemed or purchased by the company.

**(12)** The redemption or purchase of preference shares under subsection (11) by a company must not be taken as reducing the amount of a company's authorized share capital, but subsection (10) applies.

**(13)** Nothing contained in this Section prevents a company purchasing or acquiring its own shares pursuant to the Schedule. R.S., c. 81, s. 51; 1990, c. 15, s. 5; 2007, c. 34, s. 19.

REDUCTION OF SHARE CAPITAL

**Special resolution for reducing capital**

**67 (1)** A company limited by shares or by guarantee may, where authorized pursuant to subsection (2), reduce its paid-up capital of any class or series of shares for any purpose, including the purpose of

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share;

(b) either with or without extinguishing or reducing liability on any of its shares, paying or distributing to the holder of an issued share of any class or series of shares an amount not exceeding the paid-up capital of the class or series; and

(c) declaring its paid-up capital to be reduced, without payment or distribution, by an amount that is not represented by realizable assets or by such other amount as the company may see fit.

**(2)** A company limited by shares or by guarantee may not reduce its paid-up capital of any class or series of shares unless authorized to do so

(a) by special resolution, unless there are reasonable grounds for believing that

(i) the company is, or would after the reduction be, unable to pay its liabilities as they become due, or

(ii) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities; or

(b) by special resolution confirmed by court order,

and, in the case of a reduction of the paid-up capital of a class or series of shares with nominal or par value, such resolution must, to the extent necessary, subject to confirmation by the court if required, alter the company's memorandum by reducing the amount of its share capital and shares accordingly.

**(3)** A creditor of a company limited by shares or by guarantee is entitled to apply to the court for an order compelling a shareholder or other recipient

(a) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this Section; or

(b) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this Section.

**(4)** An unlimited company may, where so authorized pursuant to subsection (5), reduce its paid-up capital of any class or series of shares for any purpose, including the purpose of

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share;

(b) either with or without extinguishing or reducing liability on any of its shares, paying or distributing to the holder of an issued share of any class or series of shares an amount not exceeding the paid-up capital of the class or series; and

(c) declaring its paid-up capital to be reduced, without payment or distribution, by an amount that is not represented by realizable assets or by such other amount as the company may see fit.

**(5)** An unlimited company may not reduce its paid-up capital of any class or series of shares unless authorized to do so

(a) in the manner provided in its articles; or

(b) by special resolution,

and shall, in the case of a reduction of the paid-up capital of a class or series of shares with nominal or par value, alter its articles by reducing the amount of its share capital and of its shares accordingly.

**(6)** Where a company has issued more than one class or series of shares, a special resolution referred to in subsection (2) or (5) must specify the capital account or accounts from which the paid-up capital returned, cancelled or otherwise extinguished will be deducted.

**(7)** Where an unlimited company has issued more than one class or series of shares and a reduction of paid-up capital is authorized by a provision in its articles pursuant to clause (5)(a), the provision must include a means to ascertain from which capital account or accounts the paid-up capital returned, cancelled or otherwise extinguished will be deducted. 2007, c. 34, s. 21.

**Confirmation orders**

**68** Where the shareholders of a company limited by shares or by guarantee have passed a special resolution pursuant to clause 67(2)(b) authorizing the reduction of paid-up capital, the company may apply by petition to the court for an order confirming the reduction and Sections 69 to 76 apply. 2007, c. 34, s. 21.

**Where proposed reduction of paid-up capital**

**69 (1)** Where the proposed reduction of the paid-up capital involves either diminution of liability in respect of unpaid capital or the payment to any

shareholder of any paid-up capital and in any other case if the court so directs, the following provisions have effect, subject to subsection (2):

(a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim that would be admissible in proof against the company, if that date were the commencement of the winding up of the company, is entitled to object to the reduction;

(b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, where it thinks fit, dispense with the consent of that creditor, on the company securing payment of the creditor's debt or claim by appropriating, as the court may direct, the following amount:

(i) where the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim, or

(ii) where the company does not admit and is not willing to provide for the full amount of the debt or claim, or where the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

**(2)** Where a proposed reduction of the paid-up capital involves either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the court may, where having regard to any special circumstances of the case it thinks proper to do so, direct that subsection (1) does not apply as regards any class or any classes of creditors. R.S., c. 81, s. 59; 2007, c. 34, s. 22.

**Orders confirming terms of reductions**

**70 (1)** The court, if satisfied with respect to every creditor of the company who under Section 69 is entitled to object to the reduction that either the creditor's consent to the reduction has been obtained or the creditor's debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

**(2)** Where the court makes any such order, it may

(a) where for any special reason it thinks proper to do so, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in

regard thereto as the court may think expedient with a view to giving proper information to the public, and, where the court thinks fit, the causes that led to the reduction.

**(3)** Where a company is ordered to add to its name the words "and reduced", those words are, until the expiration of the period specified in the order, deemed to be part of the name of the company. R.S., c. 81, s. 60.

**Registration of orders**

**71** **(1)** The Registrar, on the delivery to the Registrar of a copy of an order of the court certified by the prothonotary or clerk confirming the reduction of paid-up capital of a company and, in the case of a reduction of the paid-up capital of shares with a nominal or par value, of a minute approved by the court showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, the amount of each share and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the copy of the order and the minute.

**(2)** On the registration, and not before, the resolution for reducing the paid-up capital, as confirmed by the order so registered, takes effect.

**(3)** Notice of the registration must be published in such manner as the court may direct.

**(4)** The Registrar shall certify the registration of the copy of the order and the minute, and the Registrar's certificate is conclusive evidence that all the requirements of this Act with respect to reduction of the paid-up capital have been complied with and, in the case of a reduction of the paid-up capital of shares with a nominal or par value, that the share capital of the company is such as stated in the minute. R.S., c. 81, s. 61; 2007, c. 34, s. 23; 2019, c. 27, s. 9.

**Minute part of memorandum**

**72** The minute when registered is deemed to be substituted for the corresponding part of the memorandum of the company, and is valid and alterable as if it had been originally contained therein, and must be embodied in every copy of the memorandum issued after its registration. R.S., c. 81, s. 62.

**Liability for default**

**73** Where a company makes default in complying with the requirements of Section 72 it is liable to a penalty not exceeding five dollars for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty. R.S., c. 81, s. 63.

**Penalty for concealing creditors**

**74** Where any director, manager or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or where any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager or officer is liable to a penalty not exceeding $500. R.S., c. 81, s. 65.

**Publication orders**

**75** In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, where the court thinks fit, the causes that led to the reduction. R.S., c. 81, s. 66.

**Application**

**76** A company limited by guarantee and registered on or after August 1, 1935, may, where it has a share capital, and is so authorized by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act. R.S., c. 81, s. 67.

REGISTRATION OF UNLIMITED COMPANY AS LIMITED

**Effect of registration and procedure**

**77 (1)** Subject to this Section, any company registered as unlimited may register under this Act as limited, but the registration of an unlimited company as a limited company does not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of the company before the registration.

**(2)** On registration in pursuance of this Section, the Registrar shall close the former registration of the company, and may dispense with the delivery to the Registrar of copies of any documents with copies of which the Registrar was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration must take place in the same manner and has effect as if it were the first registration of the company under this Act. R.S., c. 81, s. 68.

**Powers of company**

**78** An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following:

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital is capable of being called up except in the event and for the purpose of the company being wound up; and

(b) provide that a special portion of its uncalled share capital is not capable of being called up except in the event and for the purposes of the company being wound up. R.S., c. 81, s. 69.

RESERVE LIABILITY OF LIMITED COMPANY

**Restricting calls**

**79** A limited company may by special resolution determine that any portion of its share capital that has not been entirely called up is not capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital is not capable of being called up except in the event and for the purposes aforesaid. R.S., c. 81, s. 70.

RECEIVERS AND RECEIVER-MANAGERS

**Powers**

**80** A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property and pay the liabilities connected with the property and realize the security interest of those on behalf of whom the receiver is appointed, but, except to the extent permitted by a court, the receiver may not carry on the business of the company. R.S., c. 81, s. 71.

**Carrying on business**

**81** A receiver of a company may, where the receiver is also appointed receiver-manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom the receiver is appointed. R.S., c. 81, s. 72.

**Assumption of directors duties**

**82** Where a receiver-manager is appointed by a court or under an instrument, the powers of the directors of the company that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged. R.S., c. 81, s. 73.

**Court directions**

**83** A receiver or receiver-manager appointed by a court shall act in accordance with the directions of the court. R.S., c. 81, s. 74.

**Directions by instrument**

**84** A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any direction of a court made under Section 86. R.S., c. 81, s. 75.

**Responsibility of receiver**

**85** A receiver or receiver-manager of a company appointed under an instrument shall

(a) act honestly and in good faith; and

(b) deal with any property of a company in the receiver's or receiver-manager's possession or control in a commercially reasonable manner. R.S., c. 81, s. 76.

**Court orders**

**86** Upon an application by a receiver or receiver-manager, whether appointed by a court or under an instrument, or upon an application by any interested person, a court may make any order it thinks fit, including

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving the receiver's or receiver-manager's accounts;

(b) an order determining the notice to be given to any person, or dispensing with notice to any person;

(c) an order fixing the remuneration of the receiver or receiver-manager;

(d) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom the receiver or receiver-manager is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the company, or to relieve any such person from any default on such terms as the court thinks fit, and to confirm any act of the receiver or receiver-manager; and

(e) an order giving directions on any matter relating to the duties of the receiver or receiver-manager. R.S., c. 81, s. 77.

**Duties of receiver**

**87** A receiver or receiver-manager shall

(a) immediately notify the Registrar of the receiver's or receiver-manager's appointment and discharge;

(b) take into the receiver's or receiver-manager's custody and control the property of the company in accordance with a court order or instrument under which the receiver or receiver-manager is appointed;

(c) open and maintain a bank account in the receiver's or receiver-manager's name as receiver or receiver-manager of the company for the money of the company coming into the receiver's or receiver-manager's control;

(d) keep detailed accounts of all transactions carried out by the receiver or receiver-manager;

(e) keep accounts of the receiver's or receiver-manager's administration that must be available during usual business hours for inspection by the directors of the company; and

(f) upon completion of the receiver's or receiver-manager's duties, render a final account of the receiver's or receiver-manager's administration to the Registrar in a form satisfactory to the Registrar. R.S., c. 81, s. 78.

## PART IV

## MANAGEMENT AND ADMINISTRATION

### OFFICE AND NAME

**Registered office in Province**

**88 (1)** Every company shall as from the day on which it begins to carry on business or as from the 28th day after the date of its incorporation, whichever is the earlier, have a registered office in the Province, to which all communications and notices may be addressed.

**(2)** Notice of the situation of the registered office, and of any change therein, must be given within 28 days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar, who shall record

the same, and the notice must, where possible, state the street and number where the registered office is situated, or must otherwise sufficiently identify the situation of the office.

**(3)** Where a company carries on business without complying with this Section it is liable to a penalty not exceeding $25 for every day during which it so carries on business. R.S., c. 81, s. 79.

**Company name**

**89** **(1)** Every limited company shall

(a) paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) have its name engraven in legible characters on its seal; and

(c) have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

**(2)** Where a limited company does not paint or affix, and keep painted or affixed, its name in the manner directed by this Act, it is liable to a penalty not exceeding $25 for not so painting or affixing its name, and for every day during which its name is not kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty.

**(3)** Where a company's name is in more than one language form, the company may be legally designated by any such form and, unless expressly required by law to use a particular language form or all language forms of its name, it may use any one language form of its name by itself in any case where its name is required to be used.

**(4)** Notwithstanding any other provision of this Act, a limited company with the word "Incorporated" or the word "Incorporée" as part of its name may use as part of the name of the company the word "Incorporated" or the word "Incorporée", or both, and may substitute for these words the abbreviation "Inc." and reference to the company may be made in the same manner.

**(5)** Notwithstanding any other provision of this Act, a limited company with the word "Limited" or the word "Limitée" as part of its name may use as part of the name of the company the word "Limited" or the word "Limitée", or both, and may substitute for these words the abbreviation "Ltd." or "Ltée" and reference to the company may be made in the same manner.

**(6)** Where any director, manager or officer of a limited company, or any person on its behalf,

(a) uses or authorizes the use of any seal purporting to be the seal of the company whereon its name is not engraven as aforesaid;

(b) issues or authorizes the issue of any notice, advertisement or other official publication of the company;

(c) signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods; or

(d) issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company,

wherein its name is not mentioned in manner aforesaid, the director, manager, officer or person is liable to a penalty not exceeding $200, and is further personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is fully paid by the company.

**(7)** A company may carry on business using any name that it has registered under the *Partnerships and Business Names Registration Act* as well as its proper corporate name.

**(8)** Where it is proved to the satisfaction of the Governor in Council that an association about to be formed as a company limited by guarantee is to be formed for promoting art, science, religion, education or any charitable, patriotic or other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Governor in Council may by order in council direct that the association, upon complying with the other provisions of this Act with respect to incorporation, be registered as a company limited by guarantee as defined by clause 9(b), without the addition of the word "Incorporated", "Incorporée", "Limited" or "Limitée", and the association may be registered accordingly.

**(9)** The Governor in Council may by such order in council direct that such registration as described in subsection (8) be granted on such conditions and subject to such regulations as the Governor in Council thinks fit, and such conditions and regulations are binding on the association and must, where the Governor in Council so directs, be inserted in the memorandum and articles, or in either one of those documents.

**(10)** The Governor in Council may by such order in council, notwithstanding anything contained in this Act, in the Schedule or the regulations made pursuant to this Act, direct that such association as described in subsection (8) be registered without the payment of any fees or on the payment of such fees as the Governor in Council thinks fit.

**(11)** The association as described in subsection (8) on registration enjoys all the privileges of companies limited by guarantee, and is subject to all their obligations, except those of using the word "Incorporated", "Incorporée", "Limited" or "Limitée" as any part of its name, and of publishing its name and of sending lists of members and directors and managers to the Registrar.

**(12)** The Governor in Council may by order in council at any time revoke such registration as described in subsection (8) and upon revocation the Reg-

istrar shall enter the word “Incorporated”, “Incorporée”, “Limited” or “Limitée” at the end of the name of the association upon the register and the association ceases to enjoy the exemptions and privileges granted by this Section, but, before such registration may be so revoked, the Governor in Council shall give to the association notice in writing of the Governor in Council’s intention and shall afford the association an opportunity of being heard in opposition to the revocation.

**(13)** A company, as described in subsection (8), that has been registered with the word “Incorporated”, “Incorporée”, “Limited” or “Limitée” as the last word in its name, may, by special resolution and with the approval of the Governor in Council, change its name by omitting the word “Incorporated”, “Incorporée”, “Limited” or “Limitée”, and upon such change being made, the Registrar shall amend the register accordingly and issue a certificate of incorporation altered to meet the circumstances of the case.

**(14)** Subsections (11) and (12) apply to a company whose name has been changed under subsection (13) as though it had been originally registered without the addition of the word “Incorporated”, “Incorporée”, “Limited” or “Limitée” as part of its name. R.S., c. 81, s. 80; 2007, c. 34, s. 25; 2019, c. 27, s. 10.

**Penalty for improper use**

**90** Where any person or persons trade or carry on business under any name or title of which “Incorporated”, “Incorporée”, “Limited” or “Limitée” or any contraction thereof is the last word, that person or each of those persons are, unless duly incorporated with limited liability, liable to a penalty not exceeding $25 for every day upon which the name or title has been used. R.S., c. 81, s. 81; 2007, c. 34, s. 26.

**Penalty for use of incorrect name**

**91** Where a company carries on business under any name or title other than the name under which it is registered under this Act or any name that it has registered under the *Partnerships and Business Names Registration Act*, the company is liable to a penalty not exceeding $25 for every day upon which it so carries on business and every director, manager, secretary or other officer of the company who knowingly and wilfully authorizes or permits the carrying on of business as aforesaid is liable to the same penalty. R.S., c. 81, s. 82.

## MEETINGS AND PROCEEDINGS

**Annual meeting**

**92 (1)** A general meeting of every company must be held at least once in every calendar year and not more than 15 months after the holding of the last preceding general meeting, and, where not so held, the company and every director, manager, secretary and other officer of the company, who is knowingly a party to the default, is liable to a penalty not exceeding $200.

**(2)** When default has been made in holding a meeting of the company in accordance with this Section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company. R.S., c. 81, s. 83.

**Special meeting**

**93** **(1)** Notwithstanding anything in the articles of a company, the directors of the company shall on the requisition of the holders of not less than one tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene a special general meeting of the company.

**(2)** The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

**(3)** Where the directors do not proceed to cause a meeting to be held within 21 days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened may not be held after three months from the date of the deposit.

**(4)** Where at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further special general meeting for the purpose of considering the resolution and, where thought fit, of confirming it as a special resolution and, where the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

**(5)** Any meeting convened under this Section by the requisitionists must be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors. R.S., c. 81, s. 84.

**Calling meetings**

**94** In default of, and subject to, any regulations in the articles,

(a) a meeting of a company may be called by seven days notice in writing, served on every member in a manner in which notices are required to be served by the regulations made pursuant to this Act respecting the management of a company limited by shares;

(b) five members may call a meeting;

(c) any person elected by the members present at a meeting may be chair thereof; and

(d) every member has one vote. R.S., c. 81, s. 85; 2019, c. 27, s. 11.

**Virtual meetings**

**95** Subject to any regulations in the articles or the bylaws of a company, a general meeting under Section 92 or a special meeting under Section 93 may be held entirely or partially by telephonic or electronic means and a member who, through those means, votes at the meeting or establishes a communications link to the meeting is deemed, for the purpose of this Act, to be present at the meeting. 2022, c. 8, s. 1.

PROXIES

**Interpretation of Sections 96 to 101**

**96** In this Section and Sections 97 to 101,

"dissident's information circular" means the circular referred to in clause 99(1)(b);

"form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a member, becomes a proxy;

"management information circular" means the circular referred to in clause 99(1)(a);

"proxy" means a completed and executed form of proxy by means of which a member has appointed a proxyholder to attend and act on the member's behalf at a meeting of the company;

"solicitation" includes

(a) a request for a proxy whether or not accompanied by or included in a form of proxy;

(b) a request to execute or not to execute a form of proxy or to revoke a proxy;

(c) the sending of a form of proxy or other communication to a member under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and

(d) the sending of a form of proxy to a member pursuant to Section 98,

but does not include

(e) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a member;

(f) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;

(g) the sending of material pursuant to Section 77 of the *Securities Act*; or

(h) a solicitation by a person in respect of shares of which that person is the beneficial owner;

"solicitation by or on behalf of the management of the company" means a solicitation by any person under a resolution or the instructions of the directors of that company or a committee of such directors. 1990, c. 15, s. 6; 2022, c. 8, ss. 1, 2.

**Proxy**

**97 (1)** Every member entitled to vote at a meeting of the company may, by means of a proxy, appoint a proxyholder or one or more alternate proxyholders, who need not be members, as that member's nominee to attend and act at the meeting, to the extent and with the authority conferred by the proxy.

**(2)** A proxy must be executed by the member or the member's attorney authorized in writing or, where the member is a corporation, whether a company within the meaning of this Act or not, by an officer or attorney thereof

duly authorized or by a representative authorized in the manner referred to in clause 102(1)(a) and, in the case of a proxy appointing a proxyholder to attend and act at a meeting or meetings of a reporting issuer, ceases to be valid one year from its date.

**(3)** Every form of proxy must comply with the regulations.

**(4)** A member may revoke a proxy

(a) by depositing an instrument in writing executed by the member or by the member's attorney authorized in writing,

(i) at the registered office of the company at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used, or

(ii) with the chair of the meeting on the day of the meeting or an adjournment thereof; or

(b) in any other manner permitted by law.

**(5)** The directors may, by resolution, fix a time not exceeding 48 hours excluding Saturdays and holidays preceding any meeting or adjourned meeting of the company before which time proxies to be used at that meeting must be deposited with the company or an agent thereof, and any period of time so fixed must be specified in the notice calling the meeting. 1990, c. 15, s. 6.

**Form of proxy to member**

**98** The management of a reporting issuer shall, concurrently with or prior to sending notice of a meeting of a company, send a form of proxy to each member who is entitled to receive notice of the meeting. 1990, c. 15, s. 6.

**Restriction on solicitation of proxies**

**99** **(1)** No person may solicit proxies in respect of a reporting issuer unless

(a) in the case of solicitation by or on behalf of the management of the company, a management information circular in prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting; or

(b) in the case of any other solicitation, a dissident's information circular in prescribed form,

is sent to the auditor of the company, to each member whose proxy is solicited and, where clause (b) applies, to the company.

**(2)** A person, upon sending a management information circular or dissident's information circular, shall concurrently file with the Registrar,

(a) in the case of a management information circular, a copy thereof together with a copy of the notice of meeting, form of proxy and any other documents for use in connection with the meeting; and

(b) in the case of a dissident's information circular, a copy thereof together with a copy of the form of proxy and of any other documents for use in connection with the meeting. 1990, c. 15, s. 6.

**Exemption**

**100** Upon the application of any interested person, the Commission may, where satisfied in the circumstances of the particular case that there is adequate justification for so doing, make an order, on such terms and conditions as the Commission may impose, exempting, in whole or in part, any person from the requirements of Section 98 or 99. 1990, c. 15, s. 6.

**Attendance by and rights of proxyholder**

**101 (1)** A person who solicits a proxy and is appointed a proxyholder shall attend in person or cause an alternative proxyholder to attend the meeting in respect of which the proxy is given and comply with the directions of the member who appointed the person.

**(2)** A proxyholder or an alternative proxyholder has the same rights as the member who appointed the proxyholder or alternative proxyholder to speak at a meeting of the company in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternative proxyholder has conflicting instructions from more than one member, to vote at such meeting in respect of any matter by way of a show of hands.

**(3)** Notwithstanding subsections (1) and (2), where a ballot is conducted and the chair of the meeting of a company declares to the meeting that, to the best of the chair's belief, the total number of votes attached to the shares represented at the meeting by proxy required to be voted against what will be the decision of the meeting in relation to any matter or group of matters is fewer than five per cent of all the votes that might be cast at the meeting on such ballot, and a member, proxyholder or alternative proxyholder does not demand a ballot,

(a) the chair may conduct the vote in respect of that matter or group of matters by a show of hands; and

(b) a proxyholder or alternative proxyholder may vote in respect of that matter or group of matters by a show of hands. 1990, c. 15, s. 6.

**Representative of body corporate**

**102 (1)** A body corporate, whether or not a company within the meaning of this Act, may

(a) where it is a member of another body corporate, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) where it is a creditor, including a holder of debentures of another body corporate, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or

of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

**(2)** A person authorized as aforesaid is entitled to exercise the same powers on behalf of the body corporate that the person represents as that body corporate could exercise if it were an individual shareholder, creditor or holder of debentures of that other company. R.S., c. 81, s. 86; 2007, c. 34, s. 27.

SPECIAL RESOLUTIONS

**Special resolution**

**103** **(1)** Subject to subsection (2), a resolution is deemed to be special whenever it has been passed by

(a) in the case of a company incorporated before June 1, 2008, a majority of not fewer than three fourths of the votes cast by the members of the company who voted in person or by proxy at any general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) in the case of a company incorporated on or after June 1, 2008, by a majority of not fewer than two thirds of the votes cast by the members of the company who voted in person or by proxy at any general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

**(2)** Notwithstanding clause (1)(a), a company incorporated before June 1, 2008, may adopt clause (1)(b) by special resolution in accordance with the requirements of clause (1)(a), and clause (1)(b) applies to all further special resolutions commencing on the date the special resolution approving the change is filed.

**(3)** At any meeting at which a special resolution is submitted to be passed, a declaration of the chair that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**(4)** At any meeting at which a special resolution is submitted to be passed, a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

**(5)** When a poll is demanded in accordance with this Section, in computing the majority on the poll reference must be had to the number of votes to which each member is entitled by the articles of the company.

**(6)** For the purpose of this Section, notice of a meeting is deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in the manner provided by the articles. R.S., c. 81, s. 87; 2007, c. 34, s. 28.

**Record of special resolutions**

**104 (1)** A copy of every special resolution must, within 15 days from the passing thereof, be printed and forwarded to the Registrar, who shall record the same.

**(2)** Where articles have been registered, a copy of every special resolution for the time being in force must be embodied in or annexed to every copy of the articles issued after the passing of the resolution.

**(3)** Where articles have not been registered, a copy of every special resolution must be forwarded in print to any member at the member's request, on payment of 25¢ or such less sum as the company may direct.

**(4)** Where a company makes default in printing or forwarding a copy of a special resolution to the Registrar, it is liable to a penalty not exceeding $10 for every day during which the default continues.

**(5)** Where a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this Section a copy of a special resolution, it is liable to a penalty not exceeding five dollars for each copy in respect of which default is made.

**(6)** Every director and manager of a company who knowingly and wilfully authorizes or permits any default by the company in complying with this Section is liable to the same penalty as is imposed by this Section on the company for the default.

**(7)** For the purpose of this Section, "printed" includes printed, typewritten or otherwise mechanically reproduced. R.S., c. 81, s. 88; 2007, c. 34, s. 29.

MINUTES

**Minutes to be kept**

**105 (1)** Every company shall cause minutes of all proceedings of general meetings and, where there are directors or managers, of its directors or managers to be entered in books kept for that purpose.

**(2)** Any such minute if purporting to be signed by the chair or secretary of the meeting at which the proceedings were had, or by the chair or secretary of the next succeeding meeting, is evidence of the proceedings.

**(3)** Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made is deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators are deemed to be valid. R.S., c. 81, s. 89; 2007, c. 34, s. 30; 2019, c. 27, s. 12.

**Location and accessibility of minute books**

**106 (1)** The books containing the minutes of proceedings of any general meeting of a company must be kept at the registered office of the company or such other location as is designated by the directors.

**(2)** The minutes referred to in subsection (1) must be available for inspection by any member without charge at the registered office, physically or by means of a computer terminal or other electronic technology during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection.

**(3)** Any member is entitled to be furnished within seven days after the member has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding one dollar for every page or part of a page required to be copied.

**(4)** Any member who claims to be entitled to inspect or receive a copy of any minutes, and who is not permitted to inspect or be furnished with a copy of the minutes as set out in this Section, may apply, in writing, to the Registrar for an order under subsection (5).

**(5)** Where, on application of a member referred to in subsection (4), it appears to the Registrar that the company failed to allow the inspection or provide the minutes to the applicant, the Registrar may order the company to provide, within 15 days from the date of the order, an affidavit or sworn declaration of a director or officer of the company stating the reasons why the company believes the applicant should not be permitted to inspect the minutes or be provided with a copy of the minutes.

**(6)** Following receipt of the affidavit or sworn declaration referred to in subsection (5), the Registrar shall provide a copy of the affidavit or sworn declaration to the applicant and shall either

(a) order the company to permit the applicant to inspect the minutes or provide the applicant with a copy of the minutes, on such terms and conditions as may be ordered by the Registrar; or

(b) refuse the applicant's request to inspect the minutes or receive a copy of the minutes.

**(7)** Where the company fails to provide the affidavit or sworn declaration within the time required under subsection (5), the Registrar may make an order under subsection (6).

**(8)** An applicant or the company may, on written notice to the other party and the Registrar, apply to the court for a review of a decision of the Registrar under this Section, and the court may make such order as it considers just. R.S., c. 81, s. 90; 2007, c. 34, s. 31.

## REGISTERS AND RECORDS

**Storage and recording of register or record**

**107** A register or record that is required by this Act to be prepared and maintained by a company may be

(a) stored in a bound or loose-leaf format or in a photographic film format; or

(b) entered or recorded in a system of mechanical or electronic data processing or an information storage device that is capable of reproducing information in an intelligible written format within a reasonable time. 2019, c. 27, s. 13.

**Duty to preserve and maintain registers and records**

**108** A company and its directors, officers and agents shall take reasonable precautions to preserve and maintain the company's registers and records by preventing their loss or destruction, preventing false entries and facilitating the detection and correction of inaccuracies. 2019, c. 27, s. 13.

**Examination of register or record**

**109** Where a person entitled to examine a register or record that is maintained by a company in a format other than a written format makes a request to examine the register or record, the company shall

(a) make available to the person, within a reasonable time, a reproduction of the text of the register or record in an intelligible written format; or

(b) provide facilities to allow the person to examine and make copies of the text of the register or record in an intelligible written format within seven days of the company having received the request to examine the register or record. 2019, c. 27, s. 13.

**Fee for copying**

**110** A company may charge one dollar for every page or part of a page of a register or record that is copied pursuant to Section 109. 2019, c. 27, s. 13.

DIRECTORS' RESOLUTIONS

**Without meeting**

**111 (1)** A resolution in writing and signed by every director who would be entitled to vote on the resolution at a meeting of the directors or a committee of directors is as valid as if it were passed by such directors at a meeting of the directors or a committee of directors.

**(2)** A copy of every resolution referred to in subsection (1) must be kept with the minutes of proceedings of the directors or committee thereof, as the case may be. R.S., c. 81, s. 91; 2007, c. 34, s. 32.

**Shareholder resolutions without meeting**

**112 (1)** A resolution, including a special resolution, in writing and signed by every shareholder who would be entitled to vote on the resolution at a meeting is as valid as if it were passed by such shareholders at a meeting and satisfies all the requirements of this Act respecting meetings of shareholders.

**(2)** A copy of every resolution referred to in subsection (1) must be kept with the minutes of proceedings of general meetings. R.S., c. 81, s. 92; 2007, c. 34, s. 33.

APPOINTMENT, QUALIFICATION
AND REGISTER OF DIRECTORS

**Director required**

**113** Every company registered on or after August 1, 1935, must have at least one director. R.S., c. 81, s. 93.

**Prerequisites for and listing of directors**

**114 (1)** A person is not capable of being appointed a director of a company by the articles, unless before the registration of the articles, that person or that person's agent authorized in writing has

(a) signed and delivered to the Registrar for registration a consent in writing to act as director; and

(b) either

(i) signed the memorandum for a number of shares not fewer than the person's qualifications, if any,

(ii) taken from the company and paid or agreed to pay for the person's qualification shares, if any,

(iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for the person's qualification shares, if any, or

(iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not fewer than the person's qualifications, if any, are registered in the person's name.

**(2)** Where a person has signed and delivered as aforesaid an undertaking to take and pay for the person's qualification shares, the person is, as regards those shares, in the same position as if the person had signed the memorandum for that number of shares.

**(3)** On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, where this list contains the name of any person who has not so consented, the applicant is liable to a penalty not exceeding $100.

**(4)** This Section does not apply to

(a) a company not having a share capital; or

(b) a memorandum if there is only one subscriber. R.S., c. 81, s. 94; 1990, c. 15, s. 7.

**Duty to obtain qualification**

**115 (1)** It is the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain the qualification within three months after the director's appointment, or such shorter time as is fixed by the regulations of the company.

**(2)** For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant is not deemed to be the holder of the shares specified in the warrant.

**(3)** The office of director of a company is vacated if the director does not within three months from the date of the director's appointment, or within such shorter time as is fixed by the regulations of the company, obtain the director's qualification, or if after the expiration of such period or shorter time the director ceases at any time to hold the qualification, and a person vacating office under this Section is incapable of being reappointed director of the company until the person has obtained the qualification.

**(4)** Where, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, the person is liable to a penalty not exceeding $25 for every day between the expiration of the said period or shorter time and the last day on which it is proved that the person acted as a director. R.S., c. 81, s. 95.

**Penalty for bankrupt director**

**116** Where a person having been adjudged bankrupt or having made an authorized assignment on or after August 1, 1935, acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company the person is, unless and until the person has been granted an order of discharge under the *Bankruptcy Act* (Canada), liable on conviction to imprisonment for a term not exceeding 12 months or to a penalty not exceeding $500 or to both such imprisonment and penalty. R.S., c. 81, s. 96.

**Validity of managerial acts**

**117** The acts of a director or manager are valid notwithstanding any defect that is afterwards discovered in the director's or manager's appointment or qualification. R.S., c. 81, s. 97.

**Record of pertinent facts**

**118 (1)** Every company shall keep at its registered office a register containing the names and addresses of its directors, officers and managers, and send to the Registrar a copy thereof, and shall notify the Registrar of any change among its directors, officers or managers.

**(2)** Such copy must be filed with the Registrar within 14 days from the appointment of the first directors of the company and such notification must be given to the Registrar within 14 days of the happening thereof.

**(3)** Where default is made in compliance with this Section, the company is liable to a penalty not exceeding $25 for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty.

**(4)** The filing of an annual statement pursuant to the *Corporations Registration Act* is compliance with subsection (1) if the statement contains the information and is filed within the time required by subsection (1). R.S., c. 81, s. 98; 1998, c. 8, s. 19.

**Conflict of interest**

**119 (1)** Subject to this Section, it is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of the director's interest at a meeting of the directors of the company.

**(2)** In the case of a proposed contract, the declaration required by this Section to be made by a director must be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or where the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after the director became so interested, and in a case where the director becomes interested in a contract after it is made, the declaration must be made at the first meeting of the directors held after the director becomes so interested.

**(3)** For the purpose of this Section, a general notice given to the directors of a company by a director to the effect that the director is a member of a specified company or firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that company or firm is deemed to be a sufficient declaration of interest in relation to any contract so made.

**(4)** Any director who fails to comply with this Section is liable to a penalty not exceeding $100.

**(5)** Nothing in this Section prejudices the operation of any rule of law restricting directors of a company from having any interest in contracts with the company. R.S., c. 81, s. 99.

**Statement of remuneration**

**120 (1)** In this Section, "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowance or perquisites belonging to the director's office.

**(2)** Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not fewer than one fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company at the next annual meeting a statement, certified as correct, or with such qualifications as may be necessary, by the auditors of the company, if any, and where there are no auditors, then by the director of the company if there is only one director or by two directors of the company if there is more than one director, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there must, in respect of any such director who is

(a) a director of any other company that is, in relation to the first mentioned company. a subsidiary company; or

(b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by the director for the director's own use whether as a director of, or otherwise in connection with the management of the affairs of that other company, but

(c) a demand for a statement under this Section is of no effect if the company within one month after the date on which the demand is made resolve that the statement will not be furnished; and

(d) it is sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

**(3)** In computing for the purpose of this Section the amount of any remuneration or emoluments received by any director, the amount actually received by the director must, where the company has paid on the director's behalf any sum by way of income tax, including surtax, in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

**(4)** Any director who fails to comply with this Section is liable to a penalty not exceeding $100. R.S., c. 81, s. 100; 1990, c. 15, s. 8.

## CONTRACTS AND MORTGAGES

**Mode of contracting**

**121 (1)** Contracts on behalf of a company may be made as follows:

(a) any contract that if made between private persons would be by law required to be in writing and, where made according to the law of the Province or of Canada, to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged;

(b) any contract that if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(c) any contract that if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

**(2)** Every contract made according to this Section is of legal effect and binds the company and its successors and all other parties thereto, their heirs, executors or administrators, as the case may be. R.S., c. 81, s. 101.

## OBTAINING SECURITY

**Power to secure**

**122** Every company has the power, subject to the conditions of and in addition to all other powers conferred by this Act, to borrow money for the purpose of carrying out the objects of its incorporation and to execute mortgages of its real and personal property, to issue debentures secured by mortgage or otherwise, to sign

bills, notes, contracts and other evidences of or securities for money borrowed or to be borrowed by it for the purpose aforesaid, and to pledge debentures as security for loans. R.S., c. 81, s. 102; 1998, c. 8, s. 20.

## COMMON SEALS

**Delegation of powers**

**123** A company may, as to all matters to which the corporate existence and capacity of the company extends, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place situate within or outside the Province, and every deed signed by such attorney, on behalf of the company and under seal, binds the company and has the same effect as if it were under its common seal. R.S., c. 81, s. 103.

## OFFICIAL SEAL

**Official seal for extra-provincial use**

**124 (1)** A company whose objects require or comprise the transaction of business outside of the Province may, where authorized by its articles, have for use, as to all matters to which the corporate existence and capacity of the company extends, in any territory, district or place not situate in the Province, an official seal, which must be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

**(2)** A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any territory, district or place not situate in the Province, to affix the same to any deed or other document to which the company is party in that territory, district or place.

**(3)** The authority of any such agent, as between the company and any person dealing with the agent, continues during the period, if any, mentioned in the instrument conferring the authority or, where no period is there mentioned, until notice of the revocation or determination of the agent's authority has been given to the person dealing with the agent.

**(4)** The person affixing any such official seal shall by writing under the person's hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

**(5)** A deed or other document to which an official seal is duly affixed binds the company, as to all matters to which the corporate existence and capacity of the company extends, in the same manner as if it had been sealed with the common seal of the company. R.S., c. 81, s. 104.

## PAYMENT FOR SHARES OTHERWISE THAN IN CASH

**Deemed subject to payment**

**125 (1)** Every share with nominal or par value in any company is deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract, duly made in writing.

**(2)** Every share without nominal or par value in any company is deemed and taken to have been issued and to be held subject to the payment in cash of the whole amount for which same has been subscribed for and allotted unless otherwise determined by a contract duly made in writing.

**(3)** Whenever any shares in the capital of any company, credited as fully or partly paid up, have been or may be issued for a consideration other than cash and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar in compliance with this Section, the company or any person interested in such shares, or any of them, may apply to the court for relief, and the court, where satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it, in relation to such shares, operates as if it had been duly filed with the Registrar before the issue of such shares.

**(4)** The application as described in subsection (3) may be made in the manner in which an application to rectify the register of members may be made under Section 50, and either before or after an order has been made or effective resolution has been passed for the winding up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application must, where not made by the company, be served on the company.

**(5)** Any order under this Section may be made on such terms and conditions as the court may think fit, and the court may make such order as to costs as it considers proper, and may direct that a certified copy of the order be filed with the Registrar, and the order in all respects has full effect.

**(6)** Where the court in any such case is satisfied that the filing of the requisite contract under this Section would cause delay or inconvenience, or is impracticable, it may in lieu thereof direct the filing of a memorandum in writing, in a form approved by the court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it, in relation to such shares, operates as if it were duly made in writing within the meaning of this Section and had been duly filed with the Registrar before the issue of such shares.

**(7)** Subsections (3) to (6) do not apply to shares issued on or after December 3, 1998. R.S., c. 81, s. 109; 1998, c. 8, s. 21.

## COMMISSIONS AND DISCOUNTS

**Commission for sale of shares**

**126 (1)** It is lawful for a company to pay a reasonable commission to any person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorized by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized.

**(2)** Save as aforesaid, no company may apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

**(3)** A vendor to, promoter of, or other person who receives payment in money or shares from, a company has and is deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, where made directly by the company, would have been legal under this Section. R.S., c. 81, s. 110; 1990, c. 15, s. 10; 2007, c. 34, s. 34.

## FINANCIAL ASSISTANCE

**Financial assistance by company**

**127 (1)** In this Section, "financial assistance" means financial assistance by means of a loan, guarantee, the provision of security or otherwise.

**(2)** A company may give financial assistance to any person for any purpose. 2007, c. 34, s. 35.

## REGISTER OF DEBENTURES

**Register of debenture holders**

**128 (1)** Every company shall keep or cause to be kept in one or more books at the registered office of the company a register of the holders of debentures that have been or may be on or after August 1, 1935, issued by the company and that are not validly and completely transferable solely by the delivery thereof, and shall enter therein the following particulars:

(a) the names and addresses of the holders of debentures that have been or may be on or after August 1, 1935, issued by the company, and that are not validly and completely transferable solely by the delivery thereof;

(b) the date at which the name of any person was entered in the register as such holder; and

(c) the date at which any person ceases to be such holder.

**(2)** Where a company fails to comply with this Section, it is liable to a penalty not exceeding $25 for every day during which the default continues and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty.

**(3)** No transfer of any debentures that have been or may be on or after August 1, 1935, issued by a company, and that are not validly and completely transferable solely by the delivery thereof, is valid, complete or effectual unless and until the entries in respect thereof required by this Act have been made in the register.

**(4)** The register is prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

**(5)** A company may, where so authorized by its articles, cause to be kept in any place outside of the Province a branch register of the holders of debentures that have been or may be on or after August 1, 1935, issued by the company, and that are not validly and completely transferable solely by the delivery thereof, hereinafter in this Section called a "branch register of debenture holders".

**(6)** A company shall give to the Registrar notice of the location of the office where any branch register of debenture holders is kept, and of any change in location and of the discontinuance of the office in the event of its being discontinued.

**(7)** A branch register of debenture holders is deemed to be part of the company's register of debenture holders, hereinafter in this Section called the "principal register of debenture holders".

**(8)** A branch register of debenture holders must be kept in the same manner in which the principal register of debenture holders is by this Act required to be kept.

**(9)** The company shall transmit to its registered office a copy of every entry in its branch register of debenture holders as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up, a duplicate of its branch register of debenture holders, and the duplicate is for all the purposes of this Act deemed to be part of the principal register.

**(10)** Subject to the provisions of this Section with respect to the duplicate of the branch register, the debentures registered in a branch register of debenture holders must be distinguished from the debentures registered in the principal register of debenture holders, and no transaction with respect to any debenture registered in a branch register of debenture holders may, during the continuance of that register, be registered in any other register.

**(11)** On the death of a person registered in a branch register of debenture holders, the debentures of the deceased person are transferable on the duplicate of the branch register at the registered office of the company and not elsewhere.

**(12)** The company may discontinue to keep any branch register of debenture holders, and thereupon all entries in that register must be transferred to some other branch register of debenture holders kept by the company in the same country or to the principal register of debenture holders.

**(13)** Subject to this Act, any company may by its articles make such provisions as it may think fit respecting the keeping of branch registers of debenture holders.

**(14)** Every register of holders of debentures of a company must, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day are allowed for inspection.

**(15)** For the purpose of subsection (14), a register is deemed to be duly closed if closed in accordance with provisions contained in the articles of association, or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

**(16)** Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of 15¢ for every 100 words or fractional part thereof required to be copied.

**(17)** A copy of any trust deed for securing any issue of debentures must be forwarded to every holder of any such debentures at the holder's request on payment, in the case of a printed trust deed, of the sum of one dollar or such lesser sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of 15¢ for every 100 words or fractional part thereof required to be copied.

**(18)** Where inspection is refused, or a copy is refused or not forwarded, the company is liable for each refusal to a penalty not exceeding $10, and to a further penalty not exceeding $10 for every day during which the refusal continues, and every director and manager of the company who knowingly authorizes or permits the refusal is liable to the same penalty.

**(19)** Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required be sent to the person requiring them. R.S., c. 81, s. 111; 2019, c. 27, s. 14.

## DEBENTURES

**Conditions precedent**

**129** A condition contained in any debenture or in any deed for securing any debentures, whether issued or executed before, on or after August 1, 1935, are not invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding. R.S., c. 81, s. 112.

**Reissuing debentures**

**130 (1)** Where a company has redeemed any debentures previously issued, the company, unless the special Act incorporating the company or the articles of the company or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation of the company to do so, not being an obligation enforceable only by the person to whom the redeemed bonds or debentures were issued, or the person's assigns, has the power and is deemed always to have had power to keep the debentures alive for the purpose of reissue, and, where a company has purported to exercise such a power, the company has the power, and is deemed always to have had power, to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place, and upon such a reissue the person entitled to the debentures has, and

is deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

**(2)** Where, with the object of keeping debentures alive for the purpose of reissue they have been transferred to a nominee of the company, a transfer from that nominee is deemed to be a reissue for the purpose of this Section.

**(3)** Where a company has deposited any of its debentures to secure advances on current account or otherwise, the debentures are not deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited nor by reason of the repayment of the advances.

**(4)** The reissue of a debenture, or the issue of another debenture in its place, under this Section is not treated as the issue of a new debenture for any purpose.

**(5)** Nothing in this Section prejudices any power to issue debentures in the place of any debentures paid off, or otherwise satisfied or extinguished, reserved to a company by its debentures, or the securities for the same. R.S., c. 81, s. 113.

**Order for specific performance**

**131** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance. R.S., c. 81, s. 114.

## INSPECTION AND AUDIT

**Inspectors appointed by Governor in Council**

**132 (1)** The Governor in Council may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Governor in Council directs

(a) in the case of any company having a share capital, on the application of members holding not fewer than one tenth of the shares issued; or

(b) in the case of any company not having a share capital, on the application of not fewer than one fifth in number of the persons on the company's register of members.

**(2)** An application must be supported by such evidence as the Governor in Council requires for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring the investigation, and the Governor in Council may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

**(3)** It is the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

**(4)** An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

**(5)** Where any officer or agent refuses to produce any book or document that under this Section it is the officer's or agent's duty to produce, or to answer any question relating to the affairs of the company, the officer or agent is liable to a penalty not exceeding $25 in respect of each offence.

**(6)** On the conclusion of the investigation

(a) the inspectors shall report their opinion to the Governor in Council;

(b) a copy of the report must be forwarded by the Governor in Council to the registered office of the company;

(c) a copy must, at the request of the applicants for the investigation, be delivered to them; and

(d) the report must be written or printed, as the Governor in Council directs.

**(7)** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, is admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

**(8)** All expenses of and incidental to the investigation must be paid by the applicants, unless the Governor in Council directs the same to be paid by the company, which the Governor in Council is authorized to do. R.S., c. 81, s. 115.

**Inspectors appointed by company**

**133 (1)** A company may by special resolution appoint inspectors to investigate its affairs.

**(2)** Inspectors so appointed have the same powers and duties as inspectors appointed by the Governor in Council, except that, instead of reporting to the Governor in Council, they shall report in such manner and to such persons as the company in general meeting may direct.

**(3)** Officers and agents of the company shall incur the same penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Governor in Council. R.S., c. 81, s. 116.

## AUDITORS

**Appointment, removal, remuneration and rights of auditor**

**134 (1)** Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office until the next annual general meeting.

**(2)** Where an appointment of an auditor is not made at an annual meeting, the directors of the company shall appoint an auditor of the company to hold office until the next annual general meeting.

**(3)** The first auditor or auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting.

**(4)** The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

**(5)** The remuneration of the auditor or auditors of a company must be fixed by the company in general meeting, or by the directors pursuant to an authorization given by the shareholders at the annual meeting, except that the remuneration of an auditor appointed before the first annual general meeting or of an auditor appointed to fill a casual vacancy may be fixed by the directors, and that the remuneration of an auditor appointed by the Governor in Council may be fixed by the Governor in Council.

**(6)** The members may, except where the auditor has been appointed by order of the court pursuant to subsection (9), by resolution passed by a majority of the votes cast at a special meeting duly called for the purpose, remove an auditor before the expiration of the auditor's term of office and shall, by a majority of the votes cast at that meeting, appoint another auditor in the auditor's stead for the remainder of the term.

**(7)** Before calling a special meeting for the purpose specified in subsection (6) or an annual general or special meeting where the directors are not recommending the reappointment of the incumbent auditor, the company shall, 15 days or more before the mailing of the notice of the meeting, give to the auditor

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to members in connection with the meeting.

**(8)** An auditor has the right to make to the company, three days or more before the mailing of the notice of the meeting, representations in writing concerning

(a) the auditor's proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) the auditor's resignation as auditor,

and the company, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

**(9)** Where a company does not have an auditor, the court may, upon the application of a member or the Registrar, appoint and fix the remuneration of an auditor to hold office until an auditor is appointed by the members.

**(10)** The company shall give notice in writing to an auditor of the auditor's appointment forthwith after the appointment is made.

**(11)** A resignation of an auditor becomes effective at the time the written resignation is sent to the company or at the time specified in the resignation, whichever is later. R.S., c. 81, s. 117; 1990, c. 15, s. 12.

**Exemption from Sections 134 and 136 to 138**

**135** In respect of a financial year of a company, the company is exempt from the requirements of Section 134 and 136 to 138 regarding the appointment and duties of an auditor if

(a) the company is not a reporting issuer or a reporting company; and

(b) all of the members consent thereto in respect of that year. 1990, c. 15, s. 13.

**Rights of auditor**

**136 (1)** The auditor of a company is entitled to receive notice of every meeting of members and, at the expense of the company, to attend and be heard at the meeting on matters relating to the auditor's duties as an auditor.

**(2)** Where any director or member of a company, whether or not the member is entitled to vote at the meeting, gives written notice not fewer than five days before a meeting of the company to the auditor or former auditor of the company, the auditor or former auditor shall attend the meeting at the expense of the company and answer questions relating to the auditor or former auditor's duties as auditor.

**(3)** A director or member who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the company.

**(4)** No person may accept appointment or consent to be auditor of a company if that person is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until that person has requested and received from that auditor a written set of circumstances and the reasons why, in that auditor's opinion, the auditor is to be replaced.

**(5)** Notwithstanding subsection (4), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a company if, within 15 days after making the request referred to in that subsection, the person does not receive a reply.

**(6)** Any interested person may apply to the court for an order declaring an auditor to be disqualified and the office of auditor to be vacant if the auditor has not complied with subsection (4), unless subsection (5) applies with respect to the appointment of the auditor.

**(7)** Any oral or written statement or report made pursuant to this Act by the auditor or former auditor of a company has qualified privilege. 1990, c. 15, s. 13.

**Disqualification of auditor**

**137 (1)** Subject to subsection (5), a person is disqualified from being an auditor of a company if that person is not independent of the company, all of its affiliates, or of the directors or officers of the company and its affiliates.

**(2)** For the purpose of this Section,

(a) independence is a question of fact; and

(b) a person is deemed not to be independent if the person or the person's business partner

(i) is a business partner, director, officer or employee of the company or any of its affiliates, or a business partner of any director, officer or employee of the company or any of its affiliates,

(ii) beneficially owns, directly or indirectly, or exercises control or direction over a material interest in the shares of or debt owing by the company or any of its affiliates, or

(iii) has been a receiver, receiver and manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within two years of the person's proposed appointment as auditor of the company.

**(3)** An auditor who becomes disqualified pursuant to this Section shall, subject to subsection (5), resign forthwith upon becoming aware of the disqualification.

**(4)** An interested person may apply to the court for an order declaring an auditor to be disqualified pursuant to this Section and the office of auditor to be vacant.

**(5)** An interested person may apply to the court for an order exempting an auditor from disqualification pursuant to this Section and the court may, where it is satisfied that an exemption would not unfairly prejudice the members, make an exemption order on such terms as it thinks fit, which order may have retrospective effect. 1990, c. 15, s. 13.

**Examination of financial statements**

**138 (1)** An auditor of a company shall make such examination of the financial statements required by this Act to be placed before members in a general meeting as is necessary for the auditor to report.

**(2)** The audit required by this Act and the report of the auditor referred to in this Act must be conducted and prepared in accordance with the standards and report that are recommended from time to time in the CPA Canada Handbook.

**(3)** Where a company has registered any of its securities under the United States Securities Act of 1933, the report of the auditor referred to in subsection (2) may be prepared in accordance with generally accepted auditing standards

as established by the Public Company Accounting Oversight Board of the United States or its successor.

**(4)** A director or officer of a company shall forthwith notify all directors and the auditor or former auditor of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or former auditor has reported upon if the error or misstatement in all circumstances appears to be significant.

**(5)** Where the auditor or former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which the auditor or former auditor has reported, and where in the auditor or former auditor's opinion the error or misstatement is material, the auditor or former auditor shall inform each director accordingly.

**(6)** Where, pursuant to subsection (5), the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors shall, within a reasonable time,

(a) prepare and issue revised financial statements; or

(b) otherwise inform the members and any debenture holder of the company who has demanded or been furnished with the financial statements that contain the error or misstatement.

**(7)** Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish such

(a) information and explanations; and

(b) access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required pursuant to this Section and that the directors, officers, employees and agents are reasonably able to furnish.

**(8)** Upon the demand of the auditor of a company, the directors of a company shall

(a) obtain from the present or former directors, officers, employees and agents of any subsidiary of the company the information and explanations that the present or former directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required pursuant to this Section; and

(b) furnish the information and explanations so obtained to the auditor.

**(9)** Any oral or written communication pursuant to this Section between the auditor or former auditor of a company and its present or former directors, officers, employees or agents or those of any subsidiary of the company has qualified privilege.

**(10)** The auditor of a company is entitled to attend, at the expense of the company, and be heard at meetings of the board of directors of the company

on matters relating to the auditor's duties as auditor. 1990, c. 15, s. 13; 2007, c. 34, s. 36; 2015, c. 30, s. 144.

**Books of account**

**139** Every company shall keep at its registered office or at such other place as the directors may direct, proper books of account with respect to

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company. R.S., c. 81, s. 120.

FINANCIAL STATEMENTS

**Information for annual general meeting**

**140 (1)** The directors of every company shall place before the company at each annual general meeting

(a) in the case of a company that is not a reporting issuer, financial statements for the period that began on the date of incorporation of the company and ended not more than six months before the general meeting or, where the company has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the general meeting;

(b) in the case of a company that is a reporting issuer, the comparative financial statements required to be filed pursuant to the *Securities Act* and the regulations thereunder relating separately to

(i) the period that began on the date of incorporation of the company and ended not more than six months before the general meeting or, where the company has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the general meeting, and

(ii) the period covered by the financial year of a company next preceding the last financial year, if any;

(c) the report of the auditor, if any, to the members;

(d) in the case of a company that is a reporting issuer, the report of the directors; and

(e) any further information respecting the financial position of the company and the results of its operations required by the articles of the company.

**(2)** The financial statements and the report of the auditor, if any, thereon that are placed before a general meeting must be open for inspection by the members entitled to be present.

**(3)** The directors of every company shall, not fewer than seven days, or such greater length of time provided for in the articles, before the date of a general meeting or before the signing of a resolution pursuant to Section 112 in lieu

thereof, send to all members who hold voting securities of the company and all other members who are entitled to receive notice of a general meeting of the company, in the manner in which notices are required to be served by the articles of the company, the financial statements required to be placed before the general meeting and the report of the auditor, if any, thereon.

**(4)** The directors of every reporting issuer shall send to each member who holds voting securities of the reporting issuer every interim financial statement or report that the reporting issuer is required to file pursuant to the *Securities Act* and its regulations or the rules of the Commission made pursuant to that Act, concurrently with the filing thereof.

**(5)** Notwithstanding subsections (3) and (4), a company is not required to send financial statements to any person who has given notice to the company that that person does not wish to receive the financial statements and report of the auditor, if any, thereon to which that person would otherwise be entitled, but any such person may revoke such notice on seven days prior written notice given to the company.

**(6)** Any member of a company who does not hold voting securities and any holder of debentures of a company is entitled to be furnished, on demand and without charge, with the latest

(a) financial statements required to be sent to the holders of its voting securities pursuant to subsection (3), together with the report of the auditors, if any, thereon; and

(b) financial statements required to be sent to the holders of its voting securities pursuant to subsection (4). 1990, c. 15, s. 14.

**Content and approval of financial statements**

**141 (1)** The financial statements required to be placed before the annual meeting of the company must include those prescribed by the regulations prepared for or as at the end of the applicable period and, where a recommendation has been made in the CPA Canada Handbook that is applicable in the circumstances, in accordance with the principles so recommended and the provisions of this Act and the regulations.

**(2)** Where a company has registered any of its securities under the United States Securities Act of 1933, the financial statements referred to in subsection (1) may be prepared in accordance with generally accepted accounting practices as established by the Financial Accounting Standards Board of the United States or its successor.

**(3)** The financial statements of a company must be approved by the directors and the approval must be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign or by the director if there is only one, and the report of the auditor thereon, unless the company is exempt pursuant to Section 135, must be attached to or accompany the financial statements and, where so exempt, a statement to that effect must be attached to or accompany the financial statements.

**(4)** A company may not issue, publish or circulate copies of the financial statements referred to in Section 140 unless the financial statements are

(a) approved and signed in accordance with subsection (3); and

(b) accompanied by the report of the auditor thereon unless the company is exempt pursuant to Section 135, in which event a statement to that effect must accompany the financial statements. 1990, c. 15, s. 14; 2007, c. 34, s. 37; 2015, c. 30, s. 145.

EXEMPTIONS

**Order of Commission**

**142** The Commission may, upon its own motion or upon the application of a reporting issuer, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose

(a) permitting the omission from the financial statements required to be sent or furnished to members or holders of debentures of a reporting issuer or to be placed before a general meeting of a reporting issuer of

(i) comparative financial statements for particular periods of time,

(ii) sales or gross operating revenue if the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the company, or

(iii) basic earnings per share or fully diluted earnings per share; or

(b) exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of this Act contained in Sections 96 to 101, 134 to 138, 140 or 141 or contained in regulations referred to in those Sections if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. 1990, c. 15, s. 14; 2022, c. 8, s. 3.

**Order of Registrar**

**143** The Registrar may, upon the Registrar's own motion or upon the application of a company that is not a reporting issuer, where in the Registrar's opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Registrar may impose

(a) permitting the omission from the financial statements required to be sent or furnished to members or holders of debentures of the company or to be placed before a general meeting of a company of sales or gross operating revenue if the Registrar is satisfied that the disclosure of such information would be unduly detrimental to the interests of the company, or basic earnings per share or fully diluted earnings per share; or

(b) exempting, in whole or in part, any company that is not a reporting issuer or class of companies that are not reporting issuers from a requirement of this Act contained in Sections 96 to 101, 134 to 138, 140 or 141 or contained in regulations referred to in those Sections. 1990, c. 15, s. 14; 2022, c. 8, s. 4.

ARBITRATIONS

**Arbitration Act**

**144 (1)** Any company under this Act may, by writing under its common seal, agree to refer and may refer to arbitration in accordance with the *Arbitration Act*, any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person, and any company party to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

**(2)** All the provisions of the *Arbitration Act* apply to arbitrations between any company and any person or between one company and another. R.S., c. 81, s. 129.

COMPROMISES AND ARRANGEMENTS

**Meeting of creditors or members**

**145 (1)** Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up under the *Companies Winding Up Act*, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

**(2)** Where a majority in number representing three fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement is, where sanctioned by the court, binding on all the creditors or class of creditors, or on the members or class of members, as the case may be, and also on the company, or in the case of a company in the course of being wound up under the *Companies Winding Up Act*, on the liquidator, members and contributories of the company.

**(3)** An order made under subsection (2) has no effect until a certified copy of the order has been delivered to the Registrar for registration, and a copy of every such order must be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company. R.S., c. 81, s. 130.

**Reconstruction or amalgamation**

**146 (1)** Where an application is made to the court under Section 145 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that Section, and it is shown to the court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the

scheme, in this Section referred to as "a transferor company", is to be transferred to another company, in this Section referred to as "the transferee company", the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company that under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner as the court direct, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

**(2)** Where an order under this Section provides for the transfer of property or liabilities, that property must, by virtue of the order, be transferred to and vest in, and those liabilities must, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, where the order so directs, freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

**(3)** Where an order is made under this Section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and, where default is made in complying with this subsection, the company and every officer of the company who is in default is liable to a penalty of $10 for every day during which such default continues. R.S., c. 81, s. 131.

**Share transfers to other companies**

**147 (1)** Where a scheme or contract involving the transfer of shares or any class of shares in a company, in this Section referred to as "the transferor company", to another company, whether a company within the meaning of this Act or not, in this Section referred to as "the transferee company", has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares affected, the transferee company may, at any time within four months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire the shares of such dissenting shareholder.

**(2)** Where notice under subsection (1) is given, the transferee company is, unless on an application made by the dissenting shareholder within one

month from the date on which the notice was given the court thinks fit to order otherwise, entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

**(3)** Where a notice has been given by the transferee company under this Section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, where an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares by virtue of this Section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

**(4)** Any sums received by the transferor company under this Section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by that company on trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received.

**(5)** Concurrently with sending the notice referred to in subsection (1) to any dissenting shareholder, the transferee company shall send or deliver to the transferor company a copy of the transferee company's notice, which constitutes a demand under subsection 88(1) of the *Securities Transfer Act* that the transferee company not register a transfer with respect to each share held by a dissenting shareholder. 2010, c. 8, s. 113.

**Certificate of continuance**

**148 (1)** Any body corporate, incorporated under the laws of any jurisdiction other than the Province for any of the purposes or objects for which a certificate of incorporation may be issued under this Act and being at the time of the application a subsisting and valid body corporate, may apply for a certificate of continuance under this Act as a company limited by shares or, where approved by all of the members of the body corporate, whether or not the shares held by them otherwise carry the right to vote, as an unlimited company, and the Registrar, upon receiving satisfactory evidence that the body corporate applying is a subsisting and valid body corporate and that no public interest in the Province will be prejudiced, may issue a certificate of continuance continuing the body corporate as a company limited by shares or an unlimited company under this Act and thereupon the body corporate is continued and is a body corporate and politic organized under the laws of the Province.

**(2)** Before issuing a certificate of continuance in accordance with subsection (1) to a body corporate applying to be continued under this Act as an unlimited company, the Registrar must be satisfied that all persons who will be members of the company at the time of or immediately after continuance have consented to the continuance of the body corporate as an unlimited company and, for that purpose, the Registrar may rely on a certificate of an officer of the company attesting to the approval.

**(3)** It is not necessary in any application or in any such certificate of continuance to set out the names of the shareholders.

**(4)** After the issue of such certificate of continuance, the company is governed in all respects by this Act and has all the ancillary and other powers given to a company incorporated under this Act and any provision of this Act that applies only to companies incorporated or registered after a certain date applies to the company as if the company had been incorporated or registered on the date of continuance.

**(5)** From and after the continuance,

(a) without prejudice to the power of the company to vary or amend the same, the constating documents and the bylaws of the body corporate, respectively, constitute the memorandum and articles of association of the company;

(b) without prejudice to the power of the company to vary or amend the same and subject to Sections 33 to 35, the share capital of the company is the existing share capital and, unless the company is continued as an unlimited company, the liability of the shareholders continues to be limited;

(c) the property of the body corporate continues to be the property of the company subject to the power of the company thereafter to dispose of the same;

(d) the company continues to be liable for its obligations;

(e) all rights of creditors and others against the property, rights and assets of the company and all liens upon its property, rights and assets are unimpaired;

(f) none of the company's rights or properties, and none of the company's contracts or obligations are prejudicially affected nor is the company deemed to have been liquidated or dissolved;

(g) any existing cause of action, claim or liability to prosecution in any jurisdiction is unaffected;

(h) a civil, criminal or administrative action or proceeding pending by or against the company or its directors or officers in any jurisdiction may be continued to be prosecuted by or against the company or its directors or officers;

(i) a conviction against, or ruling, or order or judgment in favour of or against, the company or its directors or officers continues to be enforceable by or against the company or its directors or officers;

(j) the directors and officers of the company continue to be the directors and officers of the company until they or their successors are duly chosen, elected or appointed, as the case may be;

(k) the rights of creditors and members of the company are not adversely affected;

(l) all rights of the shareholders or members acquired, accrued, accruing or incurred on or before the continuance continue in full force and effect without any change; and

(m) notwithstanding any other provision of this Act, in the case of a body corporate incorporated or continued under the *Canada Business Corporations Act*, the provisions in the Schedule are applicable to such body corporate and any continuation thereof by amalgamation with respect to any matter arising either before or after the continuance.

**(6)** A company may, where it is authorized by special resolution, and where it establishes to the satisfaction of the Registrar that its proposed continuance in another jurisdiction will not adversely affect creditors or members of the company, apply to the appropriate official or public body of another jurisdiction requesting that the company be continued as if it had been incorporated under the laws of that other jurisdiction.

**(7)** A company may not be continued as a body corporate under the laws of another jurisdiction unless those laws provide, in effect, that

(a) the property of the company continues to be the property of the continued body corporate;

(b) the continued body corporate continues to be liable for the obligations of the company;

(c) an existing cause of action, claim or liability to prosecution is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the company may be continued to be prosecuted by or against the continued body corporate;

(e) a conviction against or ruling, order or judgment in favour of or against the company may be enforced by or against the continued body corporate;

(f) the rights of the creditors are not adversely affected; and

(g) all rights of the shareholders continue in full effect without any adverse change.

**(8)** Upon receipt of notice satisfactory to the Registrar that a company has been continued under the laws of another jurisdiction, the Registrar shall file the notice and issue a certificate of discontinuance.

**(9)** This Act ceases to apply to a company on the date shown on the certificate of discontinuance. R.S., c. 81, s. 133; 2007, c. 34, s. 38.

**Amalgamation**

**149 (1)** Any two or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

**(2)** The companies proposing to amalgamate may enter into an amalgamation agreement, which must prescribe the terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect.

**(3)** The amalgamation agreement must further set out

(a) the name of the amalgamated company;

(b) the maximum number, if any limit is to be provided, of shares of each class without nominal or par value, and the amount of shares of each class of shares having a nominal or par value, that the amalgamated company is authorized to issue;

(c) the restrictions, if any, on the objects and powers of the amalgamated company;

(d) the names and addresses of the first directors of the amalgamated company;

(e) the manner by which subsequent directors are to be elected;

(f) subject to subsections 152(2) and (3), the manner of converting shares of each class and series of shares of the amalgamating companies into shares of each class and series or into other securities of the amalgamated company and the manner of allocating the paid-up capital of each class or series of shares of each amalgamating company to the classes and series of shares of the amalgamated company;

(g) where any shares of the amalgamating companies will not be converted into securities of the amalgamated company and will not be cancelled, the amount of money or securities of another body corporate or other property that the holders of the shares are to receive in addition to or instead of securities of the amalgamating companies; and

(h) such other details as may be desirable to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company, including, if the amalgamating companies consider such necessary, a statement of the time or date on which the amalgamating companies desire the amalgamation to be effective.

**(4)** Except in the case of amalgamations referred to in subsections 152(2) and (3), the amalgamation agreement must be submitted to the shareholders of each of the amalgamating companies at general meetings called for the purpose of considering the agreement and, where approved by special resolution of each of the amalgamating companies, the amalgamation agreement is deemed to have been adopted by each of the amalgamating companies.

**(5)** Where the amalgamation agreement is deemed to have been adopted, the amalgamating companies may apply to the court for an order approving the amalgamation.

**(6)** Unless the court otherwise directs, each amalgamating company shall notify each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.

**(7)** Unless the court otherwise directs, notice of the time and place of the application for the approving order must be given to the creditors of an amalgamating company in such manner as the court may direct.

**(8)** Upon the application, the court shall hear and determine the matter and may approve the amalgamation agreement as presented or may approve it subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of all parties, including the dissentient shareholders and creditors.

**(9)** The amalgamation agreement, the special resolution or directors' resolution of each of the amalgamating companies approving the amalgamation agreement and the approving order may be filed with the Registrar, together with proof of compliance with any terms and conditions that may have been imposed by the court in the approving order.

**(10)** On receipt of the amalgamation agreement, the approving order, the special resolutions or the directors' resolutions and such other documents as may be required pursuant to subsection (9), the Registrar shall issue a certificate of amalgamation under the Registrar's seal of office and certifying that the amalgamating companies have amalgamated.

**(11)** An amalgamation may be effected under this Section without court approval, in which case

(a) subsections (6) to (8) do not apply; and

(b) subsections (9) and (10) apply, but in lieu of filing an approving order, the amalgamating companies shall each file with the Registrar a statutory declaration of a director or officer of that company that complies with subsection (12) and, where the amalgamated company will be an unlimited company, a further statutory declaration of an officer or director of each of the amalgamating companies stating that all members of each of the amalgamating companies have approved the amalgamation agreement.

**(12)** The statutory declaration referred to in subsection (11) must establish to the satisfaction of the Registrar that

(a) there are reasonable grounds for believing that

(i) each amalgamating company is and the amalgamated company will be able to pay its liabilities as they become due, and

(ii) the realizable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and paid-up capital of all classes; and

(b) there are reasonable grounds for believing that

(i) no creditor will be prejudiced by amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating companies and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

**(13)** This Section and Sections 150 to 152 apply to any company that is incorporated by or under the authority of an Act of the Legislature.

**(14)** The provisions of Section 17 apply to all companies proposing to amalgamate. R.S., c. 81, s. 134; 2007, c. 34, s. 39.

**Powers, duties and status of amalgamated company**

**150 (1)** On and from the date of the certificate of amalgamation and, where the amalgamation agreement specifies a time, the time so specified, the amalgamating companies are amalgamated and are continued as one company, hereinafter called the "amalgamated company", under the name and having the authorized capital and restrictions, if any, on its objects and powers specified in the amalgamation agreement.

**(2)** The amalgamated company thereafter possesses all the property, rights, privileges and franchises, and is subject to all the liabilities, contracts and debts of each of the amalgamating companies, and all the provisions of the amalgamation agreement respecting the name of the amalgamated company, the authorized capital, limitations on liability of its members and restrictions, if any, on its objects and powers and other provisions stated therein to become part of the memorandum, are deemed to constitute the memorandum of the amalgamated company.

**(3)** A company amalgamated on a particular date is, for the purpose of applying the other provisions of this Act, deemed to be a company incorporated on that date.

**(4)** An amalgamated company is, for the purposes of the other provisions of this Act, deemed to be a company incorporated under this Act within the meaning of "company" as defined in subsection 2(1) so far as the nature of an amalgamated company will permit. R.S., c. 81, s. 134; 2007, c. 34, s. 39.

**Articles of amalgamated company**

**151 (1)** Where the amalgamation agreement does not provide for the adoption of the articles of one of the amalgamating companies or for the adoption of new articles as articles of association for the amalgamated company, the shareholders of the amalgamated company may, by special resolution, adopt and agree upon articles of association for the amalgamated company.

**(2)** Where new articles of association are adopted for the amalgamated company, the articles may be filed with the Registrar at the same time as the amalgamation agreement or subsequently if the articles are certified

(a) by an officer or director of each amalgamating company, if the articles were adopted and agreed upon as a provision of the amalgamation agreement; or

(b) by an officer or director of the amalgamated company, if the articles were adopted and agreed upon by the shareholders of the amalgamated company.

**(3)** In the case of an amalgamated company limited by shares, where articles of an amalgamated company are not adopted by the amalgamation agreement as the articles of the amalgamated company, and new articles are not filed with the Registrar pursuant to subsection (2), the articles contained in the regu-

lations made pursuant to this Act respecting the management of a company limited by shares apply as the articles of the amalgamated company.

**(4)** Notwithstanding that articles have been adopted by the amalgamation agreement or filed as articles of the amalgamated company, the articles contained in the regulations made pursuant to this Act respecting the management of a company limited by shares, in so far as the articles of the amalgamated company do not exclude or modify, apply to a company limited by shares in the same manner and to the same extent as if these articles were contained in the articles adopted and agreed upon for the amalgamated company. R.S., c. 81, s. 134; 2007, c. 34, s. 39; 2008, c. 4, s. 5; 2019, c. 27, s. 15.

**Amalgamation of holding and subsidiary companies**

**152 (1)** For the purpose of this Section and Sections 149 and 150, a company is deemed to be another's holding company if, but only if, that other is its subsidiary.

**(2)** A holding company and one or more of its subsidiary companies may amalgamate without complying with the requirements of this Section and Sections 149 to 151 in respect of shareholder approval if

(a) the amalgamation agreement is approved by a resolution of the directors of each amalgamating company;

(b) all of the issued shares of each amalgamating subsidiary company are held by one or more of the other amalgamating companies;

(c) the amalgamation agreement provides that

(i) the shares of each amalgamating subsidiary company are cancelled without any repayment of capital,

(ii) the memorandum and articles of the amalgamated company are the same as the memorandum and articles of the amalgamating holding company, unless the agreement identifies the memorandum and articles of a particular amalgamating subsidiary company as the memorandum and articles of the amalgamated company, and

(iii) no securities may be issued by the amalgamated company in connection with the amalgamation and the paid-up capital of the shares of each class and series of shares of the amalgamated company are the same as the paid-up capital of each class and series of shares of the amalgamating holding company; and

(d) the liability of the members of the amalgamated company is limited.

**(3)** Two or more wholly-owned subsidiary companies of the same holding company may amalgamate and continue as one company without complying with the requirements of this Section and Sections 149 to 151 in respect of shareholder approval if

(a) the amalgamation agreement is approved by a resolution of the directors of each amalgamating company;

(b) the amalgamation agreement provides that

(i) the shares of all but one of the amalgamating subsidiary companies are cancelled without repayment of capital, and the amalgamating subsidiary company whose shares are not cancelled is identified in the agreement,

(ii) the memorandum and articles of the amalgamated company are the same as the memorandum and articles of the amalgamating subsidiary company whose shares are not cancelled, unless the agreement identifies the memorandum and articles of a particular amalgamating subsidiary company as the memorandum and articles of the amalgamated company, and

(iii) the capital of the amalgamating subsidiary companies whose shares are cancelled are added to the capital of the amalgamating subsidiary company whose shares are not cancelled; and

(c) the liability of the members of the amalgamated company is limited. R.S., c. 81, s. 134; 2007, c. 34, s. 39.

## LIABILITY OF MEMBERS

**Limits of liability**

**153** In the event of a company being wound up, every present and past member is, subject to this Section, liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up and for the adjustments of the rights of the contributories among themselves, with the following qualifications:

(a) a past member is not liable to contribute if the past member has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after the past member ceased to be a member;

(c) a past member is not liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount, if any, unpaid on the shares in respect of which the member is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by the member to the assets of the company in the event of its being wound up;

(f) in the case of an unlimited company, no contribution exceeding the amount, if any, unpaid on the shares in respect of which the member is liable as a past member, is required from a past member who was not a member of the company at any time on or after the time the company became unlimited;

(g) nothing in this Act invalidates any provision contained in any contract whereby the liability of the individual members of the contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract; and

(h) a sum due to any member of a company, in the member's capacity as a member, by way of dividends, profits or otherwise, is not deemed to be a debt of the company, payable to that member in a case of competition between the member and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. R.S., c. 81, s. 135; 2007, c. 34, s. 40.

SHAREHOLDER RIGHTS

**Application of Schedule**

**154** The Schedule, except Sections 1, 11 and 13, applies to a company incorporated pursuant to this Act, whether incorporated before, on or after July 15, 1991. 1990, c. 15, s. 17.

PART V

REMOVAL OF DEFUNCT COMPANIES FROM REGISTER

**Removal by Registrar from register**

**155 (1)** Where the Registrar believes that a company is not carrying on business or in operation, the Registrar may send to the company a letter inquiring whether the company is carrying on business or in operation, and stating that if an answer to the letter is not received within one month from the date thereof, a notice will be published in the Royal Gazette with a view of striking the name of the company off the register.

**(2)** Where the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the letter receive an answer thereto, the Registrar may within four weeks after the expiration of the month publish in the Royal Gazette and send to the company by post, a notice referring to the letter, and stating either that an answer thereto has been received from the company to the effect that it is not carrying on business or in operation, or that no answer thereto has been received by the Registrar, as the case may be, and that at the expiration of one month from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

**(3)** At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown to the Registrar's satisfaction by such company, strike the name of such company off the register, and shall publish notice thereof in the Royal Gazette and on the publication in the Royal Gazette of such last mentioned notice the company whose name is so struck off is dissolved, but the liability, if any, of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved.

**(4)** Any person aggrieved by the name of a company being struck off the register pursuant to this Section or dissolved pursuant to Section 156 may apply to the Registrar for restoration of the name of the company to the register, and the Registrar, where satisfied that the company was, at the time of the striking off, carrying on business or in operation, and that it is reasonable to do so, shall restore the name of the company on the register, and the company is deemed to have continued in existence as if the name of the company had never been struck off or dissolved.

**(5)** Before submitting an application under subsection (4), the applicant shall provide notice of the application to the company and to the Attorney General.

**(6)** Where a restoration is made under subsection (4), the restoration does not affect the title of a person who, before the restoration is made, acquires from the Crown in right of the Province property formerly of that company that vested in the Crown pursuant to the *Corporations Miscellaneous Provisions Act*.

**(7)** Any person aggrieved by a decision of the Registrar pursuant to subsection (4) may apply to the court for a review of the Registrar's decision within 30 days of the date of the decision.

**(8)** A letter or notice authorized or required for the purpose of this Section to be sent to a company may be sent by post, addressed to the company at its registered office or, where no office has been registered, addressed to the company to the care of some director or officer of the company or, where there is no director or officer of the company whose name and address are known to the Registrar, a letter or notice in identical form may be addressed to the company, to the care of each of the persons who subscribed the memorandum of association, addressed to the person at the address mentioned in the memorandum.

**(9)** The Registrar may strike off the register of companies the name of any company

(a) deemed to be dissolved under subsection 76(2) of the *Companies Winding Up Act*;

(b) against whom a final order winding up the company has been made either under the *Winding-up and Restructuring Act* (Canada) or the *Companies Winding Up Act*; or

(c) that pursuant to Sections 149 to 152 was an amalgamating company and was amalgamated with one or more other companies. R.S., c. 81, s. 136; 1990, c. 15, s. 18; 1999, c. 4, s. 2; 2007, c. 34, s. 41.

**Surrender of certificate of incorporation**

**156 (1)** The certificate of incorporation of a company and certificate of change of name, when applicable, may be surrendered and the name of the company struck off the companies register if the company proves to the satisfaction of the Registrar that

(a) it has no assets and that any assets owned by it immediately prior to the application for leave to surrender its certificate of incorporation have been divided rateably amongst its shareholders or members;

(b) either

(i) it has no debts, liabilities or other obligations, or

(ii) the debts, liabilities or other obligations of the company have been duly provided for or protected, or that the creditors of the company or other persons having interests in such debts, liabilities or other obligations consent; and

(c) the company has given notice of the application for leave to surrender by publishing the same once in the Royal Gazette and once in a newspaper published at or as near as may be to the place where the company has its registered office not earlier than two months and not later than two weeks before the date of the application.

**(2)** Where the certificate of incorporation or the certificate of change of name, or both, cannot be found, an affidavit must be filed with the Registrar stating that a diligent search has been made and that the certificate or certificates cannot be found.

**(3)** The Registrar, upon due compliance with this Section, may accept a surrender of the certificate of incorporation of the company and direct its cancellation and fix a date upon and from which the company is dissolved and the company is thereby and thereupon dissolved accordingly and its name struck from the register.

**(4)** Notwithstanding the dissolution of a company under this Section, the shareholders of the company among whom its assets have been divided remain, to the amount received by them respectively upon such division, jointly and severally liable to the creditors of the company and an action may be brought in any court of competent jurisdiction to enforce such liability, but such action must be commenced within and not after one year from the date of such dissolution of the company. R.S., c. 81, s. 137.

## PART VI

## APPLICATION OF ACT TO EXISTING COMPANIES

**Incorporation under different Acts**

**157 (1)** This Act applies to every existing company registered under Chapter 128 of the Revised Statutes, 1900, Chapter 19 of the Acts of 1921 or Chapter 174 of the Revised Statutes, 1923, in the same manner as if such company had been formed and registered under this Act.

**(2)** Reference in this Act, expressed or implied, to the date of registration is to be construed as a reference to the date at which the company was registered under said Chapter 128, 19 or 174. R.S., c. 81, s. 138.

## PART VII

## COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT

**Registration through petition**

**158** Any company at any time incorporated by a special Act of the Legislature, or by letters patent issued under Chapter 79 of the Revised Statutes, Fifth Series, may apply by petition to the Governor in Council for a certificate of registration as a company limited by shares under this Act. R.S., c. 81, s. 139.

**Resolution authorizing petition**

**159** Before such petition is presented, a resolution authorizing the same must be passed at a meeting regularly called for such purpose by a majority of members present or represented by proxy, where proxies are allowed by the regulations or bylaws of the company, at a meeting at which not fewer than three fourths of the members of the company are present in person or by proxy, where proxies are allowed by the regulations or bylaws of the company. R.S., c. 81, s. 140.

**Additional requests by petition**

**160** Such resolution may also authorize the embodying in the petition of a prayer that the Governor in Council will by such certificate

(a) extend the powers of the company and the purposes for which the same was incorporated;

(b) increase the amount of the share capital of the company; or

(c) modify the constitution of the company in respect of any other matter or thing in respect of which provision might be made on an original application for incorporation under this Act. R.S., c. 81, s. 141.

**Documents to accompany petition**

**161** The petition must be accompanied by the following documents, verified by a statutory declaration by the president, secretary or other officer of the company:

(a) a copy of the statute, or letters patent, or other instrument under which the company was incorporated, or a reference thereto if the Registrar considers the same sufficient;

(b) a statement showing the nominal capital of the company, the number of shares into which it is divided, the number of shares taken and the amount paid on each share;

(c) a list showing the names and addresses of all persons who on a day named in such list, and not being more than six clear days before the date of application, were members of the company, with the addition of the shares held by such persons respectively, distinguishing in cases in which shares are numbered each share by its number;

(d) the amount of any bonds or debentures issued by the company, the number of such bonds or debentures and the amount of each one of the same; and

(e) the name of the company with the addition of the word "Incorporated", "Incorporée", "Limited" or "Limitée" as the last word thereof. R.S., c. 81, s. 142; 2019, c. 27, s. 16.

**Directions to register**

**162** Upon receipt of the petition and other documents and payments of the prescribed fees, the Governor in Council may direct the Registrar to issue to the company a certificate of registration stating that the company is registered under this Part, and setting forth any extension of powers or increase of capital or other provision that the Governor in Council may allow or authorize in pursuance of Section 160. R.S., c. 81, s. 143.

**Certificate as evidence**

**163** A certificate of registration given at any time to any company registered in pursuance of this Part is conclusive evidence that all the requirements herein contained in respect of registration under this Act have been complied with and the company is registered under this Act as a limited company, with such extension of powers, increase of capital or other modification of its constitution as therein stated, and the date of registration mentioned in the certificate is deemed to be the date at which the company is registered under this Act. R.S., c. 81, s. 144.

**Property vesting in company**

**164** All such property, real and personal, including all interests and rights in, to and out of property, real and personal, and including obligations and things in action, as belong to or are vested in the company at the date of its registration under this Act, on registration vest in the company as registered under this Act for all the estate and interest of the company therein. R.S., c. 81, s. 145.

**Effect on company liabilities**

**165** The registration in pursuance of this Part of any company does not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred or any contract entered into by, to, with or on behalf of such company previously to such registration. R.S., c. 81, s. 146.

**Effect on actions**

**166** All such actions, suits and other legal proceedings as at the time of the registration of any company registered in pursuance of this Part have been commenced by or against such company or any member thereof, may be continued in the same manner as if such registration had not taken place, nevertheless, execution must not issue against the effects of an individual member of such company upon any judgment, decree or order obtained in any action, suit or proceedings so commenced as aforesaid. R.S., c. 81, s. 147.

**Provisions that apply**

**167** When a company is registered in pursuance of this Part,

(a) all provisions contained in any statute, letters patent or other instrument constituting or regulating the company, subject to any provision contained in the certificate of registration issued by the Registrar, are deemed to be conditions and regulations of the company in the same manner

and with the same incidents as if so much as would, if the company has been formed under this Act, have been required to be inserted in the memorandum were contained in a registered memorandum, and the residue thereof were contained in registered articles;

(b) all the provisions of this Act apply to such company and the members, contributories and creditors thereof, in the same manner and in all respects as if it had been formed under this Act, subject to the following provisions:

(i) the regulations made pursuant to this Act respecting the management of a company limited by shares do not apply unless adopted by special resolution,

(ii) the company does not have the power, without the sanction of the Governor in Council, to alter any provision contained in any statute relating to the company,

(iii) the company does not have the power, without the sanction of the Governor in Council, to alter any provision contained in any letters patent relating to the company,

(iv) in the event of the company being wound up every person is liable to contribute in respect of the debts and liabilities of the company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities, and every such contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from the contributory in respect of any such liability, and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the representatives, heirs and devisees of deceased contributories, and with respect to the assignees of insolvent contributories, apply. R.S., c. 81, s. 148; 2019, c. 27, s. 17.

**Alterations not authorized**

**168** Nothing in Section 167 authorizes any company to alter any such provisions contained in any letters patent or other instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum of association and are not authorized to be altered by this Act. R.S., c. 81, s. 149.

## PART VIII

## PENALTIES AND LEGAL PROCEEDINGS

**Summary proceedings**

**169** All offences under this Act made punishable by any penalty may be prosecuted under the *Summary Proceedings Act*. R.S., c. 81, s. 150.

**Penalties applied to costs**

**170** The court imposing any penalty under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information or at whose suit the penalty is recovered, and subject to any such direction, all penalties under this Act must be paid into the General Revenue Fund. R.S., c. 81, s. 151; 2010, c. 2, s. 84.

**Security for costs**

**171** Where a limited company is a plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in the defendant's defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given. R.S., c. 81, s. 152.

**Court discretion**

**172** Where in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably and ought fairly to be excused for the negligence or breach of trust, that court may relieve the director or person, either wholly or partly, from the director's or person's liability on such terms as the court may think proper. R.S., c. 81, s. 153.

**Service of documents**

**173** A document may be served on a company by leaving it at or sending it by post to the registered office of the company. R.S., c. 81, s. 154.

**Authentication of documents**

**174** A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal. R.S., c. 81, s. 155.

**Membership sufficient for action**

**175** In any action or suit brought by a company under this Act against any member to recover any call or other money due from the member in the member's capacity as a member, it is not necessary to set forth the special matter, but it is sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other money due whereby an action or suit has accrued to the company. R.S., c. 81, s. 156.

**Regulations**

**176 (1)** The Governor in Council may make regulations prescribing forms for the purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

**(3)** The forms contained in the Schedule to Chapter 81 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Act.

SCHEDULE

1 In this Schedule, unless the context otherwise requires, the expressions defined in the *Companies Act*, or any statutory modification thereof in force at the date at which this Schedule becomes applicable to a company, have the meanings so defined, and words importing the singular include the plural, and vice versa, and words importing persons include bodies corporate, and "Act" means the *Companies Act* or any amendment thereof.

2 (1) A holder of shares of any class of a company may dissent if the company is subject to an order under clause 3(d) that affects the holder or if the company resolves to

(a) amend its memorandum or articles to add, change or remove any provisions restricting or constraining the issue or transfer of the shares of that class;

(b) amend its memorandum or articles to add, change or remove any restriction upon the business or businesses that the company may carry on;

(c) amalgamate with another company, other than any wholly-owned subsidiary of the company;

(d) be continued under the laws of another jurisdiction under subsection 152(6) of the Act; or

(e) sell, lease or exchange all or substantially all its property other than in the ordinary course of business of the company.

(2) A holder of shares of any class or series of shares entitled to vote separately as a class or series upon any such amendment may dissent if the company resolves to amend its memorandum or articles to

(a) increase or decrease any maximum number of authorized shares of such class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of such class;

(b) effect an exchange, reclassification or cancellation of all or part of the shares of such class;

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of such class and, without limiting the generality of the foregoing,

(i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,

(ii) add, remove or change prejudicially redemption rights,

(iii) reduce or remove a dividend preference or a liquidation preference, or

(iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of the company, or sinking fund provisions;

(d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of such class;

(e) create a new class of shares equal or superior to the shares of such class;

(f) make any class of shares having rights or privileges inferior to the shares of such class equal or superior to the shares of such class;

(g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of such class; or

(h) constrain the issue or transfer of the shares of such class or extend or remove such constraint.

(3) Management's proxy circular or notice of meeting relating to a meeting of shareholders at which a proposal or other resolution with respect to any matter referred to in subsection (1) or (2) is to be raised or voted on must state that a dissenting shareholder is entitled to be paid the fair value of the dissenting shareholder's shares in accordance with this Section, but failure to make that statement does not invalidate the meeting or business thereat.

(4) In addition to any other right a shareholder may have, but subject to subsection (26), a shareholder who complies with this Section is entitled, when the action approved by the resolution from which the shareholder dissents or an order made under clause 3(d) becomes effective, to be paid by the company the fair value of the shares held by the shareholder in respect of which the shareholder dissents, determined as of the close of business on the day before the resolution was adopted or the order was made.

(5) A dissenting shareholder may only claim under this Section with respect to all the shares of a class held by the dissenting shareholder on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

(6) A dissenting shareholder shall send to the company, at or before any meeting of shareholders at which a proposal or other resolution with respect to any matter referred to in subsection (1) or (2) is to be raised or voted on, a written objection to the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting or of the shareholder's right to dissent.

(7) The company shall, within 10 days after the shareholders adopt the resolution, send to each shareholder who has filed the objection referred to in subsection (6) notice that the resolution has been adopted, but such notice is not required to be sent to any shareholder who voted for the resolution or who has withdrawn the shareholder's objection.

(8) A dissenting shareholder shall, within 20 days after the dissenting shareholder receives a notice under subsection (7) or, where the dissenting shareholder does not receive such notice, within 20 days after the dissenting shareholder learns that the resolution has been adopted, send to the company a written notice containing

(a) the dissenting shareholder's name and address;

(b) the number and class of shares in respect of which the dissenting shareholder dissents; and

(c) a demand for payment of the fair value of such shares.

(9) A dissenting shareholder shall, within 30 days after sending a notice under subsection (8), send the certificates representing the shares in respect of which the dissenting shareholder dissents to the company or any securities registrar of the company.

(10) A dissenting shareholder who fails to comply with subsection (9) has no right to make a claim under this Section.

(11) A company or its securities registrar shall endorse on any share certificate received under subsection (9) a notice that the holder is a dissenting shareholder

under this Section and shall forthwith return the share certificates to the dissenting shareholder.

(12) On sending a notice under subsection (8), a dissenting shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of the dissenting shareholder's shares as determined under this Section except if

(a) the dissenting shareholder withdraws the dissenting shareholder's notice before the company makes an offer under subsection (13);

(b) the company fails to make an offer in accordance with subsection (13) and the dissenting shareholder withdraws the dissenting shareholder's notice; or

(c) the resolution to amend the memorandum or articles is revoked, the amalgamation or application for continuance terminated, or the sale, lease or exchange abandoned, as the case may be,

in which case the dissenting shareholder's rights as a shareholder are reinstated as of the date the dissenting shareholder sent the notice referred to in subsection (8).

(13) A company shall, not later than seven days after the later of the day on which the action approved by the resolution is effective or the day the company received the notice referred to in subsection (8), send to each dissenting shareholder who has sent such notice

(a) a written offer to pay for the dissenting shareholder's shares in an amount considered by the directors of the company to be the fair value thereof, accompanied by a statement showing how the fair value was determined; or

(b) where subsection (26) applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(14) Every offer made under subsection (13) for shares of the same class or series be on the same terms.

(15) Subject to subsection (26), a company shall pay for the shares of a dissenting shareholder within 10 days after an offer made under subsection (13) has been accepted, but any such offer lapses if the company does not receive an acceptance thereof within 30 days after the offer has been made.

(16) Where a company fails to make an offer under subsection (13), or where a dissenting shareholder fails to accept an offer, the company may, within 50 days after the action approved by the resolution or order made under clause 3(d) becomes effective or within such further period as the court may allow, apply to the court to fix a fair value for the shares of any dissenting shareholder.

(17) Where a company fails to apply to the court under subsection (16), a dissenting shareholder may apply to the court for the same purpose within a further period of 20 days or within such further period as the court may allow.

(18) A dissenting shareholder is not required to give security for costs in an application made under subsection (16) or (17).

(19) Upon an application under subsection (16) or (17)

(a) all dissenting shareholders whose shares have not been purchased by the company are joined as parties and are bound by the decision of the court; and

(b) the company shall notify each affected dissenting shareholder of the date, place and consequences of the application and of the dissenting shareholder's right to appear and be heard in person or by counsel.

(20) Upon an application to the court under subsection (16) or (17), the court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting shareholders.

(21) The court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(22) The final order of the court must be rendered against the company in favour of each dissenting shareholder and for the amount of the dissenting shareholder's shares as fixed by the court.

(23) The court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment.

(24) Where subsection (26) applies, the company shall, within 10 days after the pronouncement of an order under subsection (22), notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(25) Where subsection (26) applies, a dissenting shareholder, by written notice delivered to the company within 30 days after receiving a notice under subsection (24), may

(a) withdraw the dissenting shareholder's notice of dissent, in which case the company is deemed to consent to the withdrawal and the shareholder is reinstated to the dissenting shareholder's full rights as a shareholder; or

(b) retain a status as a claimant against the company, to be paid as soon as the company is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the company but in priority to its shareholders.

(26) A company may not make a payment to a dissenting shareholder under this Section if there are reasonable grounds for believing that

(a) the company is or would after the payment be unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities.

(27) Notwithstanding the foregoing, a shareholder is not entitled to dissent under this Section if an amendment to the memorandum or articles of the company is effected by court order made under any other Act that affects the rights among the company, its shareholders and creditors or under Section 5.

3 In connection with an application for sanction of the court under Section 145 of the Act, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

(a) an order determining the notice to be given to any interested person or dispensing with notice to any person;

(b) an order appointing counsel, at the expense of the company, to represent the interests of the shareholders;

(c) an order requiring the company to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in such manner as the court directs; and

(d) an order permitting a shareholder to dissent under Section 2.

4 (1) Subject to subsection (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the body corporate.

(2) No action may be brought and no intervention in an action may be made under subsection (1) unless the court is satisfied that

(a) the complainant has given reasonable notice to the directors of the company or its subsidiary of the complainant's intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend or discontinue the action;

(b) the complainant is acting in good faith; and

(c) it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

(3) In connection with any such action brought or intervened in, the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order authorizing the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present security holders of the company or its subsidiary instead of to the company or its subsidiary; and

(d) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

5 (1) A complainant may apply to the court for an order under this Section.

(2) Where, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates

(a) any act or omission of the company or any of its affiliates effects a result;

(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or

(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that it is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this Section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

(a) an order restraining the conduct complained of;

(b) an order appointing a receiver or receiver-manager;

(c) an order to regulate a company's affairs by amending the memorandum or articles;

(d) an order directing an issue or exchange of securities;

(e) an order appointing directors in place of or in addition to all or any of the directors then in office;

(f) an order directing a company, subject to subsection (5), or any other person, to purchase securities of a security holder;

(g) an order directing a company, subject to subsection (5), or any other person, to pay a security holder any part of the money paid by the security holder for securities;

(h) an order varying or setting aside a transaction or contract to which a company is a party and compensating the company or any other party to the transaction or contract;

(i) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial statements in the form required under the Act or an accounting in such other form as the court may determine;

(j) an order compensating an aggrieved person;

(k) an order directing rectification of the registers or other records of a company required under the Act;

(l) an order liquidating and dissolving the company;

(m) an order directing an investigation pursuant to Section 133 of the Act; and

(n) an order requiring the trial of any issue.

(4) Where an order made under this Section directs amendment of the memorandum or articles of a company, no other amendment to the memorandum or articles may be made without the consent of the court, until a court otherwise orders.

(5) A company may not make a payment to a shareholder under clause (3)(f) or (g) if there are reasonable grounds for believing that

(a) a company is or would after that payment be unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities.

6 Where a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a company does not comply with the Act, the memorandum or articles, a complainant may, in addition to any other right the complainant has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions thereof, and upon such application the court may so order and make any further order it thinks fit.

7 (1) An application made or an action brought or intervened in under Section 4, 5 or 6 may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or may be approved by the shareholders of such body corporate, but evidence of approval by the shareholders may be taken into account by the court in making an order under Section 4 or 5.

(2) An application made or an action brought or intervened in under Section 4, 5 or 6 must not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, where the court determines that the interests of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under Section 4, 5 or 6.

(4) In an application made or an action brought or intervened in under Section 4, 5 or 6, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for such interim costs upon final disposition of the application or action.

(5) In Sections 4, 5, 6 and this Section

(a) "action" means an action under the Act;

(b) "complainant" means

(i) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a company or any of its affiliates,

(ii) a director or an officer or a former director or officer of a company or of any of its affiliates,

(iii) a creditor of a company or any of its affiliates,

(iv) the Registrar, or

(v) any other person who, in the discretion of the court, is a proper person to make an application under this Section.

8 Notwithstanding anything in the memorandum or articles of a company, the directors of a company shall, on the requisition of the holders of not fewer than five per cent of the shares of the company carrying the right to vote at the meeting sought to be held, forthwith proceed to convene a special general meeting of the company.

9 (1) A director or a shareholder entitled to vote at an annual meeting of shareholders may

(a) submit to the company notice of any matter, hereinafter referred to as a "proposal", that the director or shareholder proposes to raise at the meeting, including without limiting the generality of the foregoing, a proposal to amend or repeal any provision of the memorandum or articles; and

(b) discuss at the meeting any matter in respect of which the director or shareholder would have been entitled to submit a proposal.

(2) The company shall set out the proposal in the management proxy circular or notice of the meeting.

(3) Where so requested by the shareholders, the company shall include in the management proxy circular or notice of the meeting a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

(4) A proposal may include nomination for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not fewer than five per cent of the shares or five per cent of the shares of a class of shares of the company entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nomination made at a meeting of shareholders.

(5) A company is not required to comply with subsections (2) and (3) if

(a) the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of shareholders;

(b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers or security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the company, at the shareholder's request, included a proposal in a management proxy circular or notice of meeting relating to a meeting of shareholders held within two years preceding the receipt of such request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(d) substantially the same proposal was submitted to shareholders in a management proxy circular, notice of meeting or dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or

(e) the rights conferred by this Section are being abused to secure publicity.

(6) No company or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this Section.

(7) Where a company refuses to include a proposal pursuant to this Section, the company shall, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention and send to the shareholder a statement of the reasons for the refusal.

(8) Upon the application of a shareholder claiming to be aggrieved by a company's refusal under subsection (7), the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

(9) The company or any person claiming to be aggrieved by a proposal may apply to the court for an order permitting the company to omit the proposal, and the court, where it is satisfied that subsection (5) applies, may make such order as it thinks fit.

(10) An applicant under subsection (8) or (9) shall give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or by counsel.

10 (1) A company shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate and each body corporate the accounts of which are consolidated in the financial statements of the company.

(2) Shareholders of a company and their agents and legal representatives may upon request therefor examine the statements referred to in subsection (1) during the usual business hours of the company, and may make extracts therefrom, free of charge.

(3) A company may, within 15 days of a request to examine under subsection (2), apply to the court for an order barring the right of any person to so examine, and the court may, where it is satisfied that such examination would be detrimental to the company or a subsidiary body corporate, bar such right and make any further order it thinks fit.

(4) A company shall give the Registrar and the person asking to examine under subsection (2) notice of an application under subsection (3) and the Registrar and such person may appear and be heard in person or by counsel.

11 (1) A company shall maintain a register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities

(a) the name and the latest known address of each person who is or has been a security holder;

(b) the number of securities held by each security holder; and

(c) the date and particulars of the issue and transfer of each security,

but no other information need be recorded.

(2) A company may appoint an agent to maintain a central register and branch registers.

(3) A central register must be maintained by a company at its registered office or at any other place in Canada designated by the directors, and any branch registers may be kept at any place in or outside of Canada designated by the directors.

(4) A branch register may only contain particulars of securities issued or transferred at that branch.

(5) Particulars of each issue or transfer of a security registered in a branch register must also be kept in the corresponding central register.

12 (1) Each share of a company carries the right to vote in respect of any matter referred to in clauses 2(1)(c), (d) and (e), whether or not otherwise carrying the right to vote, and, unless the memorandum or articles otherwise provide in the case of an amendment referred to in clause 2(2)(a), (b) or (e), each class of shares and any series of shares affected by the matter in a manner different from other shares of the same class carry the right to vote separately as a class or series upon any matter referred to in subsections 2(1) and (2), whether or not otherwise carrying the right to vote, and any such matter is deemed to be adopted by the shareholders when, in addition to any other action required to be taken by shareholders under the Act, approved by the holders of each such class and series by a majority of not fewer than two thirds of the votes cast with respect thereto.

(2) A company may liquidate and dissolve pursuant to Section 156 of the Act if approved by the holders of each class of shares voting separately as a class, whether or not otherwise carrying the right to vote, by a majority of not fewer than two thirds of the votes cast with respect thereto.

(3) Notice of a meeting of shareholders of the company, and every document required to be sent to such persons in connection with the meeting, must be sent to all persons entitled thereto not less than 21 days before the date of the meeting.

13 Unless the memorandum or articles of a company otherwise provide, the directors of a company may, and the memorandum is deemed to state that the directors of a company may, without authorization of the shareholders

(a) borrow money upon the credit of the company;

(b) issue, reissue, sell or pledge debt obligations of the company;

(c) give any guarantee which the company is otherwise permitted to give to secure performance of an obligation of any person; and

(d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the company owned or subsequently acquired, to secure any obligation of the company.

R.S., c. 81, 3rd Sch.; 2007, c. 34, s. 43; 2019, c. 4, s. 14.

CHAPTER C-44

# An Act Respecting the Winding Up of Companies

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**Short title**

**1** This Act may be cited as the *Companies Winding Up Act*. R.S., c. 82, s. 1.

INTERPRETATION

**Interpretation**

**2** In this Act,

"company" means any corporation, whether joint stock or otherwise, incorporated by the Legislature, or under the authority of any statute thereof;

"contributory" means every person liable to contribute to the assets of a company, association or club, in the event of the same being wound up, and, also, in all proceedings prior to the final determination of the status of such persons, includes any person alleged to be a contributory;

"Court" means the Supreme Court of Nova Scotia, but any act hereinafter authorized to be done by the Court, and any power or authority hereinafter conferred on the Court, may be done or exercised by any judge thereof, except in the case of acts and authorities to be done or exercised upon or after appeal from the decision or judgment of such judge;

"extraordinary resolution" means a resolution passed by a majority of not less than three fourths of the members of a company for the time being entitled to vote present in person or by proxy, in cases where by the Act, charter or instrument of incorporation, or the regulations of the company, proxies are allowed, at any general meeting of which notice specifying the intention to propose such resolution has been duly given;

"special resolution" means

(a) a resolution passed in the manner necessary for an extraordinary resolution, if the resolution, after having been so passed as aforesaid, has been confirmed by a majority of the members entitled according to the Act, charter or instrument of incorporation, or the regulations of the company to vote, present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than 14 days, or more than one month, from the date of the meeting at which the resolution was first passed; or

(b) a resolution unanimously passed by all the members of the company for the time being entitled to vote, present in person or by proxy, in cases where the Act, charter or instrument of incorporation or regulations of the company allow proxies, at any general meeting, of which notice specifying the intention to propose such resolution has been duly given. R.S., c. 82, s. 2.

APPLICATION

**Application of Act**

**3 (1)** This Act applies to all incorporated companies, associations or clubs, incorporated by the Legislature, or under the authority of any statute, and to all companies, associations and clubs, whose incorporation and the affairs thereof in the particulars hereinafter mentioned are subject to the legislative authority of the Province.

**(2)** This Act does not apply to any company or corporation whose Act of incorporation or any Act in amendment thereof contains express provisions for the mode of winding up such company or association. R.S., c. 82, s. 3.

WHEN COMPANIES MAY BE WOUND UP

**Requirements**

**4** A company may be wound up under this Act if

(a) the period, if any, fixed for the duration of the company by the Act, charter or instrument of incorporation thereof has expired, or where the event, if any, has occurred, upon the occurrence of which it is provided by such Act, charter or instrument of incorporation that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up;

(b) the company has passed a special resolution requiring the company to be wound up; or

(c) the company, though it is solvent as respects creditors, has passed an extraordinary resolution to the effect that it has been proved to the satisfaction of the members thereof that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. R.S., c. 82, s. 4.

**Winding up by Court**

**5** Where no such resolution has been passed, the Court may, on the application of the company, or any contributory or contributories, or shareholder or shareholders, or member or members of the company, make an order for winding up, in case the Court is of opinion that it is just and equitable that the company should be wound up. R.S., c. 82, s. 5.

**Court-ordered option**

**6 (1)** Where the Court is satisfied that it may make an order directing the winding up of a company pursuant to this Act, it may, subject to subsection (2),

(a) fix the value of each share issued by the company and held by any person who is a party to the application and who is seeking an order directing the winding up of the company and declare that any party to the application who is not seeking an order directing the winding up of the company has an option, exercisable within such time as the Court orders, to purchase all or such number of the shares as the Court orders, at a price per share that is equal to the value of the share fixed by the Court; and

(b) impose such terms and conditions on the option and the sale arising from the option as the Court thinks fit.

**(2)** The Court may not exercise the authority contained in subsection (1) if it appears that the company cannot by reason of its liabilities continue in business.

**(3)** The Court may appoint one or more appraisers to assist it in fixing a fair value pursuant to this Section.

**(4)** Where a Court makes an order under this Section, it may not make an order for winding up unless it appears to the Court that the option declared by the Court pursuant to this Section has not been duly exercised. R.S., c. 82, s. 6.

**Deemed commencement**

**7** A winding up is deemed to commence

(a) in case of the passage of a resolution authorizing the winding up, at the time of the passing of such resolution;

(b) in case of the making of an order directing the winding up, from the making of such order. R.S., c. 82, s. 7.

REGISTRATION OF RESOLUTION OR ORDER

**Registration in registry of deeds**

**8 (1)** A copy of the resolution or order for winding up, certified by the liquidator, may be registered in the registry of deeds of any registration district in which the company has any real property.

**(2)** Such resolution or order may be accompanied by a description of the real property belonging to the company in the district, and certified by the liquidator to be a correct description, and the registrar shall register the order and description upon payment to the registrar of a fee of one dollar. R.S., c. 82, s. 8.

CONSEQUENCES OF COMMENCING TO WIND UP

**Consequences**

**9** The following consequences ensue upon the commencement of the winding up of a company:

(a) the company shall from the date of the commencement of the winding up cease to carry on its business, except in so far as is required for the beneficial winding up thereof, but the corporate status and all the corporate powers of the company, notwithstanding it is otherwise provided by the

Act, charter or instrument of incorporation, continue until the affairs of the company are wound up;

(b) the property of the company must be applied in satisfaction of its liabilities, and, subject thereto and to the charges incurred in winding up its affairs, must, unless it is otherwise provided by the Act, charter or instrument of incorporation, be distributed amongst the members according to their rights and interests in the company;

(c) any transfers of shares, except transfers made to or with the sanction of the liquidators, or any alteration in the status of the members of the company, after the commencement of such winding up, are void;

(d) no action, suit or other proceeding may be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court imposes; and

(e) all costs, charges and expenses properly incurred in the winding up of a company under this Act, including the remuneration of the liquidators, are payable out of the assets of the company in priority to all other claims. R.S., c. 82, s. 9.

## APPOINTMENT OF LIQUIDATORS

**Appointment of liquidator**

**10 (1)** In case of a resolution for winding up, the company at a general meeting shall appoint a person or persons to be liquidator or liquidators for the purpose of winding up the affairs of the company and distributing its property, and shall fix the remuneration to be paid to the liquidator or liquidators, and such liquidators shall furnish such security as the contributories determine.

**(2)** In case of an order authorizing a winding up, the Court shall appoint such liquidators and determine the security and the remuneration.

**(3)** Where one person only is appointed, all the provisions herein contained in reference to several liquidators apply to that person.

**(4)** Where several liquidators are appointed, every power hereby given may be exercised by such one or more of them as is determined at the time of the appointment, or at a subsequent meeting, or in default of such determination by any number not fewer than two. R.S., c. 82, s. 10.

**Absence of liquidator**

**11 (1)** Where any vacancy occurs in the office of the liquidator appointed by the company, by death, resignation or otherwise, the company in general meeting may fill up such vacancy.

**(2)** Where from any cause there is no liquidator acting, either provisionally or otherwise, the Court may on the application of a contributory appoint a liquidator or liquidators.

**(3)** The Court may also on due cause shown remove any liquidator and appoint another liquidator.

**(4)** When there is no liquidator, the estate is under the control of the Court until the appointment of a new liquidator. R.S., c. 82, s. 11.

**Commission**

**12** Where there is no agreement, order or provision fixing the remuneration of a liquidator, the liquidator is entitled to a commission on the net proceeds of the estate of the company of every kind which comes to the liquidator's hands, after deducting expenses and disbursements, such commission to be five per cent on the amount realized, and to be in full of all fees and charges for the liquidator's services. R.S., c. 82, s. 12.

**Powers of directors cease**

**13** Upon the appointment of liquidators, all the powers of the directors or other managing officers cease, except in so far as the company in general meeting or the liquidators sanction the continuance of such powers. R.S., c. 82, s. 13.

**Directions to liquidator**

**14** The contributories may at any meeting pass any resolution or order directing the liquidator how to dispose of the property, real or personal, of the company, and in default of their doing so, the liquidator is subject to the directions, orders and instructions that the liquidator from time to time receives from the inspectors, if any, with regard to the mode, terms and conditions on which the liquidator may dispose of the whole or any part of the property of the company. R.S., c. 82, s. 14.

INSPECTORS

**Appointment of inspectors**

**15 (1)** The contributories may at any meeting appoint one or more inspectors to superintend and direct the proceedings of the liquidator in the management and winding up of the estate, and in case of an inspector being appointed, all the powers of the liquidators shall be exercised subject to the advice and direction of the inspector.

**(2)** The contributories may also, at any subsequent meeting held for that purpose, revoke any such appointment, and upon such revocation, or in case of death, resignation or absence from the Province of an inspector, may appoint another in the inspector's stead. R.S., c. 82, s. 15(1), (2).

**Remuneration**

**16** The inspector may be paid such remuneration as the contributories determine. R.S., c. 82, s. 15(3).

**Sole inspector**

**17** When anything is allowed or directed to be done by the inspectors, it may or must be done by the sole inspector if only one has been appointed. R.S., c. 82, s. 15(3).

GENERAL POWERS OF LIQUIDATORS

**Description and powers**

**18** The liquidator may be described in all proceedings by the style of "A.B., the liquidator of (the particular company in respect to which the liquidator is appointed)" and may

(a) bring or defend any action, or other legal proceeding in the name and on behalf of the company;

(b) carry on the business of the company so far as is necessary for the beneficial winding up of the same;

(c) sell the real and personal property of the company, by public auction or private contract, according to the ordinary mode in which such sales are made, with power to transfer the whole property to any person or company, or to sell the same in parcels, and on such terms as seem most advantageous, but no sale of the assets as a whole may be made without the previous sanction of the contributories given at a meeting called for that purpose;

(d) draw, accept, make and endorse any bill of exchange or promissory note, in the name and on behalf of the company, and to raise upon the security of the assets of the company from time to time any requisite sum or sums of money, and the drawing, accepting, making or endorsing of any such bill of exchange or promissory note as aforesaid, on behalf of the company, has the same effect with respect to the liability of the company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof;

(e) take out if necessary in the liquidator's official name, letters of administration to any deceased contributory, and to do in the liquidator's official name any other act that is necessary for obtaining payment of any money due from a contributory or from the contributor's estate, and which act cannot be conveniently done in the name of the company, and in all cases where the liquidator takes out letters of administration or otherwise uses the liquidator's official name for obtaining payment of any money due from a contributory, such money is, for the purpose of enabling the liquidator to take out such letters or recover such money, deemed due to the liquidator;

(f) execute in the name of the company all deeds, receipts and other documents;

(g) use the company's seal whenever necessary for any of the purposes mentioned in this Section; and

(h) do and exercise all other acts and things necessary for the winding up of the affairs of the company and the distribution of its assets. R.S., c. 82, s. 16.

**Sale of receivables**

**19 (1)** Where after having acted with due diligence in the collection of the debts, the liquidator finds that there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, the liquidator shall report the same to the contributories or inspector, if any, and with their sanction the liquidator may sell the same by public auction after such advertisement thereof as they order.

**(2)** Pending such advertisement the liquidator shall keep a list of the debts to be sold, open to inspection at the liquidator's office, and give free access to all documents and vouchers explanatory of such debts.

**(3)** All debts amounting to more than $100 must be sold separately. R.S., c. 82, s. 17.

**Compromises**

**20** The liquidators may, with the sanction of an extraordinary resolution of the company, compromise

(a) all calls and liabilities to calls, debts and liabilities capable of resulting in debts;

(b) all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or other debtor or person apprehending liability to the company; and

(c) all questions in any way relating to or affecting the assets of the company or the winding up of the company,

upon the receipt of such sums, payable at such times and generally upon such terms as are agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give a complete discharge in respect to all or any such calls, debts or liabilities. R.S., c. 82, s. 18.

PROOF OF CLAIMS

**Order fixing time limit**

**21 (1)** The liquidator shall apply to the Court for an order fixing the time within which creditors of the company and other persons having claims thereon are to send in their claims, and within what time notice thereof must be given.

**(2)** Such notice may be by advertisement, and the procedure upon such application and the proof of such claims and the settlement of the list thereof must, as nearly as may be, be that prescribed in the rules of the Court and the duties of the liquidator must, as nearly as may be, be those in such rules prescribed for executors and administrators. R.S., c. 82, s. 19.

**Distribution of assets**

**22 (1)** When the liquidator has given such notice and complied with the directions of the Court respecting the settlement of such list of claims, the liquidator may, at the expiry of the time limited for the sending in of such claims and the proof thereof, distribute the assets of the company, or any part thereof, among the persons thereto entitled who have sent in their claims as required.

**(2)** The liquidator is not liable for the assets or any part thereof so distributed to any person of whose claim such liquidator had no notice at the time of distributing the assets or a part thereof, as the case may be, but nothing in this Act prejudices the right of any creditor or claimant to follow assets into the hands of any person who has received the same. R.S., c. 82, s. 20.

**Compromises**

**23** The liquidators may, with the sanction of an extraordinary resolution of the company, make such compromise or other arrangement as the liquidators consider expedient with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable. R.S., c. 82, s. 21.

TRANSFER TO ANOTHER COMPANY

**Compensation for transfer**

**24** When any company is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect to any particular arrangement, may receive in compensation, or in part compensation, for such transfer or sale, shares or other like interest in such other company for the purpose of distribution amongst the members of the company that is being wound up, or may in lieu of receiving cash, shares or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company. R.S., c. 82, s. 22.

**Dissent**

**25** Any sale made or arrangement entered into by the liquidators in pursuance of Section 24 is binding on the members of the company that is being wound up, provided, that where any member of the company that is being wound up, who has not voted in favor of the special resolution passed by the company of which the member is a member at either of the meetings held for passing the same expresses the member's dissent from any such special resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissenting member may require the liquidators to either, as the liquidators prefer,

(a) abstain from carrying such resolution into effect; or

(b) purchase the interest held by such dissenting member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as is determined by special resolution. R.S., c. 82, s. 23.

**Resolution not invalid**

**26** No special resolution may be deemed invalid for the purposes of Sections 24 and 25 by reason that it is passed before or concurrently with any resolution for winding up the company or for appointing liquidators. R.S., c. 82, s. 24.

**Fixing of price**

**27** Where the price to be paid for the interest of any such dissenting member cannot be determined by agreement, it may, upon the application of the liquidator, be determined by a referee appointed by the Court. R.S., c. 82, s. 25.

LIABILITY OF CONTRIBUTORIES

**List of contributories**

**28** As soon as may be after the commencement of the winding up, the liquidator shall prepare a list of contributories. R.S., c. 82, s. 26.

**Liability to contribute**

**29** Every shareholder or member of the company or shareholder's or member's representative is liable to contribute the amount unpaid on the shareholder's or member's share of the capital or on the shareholder's or member's liability to the company or to its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company or under the law of this Province, and the amount that the shareholder or member is liable to contribute is deemed assets of the company and to be a debt due to the company. R.S., c. 82, s. 27.

**Deemed member**

**30** Where

(a) a shareholder has transferred the shareholder's shares under circumstances that do not by law free the shareholder from liability in respect thereto;

(b) the shareholder is by law liable to the company or its contributories or any of them to an amount beyond the amount unpaid on the shareholder's shares; or

(c) a member of a company, the liability of whose members is not limited by the Act, charter or instrument of incorporation of such company, has resigned or ceased to be a member of the company at a time when the liabilities of the company are not satisfied,

the member is deemed a member of the company for the purpose of this Act, and is liable to contribute as aforesaid to the extent of the member's liabilities to the company or the contributories independently of this Act, and the amount that the member is so liable to contribute must be deemed assets and a debt as aforesaid. R.S., c. 82, s. 28.

**Liability of former member**

**31** In the case of a company, the liability of whose members is not limited by the Act, charter or instrument of incorporation of the company, every member of the company at the time of the contracting of any debt or the incurring of any liability is liable to contribute to the payment of such debt or liability, notwithstanding the member has since ceased to be a member of the company, and notwithstanding any statute relating to the limitation of actions, if such liability can be enforced at law or in equity against the company. R.S., c. 82, s. 29.

**Personal representative**

**32** It is not necessary when the personal representative of any deceased contributory is placed on the list to add the heirs or devisees of such contributory, but such heirs or devisees may be added at any time afterwards. R.S., c. 82, s. 30.

**Distinction in list**

**33** The list of contributories must distinguish between persons who are contributories in their own right and as being representatives of or liable for others. R.S., c. 82, s. 31.

**List as evidence**

**34** Any list so settled is prima facie evidence of the liability of the persons named therein to be contributories. R.S., c. 82, s. 32.

**List settled by Court**

**35** The list of contributories may be settled by the Court, in which case the liquidator shall make out and leave with the prothonotary of the Court a list of the contributories of the company, and such list must

(a) be verified by the affidavit of the liquidator;

(b) so far as is practicable state the respective addresses of and the number of shares or extent of interest to be attributed to each such contributory; and

(c) distinguish the several classes of contributories,

and such list may from time to time by leave of a judge be varied or added to by the liquidator. R.S., c. 82, s. 33.

**Appointment to settle**

**36 (1)** Upon the list being so made up and filed by the liquidator, the liquidator shall

(a) obtain an appointment from the Court, or a judge, to settle the same; and

(b) give notice in writing of such appointment to every person included in the list, stating in what character and for what number of shares or interest such person is included in the list,

and in case any variation or addition to such list is at any time made by the liquidator, a similar notice in writing must be given to every person to whom such variation or addition applies.

**(2)** All such notices must be served four clear days before the day appointed to settle such list, or such variation or addition. R.S., c. 82, s. 34.

**Certificate of result**

**37** The result of the settlement of the list of contributories must be stated in a certificate by the prothonotary of the Court, and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or to any particular person, stating any variation of the list. R.S., c. 82, s. 35.

**Liability of personal representatives**

**38** Where any contributory dies, either before or after the contributory has been placed on the list of contributories, the contributory's personal representatives, heirs and devisees are liable in due course of administration to contribute to

the assets of the company, association or club in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees are deemed to be contributories accordingly. R.S., c. 82, s. 36.

**Calls**

**39** The liquidators may at any time and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories, for the time being settled on the list of contributories, to pay to the extent of their liability all or any sums the liquidators consider necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same. R.S., c. 82, s. 37.

**Arrest**

**40 (1)** Where a person's name is on the list of contributories or is liable to be placed thereon, the person is subject, in respect to the person's liability and on the application of the liquidator, to arrest and imprisonment like any other debtor and the person is for that purpose deemed a debtor to the company and a debtor to the liquidator.

**(2)** The person's arrest may be ordered by the Court.

**(3)** The person being placed on the list of contributories under this Act is deemed a judgment, and the liquidator is deemed a judgment creditor, and the judgment may be enforced by an execution order in the same manner as an ordinary judgment in the Court. R.S., c. 82, s. 38.

**Default**

**41** Where any person made a contributory as personal representative of a deceased contributory makes default in paying any sum to be paid by the person, proceedings may be taken for administering the real and personal property of such deceased contributory, and for compelling payment thereout of the money due. R.S., c. 82, s. 39.

LIQUIDATOR'S DUTIES

**Employment of counsel**

**42** No liquidator may employ any counsel or solicitor without the consent of the inspector, if any. R.S., c. 82, s. 40(1).

**Purchase of assets**

**43** No liquidator or inspector may purchase directly or indirectly any part of the stock in trade, debts or assets of any description of the estate. R.S., c. 82, s. 40(2).

**Deposit of money**

**44 (1)** The liquidator shall deposit at interest in some chartered bank, to be indicated by the inspector or by the Court, all sums of money that the liquida-

tor has in the liquidator's hands belonging to the company, whenever such sums amount to $100.

**(2)** The deposit may not be made in the name of the liquidator generally on pain of dismissal, but a separate deposit account must be kept for the company of the money belonging to the company in the name of the liquidator, as such, and of the inspectors, if any, and such money may be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if any.

**(3)** At every meeting of the contributories, the liquidator shall produce a bank pass book showing the amount of deposits made for the company, the date at which such deposits were made, and the amounts withdrawn and dates of such withdrawals, of which production mention must be made in the minutes of such meeting, and the absence of such mention is prima facie evidence that such pass book was not produced at the meeting.

**(4)** The liquidator shall also produce the pass book whenever so ordered by the Court, at the request of the inspector or of a contributory, and on the liquidator's refusal to do so the liquidator must be treated as being in contempt of Court. R.S., c. 82, s. 40(3)-(6).

**Payment of costs, charges and expenses**

**45** All costs, charges and expenses properly incurred in the winding up of a company under this Act, including the remuneration of the liquidators, are payable out of the assets of the company in priority to all other claims. R.S., c. 82, s. 40(7).

**Subject to Court**

**46** Every liquidator or inspector is subject to the summary jurisdiction of the Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of the liquidator's or inspector's duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of property upon, in, or to any effect or property in the hands, possession or custody of a liquidator, may be obtained by an order of the Court on summary application, and not by any suit, attachment, seizure or other proceeding of any kind whatever, and obedience by the liquidator to such order may be enforced by such Court under the penalty of imprisonment as for contempt of court or disobedience thereto, or the liquidator may be removed in the discretion of the Court. R.S., c. 82, s. 40(8).

MEETINGS

**Calling meetings**

**47 (1)** Where any vacancy occurs in the office of liquidator appointed by the company, by death, resignation or otherwise, a general meeting of the contributories for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or where none then by any contributory of the company.

**(2)** The liquidators may from time to time during the continuance of the winding up summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purpose they think fit.

**(3)** The liquidator shall also call meetings of the contributories whenever required in writing so to do by the inspector or five contributories, or by the Court, and the liquidator shall state succinctly in the notice calling any meeting the purpose thereof. R.S., c. 82, s. 41(1)-(3).

**Subsequent meetings**

**48** The contributories may, at any meeting, determine where subsequent meetings will be held, and in the absence of such a resolution, all meetings of the contributories must be held at the office of the liquidator or of the company, unless otherwise ordered by the Court. R.S., c. 82, s. 41(4).

**Notice of meeting**

**49** Notice of any meeting is, for the purpose of this Act, deemed to be duly given, and the meeting to be duly held, whenever such notice is given and the meeting held in manner prescribed by the Act, charter or instrument of incorporation, or by the regulations of the company, or by the Court, or notice of the meeting may be given by publication thereof for at least three weeks in the Royal Gazette, or by such other or additional notice as the Court, or the inspector or the company directs, and also, except when the Court otherwise directs, by addressing notices of the meeting to the contributories within the Province and to the representatives within the Province of contributories who reside out of the Province, and the said notices must be posted at least 10 days before the day on which the meeting is to take place, the postage being prepaid by the liquidator. R.S., c. 82, s. 41(5).

**Restriction on voting**

**50** No contributory may vote at any meeting unless present personally, or represented by some person having a written authority to be filed with the liquidator to act on the contributory's behalf at the meeting or generally, and when a poll is taken reference must be had to the number of votes to which each member is entitled by the Act, charter or instrument of incorporation, or the regulations of the company. R.S., c. 82, s. 41(6).

ASSISTANCE OF THE COURT

**Powers of Court**

**51** At any time during a winding up, the Court may, upon the application of the liquidator or any shareholder, member, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit. R.S., c. 82, s. 42.

**Application for assistance**

**52** The liquidator or any shareholder, member, creditor or contributory may apply to the Court to determine any question arising in the winding up or to exercise all or any of the powers of the Court under this Act, and the Court, where satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such order on the application as it thinks just. R.S., c. 82, s. 43.

**Restraint by Court**

**53** The Court at any time after the presentation of a petition for winding up a company, and before making an order for winding up the company, may restrain further proceedings in any action or proceeding against the company, other than under any insolvency Act in force at the time, or any other authority over which the Legislature has no jurisdiction, in and upon such terms as the Court thinks fit. R.S., c. 82, s. 44.

**No action without leave**

**54 (1)** The Court may make an order that no action or other proceedings may be proceeded with or commenced against the company, except with the leave of the Court and subject to such term as the Court imposes.

**(2)** This Section does not apply to proceedings under any Act of the Parliament of Canada under its jurisdiction in matters of bankruptcy and insolvency, or otherwise.

**(3)** A copy of any such order must forthwith be advertised as the Court directs. R.S., c. 82, s. 45.

**Meetings directed by Court**

**55** The Court may direct meetings of the contributories to be summoned, held and conducted in such manner as the Court thinks fit, for the purpose of ascertaining their wishes, and may appoint a person to act as chair of any such meeting, and to report the result of such meeting to the Court. R.S., c. 82, s. 46.

**Order to contributory**

**56** The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker or agent or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate or effects, that happen to be in that person's hands for the time being, and to which the company is prima facie entitled. R.S., c. 82, s. 47.

**Power of Court**

**57** The Court may make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the order mentioned, of any money due from the contributory or from the estate of the person whom the contributory represents, to the company, exclusive of any money that the contributory or the estate of the person whom the contributory represents is liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Act. R.S., c. 82, s. 48.

**Contents of order**

**58** The Court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into any bank appointed for this purpose, in any general order made under this Act, or in default thereof into any bank named in the order, or into any branch of such bank, to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator. R.S., c. 82, s. 49.

**Effect of order**

**59** Any order made by the Court in pursuance of this Act upon any contributory is, subject to the provisions herein contained for appealing against such order, conclusive evidence that the money, if any, thereby appearing to be due, or ordered to be paid, is due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever, with the exception of proceedings taken against the real property of any deceased contributory, in which case such order is only prima facie evidence for the purpose of charging such real property, unless the contributory's heirs or devisees were on the list of contributories at the time the order was made. R.S., c. 82, s. 50.

**Order for inspection**

**60** The Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise. R.S., c. 82, s. 51.

**Summons by Court**

**61** The Court may, at any time after the commencement of the winding up of the company, summon to appear before the Court or liquidator any officer of the company, or any other person known or suspected to have in the person's possession any of the property or effects of the company, or supposed to be indebted to the company, or any person whom the Court considers capable of giving information concerning the trade, dealings, property or effects of the company, and in case of refusal by such officer or other person to appear, or answer the questions submitted, the officer or other person may be committed and punished by the judge as for a contempt. R.S., c. 82, s. 52.

**Order to produce**

**62** The Court may require any such officer or person to produce any books, papers, deeds, writings or other documents in the officer's or other person's custody or power relating to the company. R.S., c. 82, s. 53.

**Failure to comply**

**63** Where any person so summoned, after being tendered the fees to which a witness is entitled in the Court, refuses to come before the Court or liquidator at the time appointed, having no lawful impediment, the Court may cause such person to be apprehended and brought before the Court or liquidator for examination. R.S., c. 82, s. 54.

**Examination on oath**

**64** The Court or liquidator may examine upon oath any person appearing or brought before them in the manner aforesaid, concerning the affairs, dealings, property or effects of the company, and may reduce into writing the answers of every such person, and require the person to subscribe the same. R.S., c. 82, s. 55.

**Subpoena**

**65** In any proceedings under this Act, the Court may order a subpoena to issue, commanding the attendance as a witness of any person within the limits of the Province. R.S., c. 82, s. 56.

**Lien not prejudiced**

**66** When any person claims any lien on papers, deeds or writings, or documents produced by the person, such production is without prejudice to the lien, and the Court has jurisdiction in the winding up to determine all questions relating to such lien. R.S., c. 82, s. 57.

**Powers of Court**

**67** Where, in the course of winding up any company under this Act, it appears that any past or present director, manager, liquidator or any officer of such company, has misapplied or retained in the director's, manager's or officer's own hands, or become liable or accountable for, any money of the company, or been guilty of any malfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel the director, manager or officer or the director's, manager's or officer's executors or administrators to repay any money so misapplied or retained, or for which the director, manager or officer or the director's, manager's or officer's estate has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect to such misapplication, retainer, malfeasance or breach of trust, as the Court thinks just. R.S., c. 82, s. 58.

**Appeal**

**68** Any person who is dissatisfied with any order or decision of a judge in any proceeding under this Act may appeal therefrom in the manner prescribed by the practice and rules of the Court in relation to appeals from the decision of a single judge. R.S., c. 82, s. 59.

**Existing powers unaffected**

**69** Any powers by this Act conferred on the Court are deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity of instituting proceedings against any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or the contributory's or debtor's estate, and such proceedings may be instituted accordingly. R.S., c. 82, s. 60.

PROCEEDINGS BY CONTRIBUTORIES

**Authorization by Court**

**70 (1)** Where at any time any contributory who desires to cause any proceeding to be taken, that in the contributory's opinion would be for the benefit of the company, and the liquidator, under the authority of the contributories or of the inspectors, refuses or neglects to take such proceeding after being duly required so to do, such contributory may obtain an order of the Court authorizing the contributory to take such proceeding in the name of the liquidator or company, but at the contributory's own expense and risk, upon such terms and conditions as to indemnity to the liquidator as the Court prescribes.

**(2)** Any benefit derived from such proceedings belongs exclusively to the contributory instituting the same for the contributory's benefit and that

of any other contributory who joins the contributory in causing the institution of such proceeding, but where before such order is granted the liquidator signifies to the Court the liquidator's readiness to institute such proceeding for the benefit of the company, an order must be made prescribing the time within which the liquidator shall do so, and in that case the advantage derived from such proceeding appertains to the company. R.S., c. 82, s. 61.

**Court application by contributories**

**71 (1)** Any one or more contributories whose claims in the aggregate exceed $500, who are dissatisfied with the resolutions adopted or orders made by the contributories or the inspectors, or with any action of the liquidator, for the disposal of the property of the company, or any part thereof, or for postponing the disposal of the same, or with reference to any matter connected with the management or winding up of the estate, may within four clear days after the meeting of the contributories, in case the subject of dissatisfaction is a resolution or order of the contributories, or within four clear days after becoming aware of or having notice of the resolution of the inspectors, or action of the liquidator, where such resolution or action is the subject of dissatisfaction, give to the liquidator notice that the contributory or contributories will apply to the Court on the day and at the hour fixed by such notice, and not being later than four clear days after such notice has been given, or as soon thereafter as the parties may be heard before such Court, to rescind such resolutions or orders.

**(2)** The Court, after hearing the inspectors, the liquidators and contributories present at the time and place so fixed, may approve, rescind or modify such resolutions or orders.

**(3)** In case of the application being refused, the party applying shall pay all costs occasioned thereby, and in other cases the costs are in the discretion of the Court. R.S., c. 82, s. 62.

MATTERS OF PRACTICE

**Taxation of costs and petition**

**72 (1)** The costs of proceedings under this Act are taxed and allowed according to the law relating to costs and fees.

**(2)** An application to the Court for the winding up of a company under this Act must be by petition, and the petition may be presented by the company, or by any contributory or contributories, or shareholder or shareholders, or member or members of the company.

**(3)** Upon hearing the petition, the Court may dismiss the same with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make an interim order or any other order that it considers just.

**(4)** In every petition, application, motion or other pleading or proceeding under this Act the parties may state the facts upon which they rely in plain and concise language, and to the interpretation thereof the rules of construction applicable to such language in the ordinary transactions of life apply.

**(5)** All books, accounts and documents of the company and of the liquidator are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be therein recorded.

**(6)** Except when otherwise provided for, a clear judicial day's notice of any petition, motion, order or rule is sufficient, and service of such notice must be made in such manner as a similar service in a civil action. R.S., c. 82, s. 63.

**Rules of procedure apply**

**73** The rules of procedure for the time being as to amendments of pleadings and proceedings in the Court, as far as practicable, apply to all pleadings and proceedings under this Act, and the Court or liquidator before whom such proceedings are pending has full power and authority to apply the appropriate rules as to amendments to such proceedings, and no pleading or proceeding is be void by reason of any irregularity or default which can or may be amended or disregarded under the rules and practice of the Court. R.S., c. 82, s. 64.

**Enforcement of orders**

**74** All orders made by the Court may be enforced in the same manner and by the same officers as in the case of orders of the Court made in any action pending therein. R.S., c. 82, s. 65.

**Powers of judges concerning procedure**

**75** A majority of the judges of the Court from time to time shall make, frame, settle and approve of the forms, rules and regulations to be followed and observed in proceedings under this Act, and have power to amend, change and vary the same, and such forms, rules and regulations, being first published in the Royal Gazette, have the same force and effect as if they had been made and included in this Act. R.S., c. 82, s. 66.

## DISSOLUTION OF THE COMPANY

**Dissolution of company**

**76 (1)** As soon as the affairs of the company are fully wound up, the liquidators shall make up an account, showing the manner in which such winding up has been conducted, and the property of the company disposed of, and within 60 days after the affairs of the company are fully wound up, they shall call a general meeting of the members of the company, to be held within 60 days for the purpose of having the account laid before them, and hearing any explanation that is given by the liquidators, such meeting must be called by advertisement, specifying the time, place and object thereof, and the advertisement must be published one month at least previous thereto.

**(2)** The liquidator shall within 30 days after the holding of such meeting make a return to the Minister of Justice and Attorney General of such meeting having been held, and of the date at which the same was held, which return must be filed in the office of the Minister of Justice and Attorney General, and on the expiration of three months from the date of filing such return the company is deemed to be dissolved.

**(3)** Or, whenever the affairs of the company have been completely wound up, the Court may make an order that the company be dissolved from the date of such order, and the company is dissolved accordingly, and the order must be reported by the liquidator to the Minister of Justice and Attorney General within 30 days after the date thereof. R.S., c. 82, s. 67.

**Penalty**

**77** **(1)** Where the liquidator makes default,

(a) in calling a general meeting of the members of the company as provided by Section 76;

(b) in transmitting to the Minister of Justice and Attorney General the return as provided by Section 76; or

(c) in reporting the order, if any, declaring the company dissolved, as provided by Section 76,

the liquidator is liable to a penalty of $10 for every day during which the liquidator is in such default.

**(2)** The penalties prescribed by subsection (1) are recovered or enforced under the *Summary Proceedings Act*. R.S., c. 82, s. 68.

**Treatment of dividends**

**78** All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the company must be left for three years in the bank where they are deposited and where still unclaimed must then be paid over by the bank with interest accrued thereon to the Minister of Finance and Treasury Board, and where afterwards duly claimed must be paid over to the persons entitled thereto. R.S., c. 82, s. 69.

**Deposit in bank**

**79** **(1)** Every liquidator shall, within 30 days after the date of the dissolution of the company, deposit in the bank appointed or named, as hereinbefore provided, for any other money belonging to the estate then in the liquidator's hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all the liquidator has in the liquidator's hands.

**(2)** Every liquidator neglecting to make such deposit is liable to a penalty not exceeding $10 for each day during which such neglect continues, and the liquidator is a debtor to the Crown in right of the Province for such money, and may be compelled as such to account for and pay over the same.

**(3)** The money so deposited must be left for three years in the bank, and must then be paid over with interest to the Minister of Finance and Treasury Board, and where afterwards claimed must be paid over to the person entitled thereto. R.S., c. 82, s. 70.

**Disposal of records**

**80** **(1)** When any company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the company and of the

liquidators may be disposed of in such a way as the company by an extraordinary resolution directs.

**(2)** After the lapse of five years from the date of such dissolution, no responsibility rests on the company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein. R.S., c. 82, s. 71.