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VOLUME D



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2023

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CHAPTER D-1

An Act Respecting the Regulation of the Dairy Industry

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Short title

1 This Act may be cited as the *Dairy Industry Act*. 2000, c. 24, s. 1.

Purpose of Act

2 The purpose of this Act is to provide a structure to regulate the dairy industry in the Province so that

(a) subject to the supervisory jurisdiction of the Natural Products Marketing Council, the production, transportation and sale of raw milk will be regulated by producers;

(b) the processing of raw milk and the pricing, packaging, distribution and sale of dairy products will be regulated by the Natural Products Marketing Council; and

(c) subject to the approval of the Minister, all national and inter-provincial agreements regarding total Provincial production quota and out-of-Province sales will be negotiated and regulated by the Natural Products Marketing Council and producers jointly. 2000, c. 24, s. 2.

Interpretation

3 In this Act,

“Board” means the Dairy Farmers of Nova Scotia;

“Code” means the National Dairy Regulation and Code;

“Council” means the Natural Products Marketing Council established pursuant to the *Natural Products Act*;

“dairy animal” means a cow or such other species of animal as may be kept for the purpose of milking;

“dairy plant” means premises, a building or a structure where milk is received and the processing of dairy products occurs;

“dairy product” means milk or a product of milk that

(a) contains no oil or fat other than that of milk;

(b) is prescribed by a standard set out in the Code, including foods made by modifying the standard in accordance with the Code; or

(c) contains a minimum of 50% milk ingredients by weight;

“distributor” means a person who carries on the business of distributing fluid milk products, but does not include a jobber or storekeeper;

“fluid milk products” means the classes of milk and milk products designated as fluid milk products in the regulations;

“grader” means a person who holds a bulk milk grader certificate issued by the Minister for the grading of milk;

“inspector” means a person appointed as an inspector pursuant to this Act;

“jobber” means a person who purchases or receives milk from a licensed distributor for resale, but does not include a storekeeper or a person designated by the regulations;

“licence” means a licence required by this Act;

“licensing authority” means the designated authority authorized to issue a licence pursuant to this Act;

“marketing” means buying, selling or offering for sale and includes advertising, pricing, financing, researching, assembling, storing, packing, delivering and transporting in any manner by any person;

“milk” means a normal lacteal secretion obtained from the mammary gland of a dairy animal;

“Minister” means the Minister of Agriculture;

“payment agent” means a person designated to make payments to producers on behalf of the Board;

“processor” means a person producing, pasteurizing, manufacturing or packaging a dairy product;

“Processor Association” means the Nova Scotia Milk Processors Division of the Atlantic Dairy Council;

“producer” means a person who sells raw milk that has been produced by a herd of dairy animals that the producer owns or controls;

“quota” means a portion of supply entitlement allotted to a producer in units as designated in the regulations;

“raw milk” means milk that has not been pasteurized;

“transporter” means a person transporting raw milk. 2000, c. 24, s. 3.

Supervision and management

4 The Minister has the general supervision and management of this Act and the regulations. 2000, c. 24, s. 4.

Continuation of Milk Producers Association

5 The society registered pursuant to the *Societies Act* known as the Nova Scotia Milk Producers Association is continued as a body corporate to be known as the Dairy Farmers of Nova Scotia. 2000, c. 24, s. 5.

Federal statutes and agreements

6 (1) The Council may, with the approval of the Minister, accept and exercise any authority or power granted to the Council pursuant to the *Agricultural Products Marketing Act* (Canada), the *Canadian Dairy Commission Act* or any other enactment of the Parliament of Canada.

(2) The Council and the Board may co-operate or enter into an agreement with a person, a marketing board or a marketing agency of Canada or of a province or a group of provinces of Canada and any of their respective agencies or commodity boards for the purpose of producing and marketing milk and dairy products.

(3) An agreement referred to in subsection (2) may provide for the pooling of revenue and may authorize the Council or the Board to perform, on behalf of the Government of Canada or the Canadian Dairy Commission, any function relating to interprovincial or export trade in milk or a dairy product in respect of which the Council or the Board, as the case may be, may exercise powers in intraprovincial trade. 2000, c. 24, s. 6.

Requirement for licence

7 (1) No person shall, directly or indirectly, engage in or carry on the business of producing, transporting, processing, distributing or marketing dairy products unless the person is the holder of a licence issued by a licensing authority.

(2) A licence issued pursuant to subsection (1) may be subject to such terms and conditions as the licensing authority considers appropriate.

(3) Where the licensing authority is not satisfied that an applicant for a licence is qualified by experience, financial responsibility and equipment to

properly conduct the proposed business and that the issuance of the licence is in the public interest, the licensing authority may refuse to grant a licence to the applicant. 2000, c. 24, s. 7.

Powers of Council

8 The Council may

- (a) investigate the cost of producing, processing, distributing and transporting any milk or dairy product;
- (b) investigate a price, price spread, trade practice, method of financing, management practice, grading policy or any policy or other matter relating to the marketing, production or processing of milk or dairy products;
- (c) provide for the conducting of a milk utilization audit;
- (d) designate fluid milk products for the purpose of this Act;
- (e) designate dairy animals for the purpose of this Act;
- (f) investigate, arbitrate, adjudicate upon, adjust or otherwise settle any dispute arising under this Act;
- (g) require the Board to file with the Council regulations, orders or bylaws made by the Board pursuant to this Act;
- (h) do such acts and make such orders and directives as are necessary to enforce this Act and the regulations. 2000, c. 24, s. 8.

Regulations

9 The Council may make regulations

- (a) fixing and allotting quota for marketing or production;
- (b) prescribing the price structure for raw milk and any component of milk and the basis of the calculation of the price structure having regard to any or all of the following circumstances:
 - (i) the prevailing market price of milk,
 - (ii) the conditions of production,
 - (iii) the manner of delivery,
 - (iv) the cost of handling and delivering milk,
 - (v) any other circumstance that has an effect on the price of milk;
- (c) prescribing
 - (i) the price or prices or the maximum or minimum prices for fluid milk products,
 - (ii) the quantities or containers or types of containers in which fluid milk products may be sold,
 - (iii) the price or prices or the maximum or minimum prices for fluid milk products when sold or offered for sale in quantities or containers as prescribed;

- (d) prohibiting the sale of fluid milk products
 - (i) at a price other than the price prescribed by the Council or at a price higher than the maximum price or lower than the minimum price prescribed by the Council,
 - (ii) in quantities or containers other than those prescribed by the Council,
 - (iii) at prices other than prices prescribed by the Council for fluid milk products when sold in a quantity or container prescribed by the Council or at prices higher than the maximum or lower than the minimum prices prescribed by the Council for sales in quantities or containers prescribed by the Council;
- (e) prohibiting or regulating the manufacture, processing, distribution or sale of reconstituted milk;
- (f) providing for the registration and licensing of producers, processors, distributors or any person marketing milk or dairy products;
- (g) prescribing the grounds for the refusal of the registration and licensing of a producer, processor, distributor or marketer of milk or dairy products;
- (h) specifying the information required to be submitted with an application for a licence;
- (i) specifying the criteria and the terms and conditions, including the expiry date, if any, upon which a licence may be obtained and the fees payable for a licence and the collection of those fees;
- (j) requiring applicants for licences and holders of licences to furnish from time to time proof of financial responsibility satisfactory to the licensing authority and requiring a bond or other security from applicants and holders of licences in the amount determined by the licensing authority and providing for the administration, forfeiture and disposition of any money or securities so furnished;
- (k) classifying producers, processors, distributors or any persons engaged in the dairy industry;
- (l) respecting the grading of milk, including the powers and duties of a grader;
- (m) providing for the appointment of persons to inspect the records, equipment and premises of persons engaged in the producing, processing or marketing of milk or dairy products;
- (n) prescribing the records and reports to be kept or made by a person, including a producer, transporter, processor or distributor;
- (o) requiring persons who produce, transport, distribute, process, keep for sale, market or sell milk to furnish to the Council such information as the Council may from time to time require;
- (p) prohibiting
 - (i) a producer from discontinuing the sale of milk to the Board,

(ii) the Board from discontinuing the purchase of milk from a producer,

(iii) a distributor or processor from discontinuing the purchase of milk from the Board,

(iv) the Board from discontinuing the sale of milk to a distributor or processor,

without the approval of the Council, except in such circumstances as may be prescribed by the regulations;

(q) prescribing the terms and conditions upon which milk may be produced, received, handled, transported, stored, delivered, supplied, processed and marketed;

(r) prescribing the categories and classification of milk;

(s) prescribing the methodology for milk component testing;

(t) approving the allocation of raw milk for processing;

(u) fixing, imposing upon and collecting fees, levies or charges from persons engaged in the production of milk and designating to whom the fees, levies or charges must be paid;

(v) fixing and collecting fees or charges to be paid by a producer, transporter, processor or distributor to the Council for administration, arbitration or auditing functions;

(w) authorizing the payment of expenses from fees, levies or charges imposed pursuant to clause (u);

(x) authorizing the fixing of prompt payment discounts, delayed payment penalties and interest on licence fees and service charges owing by any person engaged in the producing, marketing or processing of milk or dairy products;

(y) authorizing a licensing authority to use licence fees and other money payable for the purpose of paying the expenses of the licensing authority and for carrying out and enforcing this Act and the regulations;

(z) authorizing the establishment of a fund with respect to the payment of any money required pursuant to clause (y);

(aa) providing for the making of grants or other like payments to any person or association or body of persons;

(ab) requiring that no charges, costs or expenses relating to the producing or marketing of milk may be made, other than such charges, costs or expenses as provided for in this Act or the regulations;

(ac) exempting a person or class of persons engaged in the production or marketing of milk or a dairy product or a class, variety or grade of dairy product from this Act or the regulations;

(ad) providing for the establishment and terms of reference of advisory committees;

(ae) providing for the transfer of information necessary to carry out the purpose of this Act and the regulations;

(af) respecting the powers and duties of an inspector;

- (ag) respecting penalties;
- (ah) subject to subsection 24(1), respecting appeals;
- (ai) defining any word or expression used but not defined in the regulations;
- (aj) considered necessary or advisable to carry out effectively the intent and purpose of this Act. 2000, c. 24, s. 9.

Transfer or sale of quotas

10 Subject to the approval of the Governor in Council, the Council may make regulations regulating or controlling the transfer or sale of quota outside of the Province. 2000, c. 24, s. 10.

Regulations by Council

11 The Council, after consulting with the Board and the Processor Association and with the approval of the Minister, may make regulations not inconsistent with the *Health Protection Act* or regulations made pursuant to that Act

- (a) relating to the quality, kind, storage, production, manufacture, processing, transportation and marketing of milk or dairy products;
- (b) providing for the inspection and control of premises at which the storage or production of milk or dairy products is carried on;
- (c) providing standards for sampling;
- (d) providing for the inspection and regulation of vehicles of any kind by which milk or dairy products are transported;
- (e) respecting the grading and inspection of milk;
- (f) adopting regulations or standards under the Code as regulations under this Act. 2000, c. 24, s. 11; 2004, c. 4, s. 109.

Regulations Act

12 The exercise by the Council of the authority contained in Sections 9, 10 and 11 is a regulation within the meaning of the *Regulations Act*. 2000, c. 24, s. 12.

Delegation of powers

13 (1) The Council may delegate to the Board such of its powers as the Council considers appropriate to provide a flexible, efficient structure to regulate the dairy industry.

(2) Notwithstanding subsection (1), the Council may not delegate any of the powers referred to in clause 8(c) or (f), clause 9(c), (d) or (e), subclause 9(p)(iii) or (iv) or Sections 10 and 11.

(3) Notwithstanding subsection (1), the Council may not delegate a power, including a regulation-making power, that primarily relates to a processor, distributor or retailer function.

(4) On giving the notice that the Council considers reasonable in the circumstances, the Council may, by regulation, revoke a delegation made pursuant to subsection (1) where

- (a) the Board has failed to comply with this Act or the regulations or any of the powers delegated to the Board; or
- (b) the Council considers it advisable in the public interest to revoke the delegation. 2000, c. 24, s. 13.

Powers that may be delegated

14 (1) The Council may delegate the following powers to the Board, including the power to make regulations:

- (a) requiring all persons engaged in the production of milk to be licensed;
- (b) requiring all persons engaged in the production of milk to meet quality standards;
- (c) prescribing the price to be paid by a distributor or processor for milk or milk components;
- (d) designating payment agents authorized to act on behalf of the Board to pay producers for milk;
- (e) providing for the regulation of the supply of milk by producers to processors, including the marketing or production of milk on a quota basis, and for that purpose
 - (i) fixing and allotting quota for marketing or production,
 - (ii) refusing to fix and allot quota to persons,
 - (iii) subject to Section 10, transferring quota among producers supplying milk and setting the terms and conditions on which the transfer may take place,
 - (iv) cancelling, reducing or refusing to increase the quota fixed and allotted to any person,
 - (v) prohibiting any person to whom a quota has not been fixed and allotted from marketing and producing milk,
 - (vi) prohibiting any person to whom a licence has been issued and a quota allotted from marketing or producing milk in excess of the quota,
 - (vii) prohibiting the purchase, sale or transfer of quota by any person,
 - (viii) authorizing the assignment of quota to a creditor as security for money loaned or advanced,
 - (ix) subject to Section 10, providing for the purchase, sale or transfer of quota through a quota exchange,
 - (x) providing for the purchase and sale of quota by the Board,
 - (xi) providing for the retention of a percentage of quotas as an assessment on each transfer of quota;

(f) providing for the establishing and administering of a pooling program whereby all producers receive a comparable price for milk that is adjusted for any geographic pricing considerations;

(g) prescribing the information the Board or its payment agent must supply in a milk statement to each producer;

(h) providing for the purchasing of raw milk from producers and the selling of the raw milk to processors;

(i) providing for the administering of the quality and operating standards with respect to the production and storage of milk on the farm.

(2) The exercise by the Board of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2000, c. 24, s. 14.

Regulations by Board

15 (1) The Board, with the approval of the Council, may make regulations

(a) establishing penalties to be imposed on a producer with respect to licensing, production and quality standards for milk on the farm;

(b) prescribing the criteria, rates or charges, equalization payments, other fee mechanisms or charges and method of payment for bulk haulage;

(c) prescribing the powers and duties of an advisory committee to the Board;

(d) requiring the filing of returns and reports;

(e) prescribing and defining the rights, privileges, obligations and liabilities of a transporter, producer or processor in relation to the storage, transportation and delivery of milk;

(f) requiring, by order, persons designated by the Board who are engaged in the marketing or the production of a dairy product or any persons who are members of class of persons designated by the Board and who are engaged in the marketing or production of a dairy product to deduct from any amount payable by that person to any other person engaged in the production or marketing of a dairy product any amount payable to the Board by such other person by way of a licence fee, levy or charge provided for the marketing of milk that the Board is authorized to implement and to remit all amounts so deducted;

(g) prescribing fees, levies or charges to be collected by the Board from a producer;

(h) prescribing bylaws for the administration and structure of the Board;

(i) prescribing the procedures for the collection, use, release and protection of personal or confidential information by the Board in carrying out its duties pursuant to this Act and the regulations;

(j) authorizing rehearings of decisions of the Board and prescribing the process for such hearings;

(k) requiring all persons engaged in the production of milk to register with the Board the name of the person and to keep and furnish the information required by the Board.

(2) The exercise by the Board of the authority contained in subsection (1) is a regulation within the meaning the *Regulations Act*. 2000, c. 24, s. 15.

Public Inquiries Act powers

16 When exercising powers pursuant to this Act, each member of the Council or the Board has the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2000, c. 24, s. 16.

Immunity from liability

17 No member of the Council or the Board is liable for any actions or decisions made in good faith in carrying out duties or responsibilities as a member of the Council or the Board. 2000, c. 24, s. 17.

Duty to consult

18 The Council shall consult with the Processor Association when dealing with issues of importance to processors and when requested to do so by the Processor Association. 2000, c. 24, s. 18.

Licensing authorities

19 The Minister may appoint licensing authorities for the purpose of this Act. 2000, c. 24, s. 19.

Producers, distributors and processors

20 (1) A person who is a producer and a distributor is entitled in that person's respective capacities as a producer and as a distributor to all the rights and privileges and is subject to all the duties and obligations of a producer and of a distributor.

(2) A person who is a producer and a distributor is deemed to have received in the person's capacity as a distributor, from that person, in that person's capacity as a producer, the milk produced by that person that that person distributes and to have contracted in that capacity with that person in the person's capacity as a producer for the marketing of the milk, upon the condition that the regulations and orders made pursuant to this Act apply.

(3) A producer or group of two or more producers who, directly or through a corporation of which the producer or producers is or are members or shareholders, or through an agent, arranges for the distributing on the account of the producer or producers by a distributor of any milk produced by the producer or producers, is a producer and distributor or producers and distributors for the purpose of subsections (1) and (2).

(4) A person who is a producer and a processor is entitled in that person's respective capacities as a producer and as a processor to all the rights and

privileges and is subject to all the duties and obligations of a producer and of a processor.

(5) A person who is a producer and a processor is deemed to have received, in the person's capacity as a processor from that person, in the person's capacity as a producer, the milk produced by that person that that person processes and to have contracted in that capacity with that person in the person's capacity as a producer for the marketing of the milk, upon the condition that the regulations and orders made pursuant to this Act apply.

(6) A producer or group of two or more producers who directly or through a corporation of which the producer or producers is or are members or shareholders, or through an agent, arrange for the processing, on the account of the producer or producers, by a processor of any milk produced by the producer or producers, is a producer and processor or producers and processors for the purpose of subsections (4) and (5). 2000, c. 24, s. 20.

Inspectors

21 (1) The Minister, the Council or the Board may appoint inspectors to carry out their respective functions under this Act and the regulations.

(2) An inspector may

(a) enter and inspect any premises or conveyance used for the producing, processing or marketing of milk or dairy products and inspect anything relevant to the inspection found in the premise or conveyance;

(b) stop any conveyance that the inspector believes may contain any milk or dairy product and inspect the conveyance and any milk or dairy product found in it;

(c) obtain a sample of any milk or dairy product at the expense of the owner for the purpose of making an inspection of it;

(d) require any person who has the custody or control of any books, records or documents of a person engaged in the producing, processing or marketing of milk or dairy products to produce the books, records or documents or to furnish copies of or extracts from them.

(3) Every person when requested to do so by an inspector shall, in respect of the milk or dairy product, produce such books and records or supply extracts therefrom and permit the inspection of the premises.

(4) No person shall hinder or obstruct an inspector in the performance of the inspector's duties, refuse to permit the inspector to carry out such duties, refuse to furnish the inspector with information or furnish the inspector with false information.

(5) The production by any person of a certificate of appointment by the Minister, the Council or the Board to inspect the books, records, documents, equipment and premises of a person engaged in the producing, marketing or processing of a dairy product purporting to be signed by the Minister or the chair or the secretary of the Council or the Board, must be accepted by any person engaged in

the producing or marketing of the dairy product as prima facie proof of such appointment. 2000, c. 24, s. 21.

Power to seize

22 (1) When an inspector believes on reasonable grounds that this Act or the regulations or any order or direction of the Council or the Board has been violated, the inspector may seize the dairy products and other things by means of or in relation to which the inspector reasonably believes a violation was committed.

(2) Dairy products and other things seized pursuant to subsection (1) may not be detained after

(a) this Act, the regulations or an order or direction, as the case may be, has, in the opinion of the inspector, been complied with; or

(b) the expiration of 90 days from the day of seizure,

unless before that time proceedings have been instituted in respect of the violation, in which case the dairy products and other things may be detained until the proceedings are finally concluded.

(3) Where a person has been convicted of a violation of this Act or the regulations or an order or direction of the Council or the Board, every dairy product or other thing by means of or in relation to which the offence was committed is, upon conviction, in addition to any penalty imposed, forfeited to the Crown in right of the Province if such forfeiture is directed by the court.

(4) Any dairy product or other thing detained pursuant to this Section is at all times at the risk and expense of the owner, but the inspector shall immediately notify the owner or person having possession of the product by personal service or registered mail that the product is being detained in storage or otherwise, as the case may be.

(5) The Council, with the approval of the Governor in Council, may make regulations

(a) respecting the detention of dairy products or other things seized pursuant to this Section and the preserving or safe guarding of those products or things;

(b) respecting the disposition of dairy products or other things forfeited pursuant to this Section.

(6) The exercise by the Council of the authority contained in subsection (5) is a regulation within the meaning of the *Regulations Act*. 2000, c. 24, s. 22.

Proof that product is regulated

23 In a prosecution under this Act or the regulations, the fact that the person charged had a dairy product in that person's possession is prima facie proof that the dairy product is regulated pursuant to this Act. 2000, c. 24, s. 23.

Appeal

24 (1) A person who is aggrieved by a decision or order of the Board may appeal to the Council in the time and in the manner prescribed by the Council.

(2) A decision of the Council with respect to an appeal pursuant to subsection (1) is final and is not subject to appeal.

(3) A person who is aggrieved by a decision or order of the Council, other than a decision with respect to an appeal referred to in subsection (1), may appeal to the Supreme Court of Nova Scotia in the time and in the manner determined by the court.

(4) A decision of the court with respect to an appeal pursuant to subsection (3) is final and is not subject to appeal. 2000, c. 24, s. 24.

Limitation of right to appeal

25 Notwithstanding subsection 24(1), where the authority referred to in clause 9(b) is delegated to the Board, a decision of the Board made pursuant to that delegation must be ratified by the Council and is not subject to appeal. 2000, c. 24, s. 25.

Binding arbitration

26 (1) Subsection 24(1) does not apply to the parties to a decision of the Board following a recommendation from an advisory committee resulting from a process of binding arbitration.

(2) Binding arbitration may not be used by an advisory committee of the Board when making a recommendation to the Board with respect to a power referred to in clause 9(b) that has been delegated to the Board. 2000, c. 24, s. 26.

Offence and penalty

27 A person who violates this Act or the regulations or an order or direction of the Minister, the Council or the Board, is guilty of an offence and liable on summary conviction to the penalty provided for in the *Summary Proceedings Act*. 2000, c. 24, s. 27.

Regulations

- 28 (1)** The Governor in Council may make regulations
- (a)** defining any word or expression used but not defined in this Act;
 - (b)** 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*. 2000, c. 24, s. 28.

CHAPTER D-2

An Act Respecting the Transportation of Dangerous Goods

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Short title

1 This Act may be cited as the *Dangerous Goods Transportation Act*.
R.S., c. 119, s. 1.

Interpretation

2 In this Act,
“analyst” means a person appointed as an analyst pursuant to this Act;
“container” means transport equipment, including equipment that
 (a) is carried on a chassis;
 (b) is strong enough to be suitable for repeated use; and
 (c) is designed to facilitate the transportation of goods
without intermediate reloading,
but does not include a vehicle;
“dangerous goods” means a product, substance or organism included
by its nature or by the regulations in any of the classes listed in the Schedule;
“highway” means a highway as defined in the *Motor Vehicle Act*;
“inspector” means a person appointed as an inspector pursuant to this
Act;

“Minister” means the Minister of Public Works;

“packaging” means a receptacle or enveloping material used to contain or protect goods, but does not include a container or a vehicle;

“prescribed” means prescribed by the regulations;

“safety mark” includes a design, symbol, device, sign, label, placard, letter, word, number, abbreviation or any combination thereof that is to be displayed on dangerous goods, packaging, containers or vehicles used in the transporting of dangerous goods;

“safety requirements” means requirements for the transportation of dangerous goods, for the reporting of such transportation, for the training of persons engaged in such transportation and for the inspection of such transportation;

“safety standards” means standards regulating the design, construction, equipping, functioning or performance of containers, packaging or vehicles used in the transporting of dangerous goods;

“shipping document” means a document that accompanies dangerous goods being transported and that describes or contains information relating to goods, and includes a bill of lading, cargo manifest, shipping order and waybill;

“*Transportation of Dangerous Goods Act, 1992 (Canada)*” includes regulations made pursuant to that Act;

“vehicle” means a device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except a device moved by human power or used exclusively upon stationary rails or tracks. R.S., c. 119, s. 2.

Act binds Crown

3 This Act is binding upon the Crown in right of the Province, in right of a province of Canada and in right of Canada. R.S., c. 119, s. 3.

Act does not apply

4 This Act does not apply to the transportation of dangerous goods in a vehicle while under the sole direction or control of the Minister of National Defence for Canada. R.S., c. 119, s. 4.

Transporting dangerous goods on highway

5 No person shall transport any dangerous goods in a vehicle on a highway unless

(a) all applicable prescribed safety requirements are complied with; and

(b) the vehicle and all containers and packaging in it comply with all applicable prescribed safety standards and display all applicable prescribed safety marks. R.S., c. 119, s. 5.

Exemption from Act

6 (1) Notwithstanding Section 5, the Minister may, upon such terms and conditions as the Minister considers fit, exempt any person or vehicle from the application of this Act, in whole or in part.

(2) The Minister may, in writing, authorize any person to exercise on the Minister's behalf the power to exempt contained in subsection (1). R.S., c. 119, s. 6.

Inspectors and analysts

7 The Minister may appoint inspectors and analysts for the purpose of this Act. R.S., c. 119, s. 7.

Certificates

8 (1) An inspector must be furnished with a certificate of the inspector's appointment and, on inspecting any container, packaging or vehicle, the inspector shall, if so required, produce the certificate to the person in charge thereof.

(2) Where an inspector pursuant to this Act inspects or takes a sample of anything that is sealed or closed up, the inspector shall provide the person in charge of it with a certificate in the prescribed form evidencing the inspection or taking of the sample.

(3) A certificate provided under subsection (2) relieves the person to or for whose benefit it is provided of liability with respect to the inspection or taking of a sample evidenced by the certificate, but does not otherwise exempt that person from compliance with this Act and the regulations. R.S., c. 119, s. 8.

Right to stop and inspect vehicle and load and to seize

9 (1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, at any time, stop and inspect a vehicle and its load if the inspector believes that dangerous goods are being transported, and request the opening and inspection of or open and inspect any container, packaging or vehicle on a highway wherein or whereby the inspector believes that the dangerous goods are being transported.

(2) Upon inspecting any container, packaging or vehicle pursuant to subsection (1), an inspector may

(a) for the purpose of analysis, take samples of anything found therein that the inspector believes on reasonable and probable grounds to be dangerous goods; and

(b) examine and make copies and extracts of any books, records, shipping documents or other documents or papers that the inspector believes on reasonable and probable grounds contain any information relevant to the administration or enforcement of this Act and the regulations.

(3) Where dangerous goods are being transported in a vehicle on a highway and an inspector is satisfied on reasonable and probable grounds that any provision of this Act or the regulations is being or has been contravened, the inspector may seize the vehicle in which such dangerous goods are being transported and

may detain the same until the final disposition of any prosecution instituted for such contravention, but the inspector may release the vehicle at any time prior to such final disposition.

(4) The owner or person who has the charge, management or control of any container, packaging or vehicle inspected pursuant to subsection (1) or vehicle seized or detained pursuant to subsection (3) shall give an inspector all reasonable assistance in the owner's or person's power to enable the inspector to carry out the inspector's duties and functions.

(5) No person shall, while an inspector is exercising the inspector's powers or carrying out the inspectors duties and functions,

(a) fail to comply with any reasonable request of the inspector;

(b) knowingly make any false or misleading statement either verbally or in writing to the inspector;

(c) except with the authority of the inspector, remove, alter or interfere in any way with anything removed by the inspector; or

(d) otherwise obstruct or hinder the inspector. R.S., c. 119, s. 9.

Offences, penalties and limitation period

10 (1) Every person who contravenes Section 5 is guilty of an offence and is liable

(a) on the first conviction to a fine of not more than \$50,000; and

(b) on each subsequent conviction to a fine of not more than \$100,000,

or to imprisonment for a term not exceeding two years.

(2) Every person who contravenes any provision of this Act or the regulations for which no other penalty is provided by this Act is guilty of an offence and is liable on conviction to a fine of not more than \$10,000 or to imprisonment for a term not exceeding two years.

(3) No proceedings under this Section may be instituted after two years from the day the offence was committed. R.S., c. 119, s. 10.

Summary Proceedings Act

11 Where the procedure set out in Sections 42 to 48 of the *Summary Proceedings Act* is employed for the prosecution of any offence under this Act, the maximum penalty that may be imposed is a fine of \$1,000. R.S., c. 119, s. 11.

Defence

12 It is a defence to a charge under this Act for the accused to establish that the accused took all reasonable measures to comply with this Act. R.S., c. 119, s. 12.

Where offence committed by employee or agent

13 In any prosecution for an offence under this Act, 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, but it is a defence for the accused to establish that the offence was committed without the accused's knowledge or that the accused took all reasonable measures to prevent its commission. R.S., c. 119, s. 13.

Offence and penalty on officer or agent of corporation

14 Any officer, director or agent of a corporation who directs, authorizes, assents to or acquiesces or participates in the commission of an offence is a party to and guilty of the offence and is liable on summary conviction to the penalty provided for the offence, whether or not the corporation has been prosecuted or convicted. R.S., c. 119, s. 14.

Certificate or report as proof

15 (1) Subject to subsections (3) and (4), a certificate or report appearing to have been signed by an inspector or analyst stating that the inspector or analyst has made an inspection or analysed or examined a vehicle, product, substance or organism and stating the results of the inspection, analysis or examination is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate or report.

(2) Subject to subsections (3) and (4), a copy or an extract made by an inspector pursuant to clause 9(2)(b) and appearing to have been certified under the inspector's signature as a true copy or extract is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the copy or extract and, in the absence of any evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

(3) The party against whom a certificate or report is produced pursuant to subsection (1) or against whom a copy or an extract is produced pursuant to subsection (2) may, with leave of the court, require the attendance of the inspector or analyst who signed or appears to have signed the certificate, report, copy or extract for the purpose of cross-examination.

(4) No certificate, report, copy or extract referred to in subsection (1) or (2) may be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate, report, copy or extract. R.S., c. 119, s. 15.

Regulations

- 16 (1)** The Governor in Council may make regulations
- (a) prescribing products, substances and organisms to be included in the classes listed in the Schedule;
 - (b) establishing divisions, subdivisions and groups of dangerous goods and classes thereof;

(c) specifying, for each product, substance and organism prescribed pursuant to clause (a) the class listed in the Schedule and the division, subdivision or group into which it falls;

(d) determining or providing the manner of determining the classes listed in the Schedule and the division, subdivision or group into which any dangerous goods not prescribed pursuant to clause (a) fall;

(e) exempting from the application of this Act and the regulations, or any provision thereof, the transporting of dangerous goods in such quantities or concentrations, in such circumstances, for such purposes or in such vehicles as are specified in the regulations;

(f) prescribing the manner of identifying any quantities or concentrations of dangerous goods exempted pursuant to clause (e);

(g) respecting exemptions granted pursuant to Section 6;

(h) prescribing safety marks, safety requirements and safety standards of general or particular application;

(i) prescribing shipping documents and other documents to be used in respect of the transportation of dangerous goods, the information to be included in such documents and the persons by whom and manner in which such documents are to be used and retained;

(j) prescribing remedial powers of an inspector where the inspector believes on reasonable and probable grounds that dangerous goods being transported constitute a serious and imminent danger to life, health, property or the environment or are being transported otherwise than in compliance with the applicable safety marks, safety requirements or safety standards;

(k) respecting the disposition or recovery of property seized;

(l) fixing the form, amount, nature, class, beneficiary, terms and conditions of insurance or bond that must be provided and carried by persons or classes of persons while transporting dangerous goods in a vehicle or class of vehicle on a highway;

(m) prohibiting the transportation of dangerous goods under such circumstances as are prescribed;

(n) prohibiting the transportation of such dangerous goods as are prescribed;

(o) requiring that where there occurs a discharge, emission or escape of dangerous goods from any container, packaging or vehicle on a highway, the persons having charge, management or control of the dangerous goods, shall report the discharge, emission or escape to a designated person, and designating the person to whom the report is to be made and prescribing the information to be included in the report and the manner of reporting;

(p) prescribing forms for the purpose of this Act and the regulations;

(q) defining any word or expression used but not defined in this Act;

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

(2) The Schedule to this Act may be added to, varied or restricted by the Governor in Council.

(3) The Governor in Council may by order determine that any regulation, code or standard made by the Governor General in Council, in whole or in part, has the same force and effect as if made by the Governor in Council and such order is a regulation for the purpose of this Act.

(4) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. R.S., c. 119, s. 16.

Agreements with Government of Canada

17 (1) The Minister may, with the approval of the Governor in Council, enter into agreements with the Government of Canada with respect to the administration and enforcement of

(a) this Act and the regulations or any provisions thereof;

(b) the *Transportation of Dangerous Goods Act, 1992* (Canada), or any provision thereof.

(2) An agreement entered into pursuant to subsection (1) may provide for any matter necessary for or incidental to the implementation, administration or enforcement agreed upon and for the apportionment of any costs, expenses or revenues arising therefrom. R.S., c. 119, s. 17.

SCHEDULE

Class 1 - Explosives, including explosives within the meaning of the *Explosives Act* (Canada)

Class 2 - Gases: compressed, deeply refrigerated, liquefied or dissolved under pressure

Class 3 - Flammable and combustible liquids

Class 4 - Flammable solids; substances liable to spontaneous combustion; substances that on contact with water emit flammable gases

Class 5 - Oxidizing substances; organic peroxides

Class 6 - Poisonous (toxic) and infectious substances

Class 8 - Corrosives

Class 9 - Miscellaneous products, substances or organisms considered by the Governor in Council to be dangerous to life, health, property or the environment when transported in a vehicle on a highway and prescribed to be included in this class.

R.S., c. 119, Sch.

CHAPTER D-3

An Act Respecting Defamation

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Short title

- 1 This Act may be cited as the *Defamation Act*. R.S., c. 122, s. 1.

Interpretation

- 2 In this Act,

“broadcasting” means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds, by means of Hertzian waves intended to be received by the public either directly or through the medium of relay stations;

“defamation” means libel or slander;

“newspaper” means a paper containing news, intelligence, occurrences, pictures or illustrations, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding 31 days between the publication of any two of such papers, parts or numbers;

“public meeting” means a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted;

“words” includes pictures, visual images, gestures or other methods of signifying meaning. R.S., c. 122, s. 2.

Broadcast is publication

3 For the purpose of this Act and of the law relating to libel and slander, the broadcasting of words must be treated as publication in permanent form. R.S., c. 122, s. 3.

Pleading

4 In an action for defamation, the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading is put in issue by the denial of the alleged defamation and, where the matters set forth, with or without the alleged meaning, show a cause of action, the pleading is sufficient. R.S., c. 122, s. 4.

Apology

5 In an action for defamation in which the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or in which judgment has been given against the defendant on motion for judgment on the pleadings, the defendant may give in evidence, in mitigation of damages, that the defendant made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action or, where the action was commenced before there was an opportunity of making or offering the apology, that the defendant did so as soon afterwards as the defendant had an opportunity. R.S., c. 122, s. 5.

Evidence in mitigation of damages

6 In an action for defamation, the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for defamation in respect of the publication of matter to the same effect as the matter on which the action is founded, or has received or agreed to receive compensation in respect of any such publication. R.S., c. 122, s. 6.

Payment into court

7 The defendant may pay into court, with the defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment has the same effect as payment into court in other cases. R.S., c. 122, s. 7.

Verdict of jury

8 On the trial of an action for defamation, the jury may give a general verdict upon the whole matter in issue in the action, and must not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action, but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special ver-

dict if it thinks fit to do so and the proceedings after verdict, whether general or special, are the same as in other cases. R.S., c. 122, s. 8.

Justification

9 In an action for defamation in respect of words containing two or more distinct charges against the plaintiff, a defence of justification does not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S., c. 122, s. 9.

Fair comment

10 In an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment does not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S., c. 122, s. 10.

Consolidation of actions

11 Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order for the consolidation of the actions so that they are tried together, and after an order has been made and before the trial of the actions, the defendants in any new actions instituted in respect of any such defamation are also entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the actions already consolidated. R.S., c. 122, s. 11.

Separate verdicts

12 (1) In a consolidated action under Section 11, the court or jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict must be given for or against each defendant in the same way as if the consolidated actions had been tried separately.

(2) Where the court or jury gives a verdict against defendants in more than one of the actions so consolidated, it shall apportion the amount of the damages between and against those defendants, and, where the plaintiff is awarded the costs of the action, the judge shall make such order as the judge considers just for the apportionment of the costs between and against those defendants. R.S., c. 122, s. 12.

Privileged report

13 (1) A fair and accurate report published in a newspaper or by broadcasting of any of the following proceedings that are open to the public is privileged unless it is proved that the publication was made maliciously:

(a) proceedings in the Senate or House of Commons of Canada, in the Legislative Assembly of this Province or any other province of Canada or in a committee of any such bodies;

(b) proceedings of a meeting of the council of a regional municipality, town or municipality of a county or district, the Conseil scolaire acadien provincial, a board of health or of any other board or local authority formed or constituted by or under any Act of Canada

or of this Province or any other province, or of any committee of or appointed by any such body;

(c) the proceedings of any administrative body that is constituted by any public authority in Canada;

(d) the proceedings of any commission of inquiry that is constituted by any public authority in the British Commonwealth;

(e) the proceedings of a meeting of commissioners authorized to act by or pursuant to statute or other lawful warrant.

(2) A fair and accurate report published in a newspaper or by broadcasting of the proceedings of a public meeting is privileged unless it is proved that the publication was made maliciously.

(3) The publication in a newspaper or by broadcasting of a copy or a fair and accurate report or summary of a notice, report, bulletin or other document issued for the information of the public by or on behalf of any of the bodies mentioned in subsection (1) or (2) or by or on behalf of any government department, bureau or office or public officer is privileged unless it is proved that the publication was made maliciously.

(4) A fair and accurate report published in a newspaper or by a broadcasting of the findings or decision of any of the following associations, or any part or committee thereof, being a finding or decision relating to a person who is a member of or is subject, by virtue of any contract, to the control of the association, is privileged, unless it is proved that the publication thereof was made maliciously:

(a) an association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;

(b) an association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession; or

(c) an association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime.

(5) Nothing in this Section applies to the publication of seditious, blasphemous or indecent matter.

(6) Subsections (1), (2), (3) and (4) do not apply where

(a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspa-

per a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that the plaintiff has done so; or

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that the defendant has done so from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast, or as near as possible to that time.

(7) Nothing in this Section limits or abridges any privilege now by law existing, or applies to the publication of any matter not of public concern or the publication of which is not for the public benefit. R.S., c. 122, s. 13; 2018, c. 1, Sch. A, s. 104.

Report of court proceeding

14 (1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court is privileged if

- (a) the report contains no comment;
- (b) the report is published contemporaneously with the proceedings that are the subject-matter of the report or within 30 days thereafter; and
- (c) the report contains nothing of a seditious, blasphemous or indecent nature.

(2) Subsection (1) does not apply where

(a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that the defendant has done so; or

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that the defendant has done so from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time. R.S., c. 122, s. 14.

Sections 13 and 14 apply

15 Sections 13 and 14 apply to every headline or caption in a newspaper that relates to any report therein. R.S., c. 122, s. 15.

Offer of amends

16 (1) A person who has published words alleged to be defamatory of another person may, if the person claims that the words were published by the

person innocently in relation to that other person, make an offer of amends under this Section and in any such case

(a) if the offer is accepted by the aggrieved party and is duly performed, no proceedings for defamation may be taken or continued by that party against the person making the offer in respect of the publication in question, but without prejudice to any cause of action against any other person jointly responsible for that publication;

(b) if the offer is not accepted by the aggrieved party, then, except as otherwise provided by this Section, it is a defence, in any proceedings by the aggrieved party for defamation against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this Section must be expressed to be made for the purpose of this Section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by the person innocently in relation to the aggrieved party and for the purpose of a defence under clause (1)(b), no evidence, other than evidence of facts specified in the affidavit, are admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this Section is understood to mean an offer

(a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the aggrieved party in respect of those words;

(b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on that person's part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the aggrieved party.

(4) Where an offer of amends under this Section is accepted by the aggrieved party,

(a) any question as to the steps to be taken in fulfillment of the offer as so accepted must in default of agreement between the parties be referred to and determined by the Supreme Court of Nova Scotia or a judge thereof, whose decision thereon is final;

(b) the power of the Court or judge to make orders as to costs in proceedings by the aggrieved party against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under clause (a), includes the power to order the payment by the person making the offer to the aggrieved party of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question,

and if no such proceedings as aforesaid are taken, the Court or judge may, upon application made by the aggrieved party, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purpose of this Section, words must be treated as published by one person innocently in relation to another person if and only if the following conditions are satisfied:

(a) the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to that other person; or

(b) the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication, and any reference in this subsection to the publisher is to be construed as including a reference to any servant or agent of the publisher who was concerned with the contents of the publication.

(6) Clause (1)(b) does not apply in relation to the publication by any person of words of which that person is not the author unless that person proves that the words were written by the author without malice. R.S., c. 122, s. 16.

Defamation action

17 Sections 18 to 22 apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in such newspaper or from such broadcasting station. R.S., c. 122, s. 17.

Notice of action

18 (1) No action lies unless the plaintiff has, within three months after the publication of the defamatory matter has come to the plaintiff's notice or knowledge, given to the defendant, in the case of a daily newspaper, seven, and in the case of any other newspaper or where the defamatory matter was broadcast, 14 days notice in writing of the plaintiff's intention to bring action, specifying the defamatory matter complained of.

(2) The notice must be served in the same manner as an originating notice. R.S., c. 122, s. 18.

Special limitation period

19 Notwithstanding the *Limitation of Actions Act*, an action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, or any officer, servant or employee of such newspaper or broadcasting station, for defamation contained in the newspaper or broadcast from the station must be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed, but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action. R.S., c. 122, s. 19.

Court

20 The action must be tried in the county where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated, or in the county wherein the plaintiff resides at the time the action is brought, but upon the application of either party the court may direct the action to be tried, or the damages to be assessed, in any other county if it appears to be in the interests of justice, and may impose such terms as to payment of witness fees and otherwise as the court considers proper. R.S., c. 122, s. 20.

Proof of mitigation

21 (1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant

(a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that the defendant offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or

(b) broadcast such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought. R.S., c. 122, s. 21.

Only special damages

22 (1) The plaintiff may recover only special damages if it appears in trial that

(a) the alleged defamatory matter was published in good faith;

(b) there was reasonable grounds to believe that the publication thereof was for the public benefit;

(c) it did not impute to the plaintiff the commission of a criminal offence;

(d) the publication took place in mistake or misapprehension of the facts; and

(e) where

(i) the alleged defamatory matter was published in a newspaper, a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and

were so published in as conspicuous a place and type as was the alleged defamatory matter, or

(ii) the alleged defamatory matter was broadcast, the retraction and apology were broadcast from broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) Subsection (1) does not apply to the case of defamation against any candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election. R.S., c. 122, s. 22.

Application of defamation action procedure

23 (1) No defendant in an action for defamation published in a newspaper is entitled to the benefit of Sections 18, 19 and 22 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

(2) The production of a printed copy of a newspaper is prima facie evidence of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

(3) Where a person, by registered letter containing the person's address and addressed to a broadcasting station, alleges that defamation against the person has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, Sections 18, 19 and 22 do not apply with respect to an action by such person against such owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to that person, within 10 days from the date on which the first mentioned registered letter is received at the broadcasting station. R.S., c. 122, s. 23.

CHAPTER D-4

An Act to Regulate the Granting of Degrees

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Short title

- 1** This Act may be cited as the *Degree Granting Act*. R.S., c. 123, s. 1.

Interpretation

- 2** In this Act,
- “degree” means any recognition in writing of academic achievement that is called a degree, and includes the degrees of bachelor, master and doctorate;
- “institution” means a person who
- (a) grants degrees;
 - (b) provides a program of post-secondary study leading to a degree; or
 - (c) sells, offers for sale or provides by agreement for a fee, reward or other remuneration, a degree,
- and includes a natural person, an association of natural persons, a partnership or a corporation that carries on any activity referred to in clauses (a) to (c);
- “Minister” means the Minister of Advanced Education;
- “public institution” means an institution that receives regular education-related operating funding from the Government. R.S., c. 123, s. 2; 2006, c. 26, s. 1.

Authority to grant degrees

- 3** No institution shall directly or indirectly
- (a) grant degrees;
 - (b) provide a program of post-secondary study leading to a degree conferred by an institution in or outside the Province;

(c) advertise a program of post-secondary study offered in the Province leading to a degree conferred by an institution in or outside the Province; or

(d) sell, offer for sale or provide by agreement for a fee, reward or other remuneration, a diploma, certificate, document or other material that is, or indicates or implies the granting or conferring of, a degree,

unless the institution

(e) is authorized by an Act of the Legislature to grant degrees;

(f) is a public institution authorized by an Act of a legislature of a province to grant degrees;

(g) is an institution authorized by the Governor in Council. R.S., c. 123, s. 3; 2006, c. 26, s. 2.

Authorization by Governor in Council

4 (1) The Governor in Council may authorize a degree-granting institution for the purpose of this Act.

(2) The Governor in Council may attach to an authorization such terms and conditions as the Governor in Council considers proper to give effect to the intent of this Act.

(3) The exercise of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. R.S., c. 123, s. 4; 2006, c. 26, s. 3.

Right of entry and inspection

5 (1) Where the Minister has reasonable and probable grounds to believe that an institution has contravened any of the provisions of this Act or the regulations, an inspector designated by the Minister in writing may at any reasonable time enter upon the premises of that institution to make an inspection for the purpose of determining whether or not the institution is in contravention of this Act or the regulations.

(2) Upon an inspection under subsection (1), the inspector

(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the institution being inspected that are relevant for the purpose of the inspection; and

(b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, in which case the inspector shall make a copy with dispatch and return the material promptly thereafter to the institution being inspected,

and no person shall obstruct the inspector in the inspection, withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purpose of the inspection.

(3) A copy made as provided in subsection (2) and purporting to be certified by an inspector is admissible in evidence in any proceeding as prima facie proof of the original. R.S., c. 123, s. 5.

Offence

- 6** (1) Every institution that
- (a) knowingly furnishes false information in any application under this Act or the regulations or in any statement or return required to be furnished under this Act or the regulations; or
 - (b) contravenes any provision of this Act or the regulations,
- and every director or officer of a corporation who knowingly concurs in such furnishing of false information or contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$20,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where the institution convicted of an offence under subsection (1) is a corporation, the maximum penalty that may be imposed upon the corporation is \$250,000. R.S., c. 123, s. 6; 2006, c. 26, s. 4.

Injunction

7 Where a person contravenes this Act, the Supreme Court of Nova Scotia, on application by the Minister, may grant an injunction enjoining the person from continuing the contravention of this Act. R.S., c. 123, s. 7.

Regulations

- 8** (1) The Minister may make regulations
- (a) respecting the process for application by an institution for authorization to grant a degree and the renewal of an application for authorization to grant a degree;
 - (b) respecting the process for the revocation and reinstatement of an authorization of an institution to grant a degree under this Act;
 - (c) respecting the terms and conditions of an authorization to grant a degree;
 - (d) establishing a process for the financial review of institutions applying for authorization to grant a degree or authorized to grant a degree under this Act;
 - (e) establishing a process to review the quality of programs, instructors, facilities and academic standards of an institution applying for authorization to grant a degree or authorized to grant a degree under this Act;
 - (f) respecting financial standards of institutions applying for authorization to grant a degree or authorized to grant a degree under this Act;
 - (g) respecting educational standards of institutions applying for authorization to grant a degree or authorized to grant a degree under this Act, including standards for the quality of programs, instructors, facilities and academic standards;
 - (h) delegating any of the duties set out in the regulations to a third party;

- (i) prescribing fees;
- (j) respecting appeals;
- (k) defining any word or expression used but not defined in this Act;
- (l) respecting any matter the Minister determines necessary or advisable to carry out effectively 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*. 2006, c. 26, s. 5.

CHAPTER D-5

An Act Respecting the Demise of the Crown

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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 *Demise of the Crown Act*. R.S., c. 124, s. 1.

Continuation of office or function

2 The holding of any office, place, employment or function under the Crown in the Province is not affected nor are any fresh appointments thereto or oath of office rendered necessary by the demise of the Crown. R.S., c. 124, s. 2.

Validity of matter or proceeding

3 No act, matter or proceeding in respect to which the Legislature has power to legislate may be held invalid or called in question by reason, proximately or remotely, of the demise of the Crown. R.S., c. 124, s. 3.

CHAPTER D-6

An Act Respecting Dentistry

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Short title

1 This Act may be cited as the *Dental Act*. 1992, c. 3, s. 1.

Interpretation

2 In this Act,

“Assistants Association” means the Nova Scotia Dental Assistants Association;

“Assistants’ Register” means the Register of Dental Assistants established and maintained by the Registrar pursuant to this Act;

“Board” means the Provincial Dental Board of Nova Scotia;

“bylaw” means, except where the context otherwise requires, a bylaw of the Dental Association;

“complaint” means a written complaint received by the Registrar respecting

- (a) unprofessional conduct;
- (b) infamous conduct;
- (c) a breach of the standard of ethics, conduct, competence or proficiency as established by the regulations; or
- (d) a breach of the advertising standards established by the regulations;

“Dental Association” means the Nova Scotia Dental Association;

“dentistry” means the services usually performed by or under the supervision of a dentist and includes

- (a) the diagnosis and treatment of any injury, disease, pain, deformity, defect, lesion, disorder or physical condition of, to, in or from a human mouth, mandible or maxilla or associated structures or tissues, including the prescribing and administering of radiographs, anaesthetics, drugs and medicines in connection therewith;
- (b) prescribing or advising the use of, or constructing, fitting or repairing any dental prosthesis, fixed or removable, denture, bridge, or appliance for any of the purposes indicated in clause (a) or to replace, improve or supplement a human tooth, or to prevent, alleviate, correct or improve any condition in the human oral cavity, or to be used in, upon or in connection with a human tooth, jaw or associated structure or tissues, or in the treatment of any condition thereof; and
- (c) taking or making, or the giving of advice or assistance, or the providing of facilities for the taking or making of any impression, bite or cast and design preparatory to constructing, fitting or

repairing a dental prosthesis, fixed or removable, denture, bridge, appliance or thing;

“Dentists’ Register” means the Register of Dentists established and maintained by the Registrar pursuant to this Act;

“Executive Director” means the Executive Director of the Dental Association;

“licensed dental assistant” means a dental assistant whose name has been registered in the Assistants’ Register and who holds a current licence issued pursuant to this Act to engage in the practice of dental assisting;

“licensed dentist” means a dentist whose name has been registered in the Dentists’ Register pursuant to this Act and who holds a current licence issued pursuant to this Act to engage in the practice of dentistry;

“Registrar” means the Registrar of the Board;

“regulation” means a regulation of the Board. 1992, c. 3, s. 2; 2000, c. 37, s. 1; 2007, c. 29, s. 90.

Prohibition

3 (1) No person shall engage in the practice of dentistry unless that person is a licensed dentist.

(2) This Section does not apply to

(a) the practice of dental hygiene performed by a licensed dental hygienist or a professional corporation pursuant to the *Dental Hygienists Act*;

(b) work, service, advice or assistance that, by the regulations, constitutes part of dental assisting and that is undertaken, performed or given by a licensed dental assistant

(i) under the supervision of a licensed dentist, or

(ii) with written permission given by the Board pursuant to subsection 17(2);

(c) work, service, advice or assistance in connection with the manufacturing or repairing of any prosthetic denture, bridge, appliance or device to be used in, upon or in connection with a human tooth, jaw or associated structure or tissue, or in the treatment of any condition thereof, performed or given by a person pursuant to a written prescription of a licensed dentist and by the use of a design, impression or cast furnished by a licensed dentist, with such written prescription, where a design, impression or cast is necessary;

(d) a person by reason only of being engaged, as a student, in a program approved by the Board;

(e) a person by reason only of demonstrating clinical operations for educational purposes, having been authorized, in writing, by the Board pursuant to subsection 17(2) to do so; or

(f) a duly qualified medical practitioner. 1992, c. 3, s. 3; 2007, c. 29, s. 91.

Restriction on corporation

4 Except as permitted by this Act and the regulations, no corporation shall engage in the practice of dentistry and no dentist, directly or indirectly, shall assist or be employed by a corporation for the purpose of engaging in the practice of dentistry. 1992, c. 3, s. 4.

Restriction on specialist

5 No person shall, either directly or indirectly, purport to be a specialist in a branch of dentistry unless that person is licensed in accordance with the regulations as a specialist in that branch of dentistry. 1992, c. 3, s. 5.

Nova Scotia Dental Association

6 (1) The Dental Association of the Province of Nova Scotia is continued under the name "Nova Scotia Dental Association".

(2) The membership of the Dental Association consists of

(a) each person who, immediately before September 8, 1992, was a member of the Dental Association of the Province of Nova Scotia; and

(b) each person who becomes a member of the Dental Association pursuant to the bylaws,

as long as that person remains a member of the Dental Association. 1992, c. 3, s. 6.

Objects of Association

7 The objects of the Dental Association are to

(a) advance the art and science of dentistry;

(b) inform and educate the general public with respect to the advantages and maintenance of good oral health;

(c) initiate and sustain measures designed to improve the oral health of the public;

(d) hold meetings, clinics and seminars to increase the knowledge and abilities of those engaged in dentistry in the Province;

(e) support publications for communication with and between members of the Dental Association;

(f) maintain communications with other health professions and with other health agencies, both public and private;

(g) promote the welfare of its members. 1992, c. 3, s. 7.

Powers of Association

8 The Dental Association may

(a) buy, sell, mortgage, lease or otherwise deal with real or personal property;

(b) manage the business and other activities of the Dental Association and invest funds of the Dental Association not immediately required;

(c) determine its annual membership fees;

- (d) publish journals and other publications to advance the objects of the Dental Association;
- (e) elect or appoint members to serve as representatives of the Dental Association at or on national, regional or local associations or groups;
- (f) negotiate on behalf of its members with persons or agencies, including government agencies, in matters respecting the practice of dentistry;
- (g) assist individual members in matters respecting the practice of dentistry;
- (h) make bylaws not inconsistent with this Act or any provision of law for the conduct and management of its affairs, including, without restricting the generality of the foregoing, bylaws respecting membership in the Dental Association, including membership of persons who are not licensed dentists;
- (i) exercise such powers as are necessary or conducive to achieve its objects and exercise its powers. 1992, c. 3, s. 8.

Executive Director

9 (1) There is an Executive Director of the Dental Association.

(2) The Executive Director is appointed by the Dental Association upon such terms and conditions of employment and for such term of office as the Dental Association determines.

(3) The Executive Director has such functions and duties as are imposed on the Executive Director by this Act and the bylaws. 1992, c. 3, s. 9.

Annual membership fee

10 (1) Every licensed dentist shall remit annually the membership fees to the Executive Director on or before such date as is prescribed by the bylaws.

(2) The Executive Director shall notify the Registrar of the names of the dentists who have not paid the annual membership fees by the date prescribed by the bylaws.

(3) Upon payment by a dentist of the arrears of annual membership fees and a reinstatement fee as determined by the bylaws, the Executive Director shall so notify the Registrar. 1992, c. 3, s. 10.

Executive Committee

11 (1) The Dental Association shall elect, in the manner set forth in the bylaws, an Executive Committee from among its members in good standing.

(2) The Executive Committee shall carry on the general management of the business and other activities of the Dental Association in accordance with this Act and the bylaws and has such functions and duties as are imposed on it by this Act and the bylaws. 1992, c. 3, s. 11.

Meetings of Association

12 (1) The Dental Association shall hold an annual meeting in each calendar year and shall hold other general meetings in accordance with the bylaws.

(2) The Executive Committee shall determine the time and place of the meetings of the Dental Association.

(3) Thirty members of the Dental Association constitute a quorum. 1992, c. 3, s. 12.

Provincial Dental Board of Nova Scotia

13 (1) The Provincial Dental Board of Nova Scotia is established as a body corporate.

(2) The Board consists of

(a) three members of the Dental Association appointed by the Governor in Council, each of whom is, and has been, for at least five years, licensed to engage in the practice of dentistry in the Province as long as that person is so licensed during that person's term of office;

(b) five members of the Dental Association appointed by the Dental Association, each of whom is, and has been, for at least five years, licensed to engage in the practice of dentistry in the Province, as long as that person is so licensed during that person's term of office;

(c) one member of the Assistants Association appointed by the Governor in Council who is and has been, for at least five years, licensed to engage in the practice of dental assisting in the Province, as long as that person remains so licensed during that person's term of office;

(d) one member of the Assistants Association appointed by the Assistants Association who is and has been, for at least five years, licensed to engage in the practice of dental assisting in the Province, as long as that person remains so licensed during that person's term of office; and

(e) two persons appointed by the Governor in Council, each of whom is not a member of an association referred to in clause (a), (b), (c) or (d). 1992, c. 3, s. 13; 2007, c. 29, s. 92; 2014, c. 11, s. 1.

Term of office of Board member and resignation

14 (1) A member of the Board holds office for a three-year term and is eligible for reappointment for two additional consecutive terms of three years each.

(2) A member of the Board may resign by written notice to the Registrar.

(3) The Registrar shall notify the body that appointed the member of the resignation and request that body to appoint pursuant to Section 13 a person to serve on the Board. 1992, c. 3, s. 14.

Chair and Vice-chair of Board

15 The Board shall elect a Chair and a Vice-chair from among its members. 1992, c. 3, s. 15.

Rules for meetings of Board and quorum

16 (1) The Board may make such rules as are necessary for the calling and conduct of its meetings.

(2) Seven members of the Board constitute a quorum. 1992, c. 3, s. 16; 2007, c. 29, s. 93.

Duties and powers of Board

17 (1) The Board shall

(a) represent and protect the interests of the general public in matters relating to the practice of dentistry;

(b) establish the educational requirements for registration and licensing for the practice of dentistry and dental assisting;

(c) approve clinical training programs for students in dentistry and dental assisting;

(d) prescribe examinations, where necessary, to ascertain the qualifications of persons seeking to be registered and licensed to engage in the practice of dentistry or dental assisting;

(e) establish a Complaints Committee, a Discipline Committee and a Registration Appeal Committee;

(f) hear appeals from decisions of the Discipline Committee;

(g) provide annually a report, including a financial statement, to the Minister of Health and Wellness;

(h) determine the registration fees and the annual licensing fees for dentists and dental assistants; and

(i) carry out such other duties as are imposed upon it by this Act.

(2) The Board may grant

(a) permission to a licensed dental assistant to undertake, perform or give work, service, advice or assistance that, by the regulations, constitutes part of the practice of dental assisting and is not undertaken, performed or given under the supervision of a dentist;

(b) authorization to a person for demonstrating clinical operations for educational purposes. 1992, c. 3, s. 17; 2000, c. 37, s. 2; 2007, c. 29, s. 94; 2015, c. 15, s. 1.

Examination of books and accounts of Board

18 The books and accounts of the Board must, at all reasonable times, be open for examination by any licensed dentist or licensed dental assistant. 1992, c. 3, s. 18; 2007, c. 29, s. 95.

Registrar

19 The Board shall appoint a dentist as Registrar of the Board and shall determine the Registrar's salary, which must be paid out of the money received by the Board pursuant to this Act. 1992, c. 3, s. 19.

Duties of Registrar

20 The Registrar shall

- (a) examine the credentials of candidates for registration and licensing and approve for registration and licensing those candidates qualified to be licensed and registered;
- (b) issue certificates of registration and licences on behalf of the Board;
- (c) impose conditions or restrictions on a certificate of registration or licence issued pursuant to clause (b), if required for the protection of the public and for appropriate patient care;
- (d) subject to the direction of the Board, maintain all registers in accordance with this Act and the regulations;
- (e) issue permits to corporations pursuant to the regulations;
- (f) collect all fees due to the Board;
- (g) serve as an ex officio member of the Board;
- (h) maintain records of the Board's proceedings;
- (i) investigate complaints respecting dentists and dental assistants and refer all complaints to the Complaints Committee;
- (j) initiate dispute mediation in appropriate circumstances;
- (k) retain and instruct counsel with respect to matters that proceed to the Discipline Committee;
- (l) report to the Board as and when necessary;
- (m) carry out such duties as are imposed on the Registrar by this Act or the regulations or as are directed by the Board. 1992, c. 3, s. 20; 2000, c. 37, s. 3; 2007, c. 29, s. 96; 2015, c. 15, s. 2.

Registers

- 21** (1) There is established
- (a) the Register of Dentists; and
 - (b) the Register of Dental Assistants.

(2) Upon approving the registration of a person and upon the payment of all prescribed fees, the Registrar shall enter the name of that person in the applicable register and issue to that person a certificate of registration.

(3) The Registrar shall make such alterations as are necessary to update the registers in accordance with this Act and the regulations.

(4) The Registrar shall strike the names of all registered persons who have died or who are to be struck from a register in accordance with this Act and the regulations.

(5) The name of a person struck from a register may be reinstated where the Registrar is satisfied that the person is entitled to be registered.

(6) All of the registers are open to inspection without charge by any person at reasonable times during normal business hours. 1992, c. 3, s. 21; 2007, c. 29, s. 97.

Registration fees

22 Every dentist and dental assistant applying to be registered in the applicable register shall remit to the Registrar the applicable registration fee determined by the Board. 1992, c. 3, s. 22; 2007, c. 29, s. 98.

Reference to additional qualification

23 A person registered pursuant to this Act who has obtained a degree or qualification relating to dentistry, other than a degree required to qualify that person for registration, is entitled to have the degree or additional qualification entered in the applicable register in substitution for, or in addition to, the qualifications previously registered upon satisfying the Registrar that the person is entitled to that qualification and upon payment of such fees as the Board determines. 1992, c. 3, s. 23.

Licensing fees

24 (1) Every dentist or dental assistant applying for a licence to engage in the practice of dentistry or dental assisting, respectively, for the ensuing year shall remit the applicable annual licensing fee to the Registrar on or before the date prescribed by the regulations.

(2) The name of a person who has not paid the annual licensing fees for the year or met the other requirements for the issue of an annual licence on or before the date prescribed by the regulations or who does not at any time meet the other requirements for the issue of a licence must be struck from the applicable register but the name may be re-entered in the register upon

(a) payment of a reinstatement fee as determined by the Board;

(b) all the requirements for the issue of an annual licence being met; and

(c) where the person does not give prior written notice to the Board that the person does not intend to renew that person's licence, payment of the arrears of licensing fees,

if the person is otherwise still eligible to have the name so entered.

(3) The Board may, in a court of competent jurisdiction, recover as a private debt money owed to it. 1992, c. 3, s. 24; 2007, c. 29, s. 99.

Dentistry licence

25 (1) Subject to subsection (2), the Registrar shall annually issue a licence to engage in the practice of dentistry to a person who

- (a) is registered in the Dentists' Register;
- (b) has paid the membership fees of the Dental Association for the current year;
- (c) pays the annual licensing fee for the ensuing year on or before such date as is prescribed by the regulations;
- (d) meets the educational requirements and other qualifications set out in the regulations;
- (e) provides the Registrar with a statement signed by that person indicating whether or not that person has been engaged in the practice of dentistry within the preceding 12 months;
- (f) has complied with any restrictions, conditions or limitations imposed upon that person by the Registrar, the Registration Appeal Committee or the Discipline Committee pursuant to this Act or the regulations; and
- (g) meets any other requirements of the Board.

(2) Where a person ceases to be engaged in the practice of dentistry for the time prescribed by the regulations, the Registrar shall not issue to that person a licence to engage in the practice of dentistry unless and until that person passes examinations and meets any other requirements prescribed by the Board.

(3) The Registrar shall strike from the Dentists' Register the name of a dentist who does not pass the examinations or meet the requirements referred to in subsection (2).

(4) The Registrar shall re-enter a person's name in the Dentists' Register and restore the person's licence upon that person passing the examinations prescribed by the Board and upon fulfilling any other requirements of the Board. 1992, c. 3, s. 25; 2015, c. 15, s. 3.

Dental assisting licence

26 (1) Subject to subsection (2), the Registrar shall annually issue a licence to engage in the practice of dental assisting to a person who

- (a) is registered in the Assistants' Register;
- (b) has paid the membership fees of the Assistants Association for the current year;
- (c) pays the annual licensing fee for the ensuing year on or before such date as is prescribed by the regulations;
- (d) meets the educational requirements and other qualifications set out in the regulations;
- (e) provides the Registrar with a statement signed by that person indicating whether or not that person has been engaged in the practice of dental assisting within the preceding 12 months;

(f) has complied with any restrictions, conditions or limitations imposed upon that person by the Registrar, the Registration Appeal Committee or the Discipline Committee pursuant to this Act or the regulations; and

(g) meets any other requirements of the Board.

(2) Where a person ceases to be engaged in the practice of dental assisting for the time prescribed by the regulations, the Registrar shall not issue to that person a licence to engage in the practice of dental assisting unless and until that person passes examinations prescribed by the Board and meets any other requirements imposed by the Board.

(3) The Registrar shall strike from the Assistants' Register the name of a person who does not pass the examinations or meet the requirements referred to in subsection (2).

(4) The Registrar shall re-enter a person's name in the Assistants' Register and restore the person's licence upon that person passing the examinations prescribed by the Board and upon fulfilling any other requirements of the Board. 1992, c. 3, s. 27; 2015, c. 15, c. 4.

Execution of licence

27 Every licence must be sealed with the seal of the Board and signed by the Registrar. 1992, c. 3, s. 28.

Licence as evidence

28 A licence is prima facie proof, for all purposes and in any action, proceeding or prosecution, that the person named therein is qualified to engage in the practice of dentistry or dental assisting, as the case may be, during the time indicated on the licence. 1992, c. 3, s. 29; 2007, c. 29, s. 101.

Consequence of false representation

29 A person who makes a false representation in an application for registration or licensing must be struck from the applicable register. 1992, c. 3, s. 30.

Appeal to Registration Appeal Committee

30 (1) A person who is dissatisfied with a decision of the Registrar respecting registration or licensing or otherwise relating to entries in either the Dentists' Register or the Dental Assistants' Register may appeal from the decision to the Registration Appeal Committee.

(2) Where an appeal is taken pursuant to subsection (1), the Registration Appeal Committee may reverse, uphold or vary the decision of the Registrar.

(3) The Registration Appeal Committee's decision made pursuant to subsection (2) is final. 1992, c. 3, s. 31; 2007, c. 29, s. 102; 2015, c. 15, s. 5.

Power to inspect and assess

31 (1) The Registrar, or a licensed dentist appointed by the Registrar, may enter, without notice and at all reasonable times, premises where dentistry is practised to inspect and assess the quality of the dental practice.

(2) No person shall obstruct a person in exercising the powers conferred upon that person by this Section.

(3) The Registrar or inspector shall make a report setting out the findings of an inspection together with any recommendations and the report must be sent by the Registrar to each dentist whose premises are inspected. 1992, c. 3, s. 32.

Discipline regulations

32 (1) The Board may, subject to subsection 44(3), make regulations

(a) constituting a Complaints Committee to consider complaints relating to dentists and dental assistants;

(b) prescribing the powers and procedures of the Complaints Committee;

(c) prescribing the actions that the Complaints Committee may take with respect to complaints, which actions may include

(i) dismissing the complaint,

(ii) referring the complaint to the Discipline Committee,

(iii) counselling,

(iv) cautioning,

(v) reprimanding;

(d) providing for appeals from the Complaints Committee to the Discipline Committee.

(2) The Board may, subject to subsection 44(3), make regulations

(a) constituting a Discipline Committee to hear complaints relating to dentists and dental assistants;

(b) prescribing the powers and procedures of the Discipline Committee;

(c) prescribing the sanctions that may be imposed by the Discipline Committee on a dentist or dental assistant against whom a finding is made with respect to any matter referred to it, which sanctions may include

(i) counselling,

(ii) cautioning,

(iii) reprimanding,

(iv) suspending or cancelling a certificate of registration or an annual licence, with or without conditions,

(v) requiring that a person pay all or part of the costs of the disciplinary proceeding.

(3) The Board may, subject to subsection 44(3), make regulations respecting the publication of decisions of the Complaints Committee and the Discipline Committee. 2000, c. 37, s. 4; 2007, c. 29, s. 103.

Immediate suspension or imposition of restrictions

33 (1) In urgent and compelling circumstances, the Complaints Committee may, without a hearing, in the interests of the public, immediately suspend the licence of a dentist or dental assistant or may immediately impose restrictions on a temporary basis on the registration or licence, or both, of a dentist or dental assistant.

(2) When a licence is suspended pursuant to subsection (1), the Registrar shall, forthwith, give written notice of the decision made pursuant to subsection (1) to the dentist or dental assistant.

(3) The Complaints Committee shall, upon receipt of a request from the dentist or dental assistant, provide an opportunity for a meeting with the Committee within 10 days of the written request and, after the meeting, the Committee may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1).

(4) Where a decision is made pursuant to subsection (1) and the suspension or any restrictions imposed by the Complaints Committee remain in place following the meeting referred to in subsection (3), the matter must be referred to the Discipline Committee, which shall hold a hearing within 30 days unless the dentist or dental assistant requests a hearing date that is more than 30 days after the referral of the matter to the Discipline Committee. 2000, c. 37, s. 4; 2007, c. 29, s. 104.

Inadmissibility of evidence in legal proceeding

34 (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; 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 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 the Complaints Committee, the Discipline Committee or the Registration Appeal 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 Board, including any information gathered in the course of an investigation or produced for the Complaints Committee, the

Discipline Committee, the Registration Appeal Committee or staff members of the Board.

(3) Subsection (2) does not apply to documents or records that have been made available to the public by the Board.

(4) Unless otherwise determined by a court of competent jurisdiction, a decision of the Complaints Committee, the Discipline Committee or the Registration Appeal Committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 3; 2015, c. 15, s. 6.

Jurisdiction unaffected

35 The jurisdiction of the Complaints Committee and the Discipline Committee to deal with a charge or a complaint against a person is not affected by the failure to renew the annual licence or by the fact that a person's name is no longer on the applicable register. 2000, c. 37, s. 4.

Recording in register of finding or order

36 (1) The Complaints Committee or the Discipline Committee may determine whether or not a finding or order against a person must be recorded in the applicable register and the length of time during which the record remains in the register.

(2) A person against whom a finding or order is made by the Complaints Committee or the Discipline Committee may apply to the Complaints Committee or the Discipline Committee, as the case may be, to have the record of the finding or order removed from the applicable register. 1992, c. 3, s. 36; 2000, c. 37, s. 5.

Application for restoration of licence

37 The Board, upon application, may order that the registration or licensing of a dentist or dental assistant be restored upon such terms and conditions as the Board orders. 1992, c. 3, s. 37; 2007, c. 29, s. 105.

Appeal to Court of Appeal

38 (1) A dentist or dental assistant against whom the Discipline Committee has rendered a decision and imposed sanctions may appeal on any point of law from the findings of the Discipline Committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be filed with the Nova Scotia Court of Appeal not later than 30 days after service of the decision of the Discipline Committee and must be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of the Discipline Committee consists of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Committee certified by the Chair of the 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 Court, grant a stay of any order made pursuant to this Act where, in its discretion, it considers it fit to grant such a stay. 2000, c. 37, s. 6; 2007, c. 29, s. 106.

Practice by corporation

39 (1) Subject to subsections (2) and (3), a corporation may engage in the practice of dentistry in accordance with the regulations.

(2) A majority of the voting shares of a corporation engaged in the practice of dentistry must be beneficially owned by one or more licensed dentists.

(3) The majority of the directors and officers of a corporation engaged in the practice of dentistry must be licensed dentists. 1992, c. 3, s. 40.

Effect of incorporation

40 (1) The relationship of a dentist or dental assistant to a corporation that is engaged in the practice of dentistry, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application to the dentist or dental assistant of this Act and the regulations.

(2) The liability of an individual arising from that individual or any other individual engaging in the practice of dentistry or dental assisting is not affected by reason only that the services are provided by a corporation. 1992, c. 3, s. 41; 2007, c. 29, s. 107.

Confidential and ethical relationships

41 (1) Nothing contained in this Act affects, modifies or limits a law applicable to the confidential or ethical relationships between a dentist or dental assistant and a patient.

(2) The relationship between a corporation engaged in the practice of dentistry and a person receiving the professional services of the corporation is subject to all applicable laws relating to the confidential and ethical relationship between a dentist and the dentist's patient.

(3) All rights and obligations respecting communications made to, or information received by, a person who is a dentist or dental assistant apply to that person notwithstanding that the person is a shareholder, director, officer or employee of a corporation engaged in the practice of dentistry. 1992, c. 3, s. 42; 2007, c. 29, s. 108.

Powers, privileges and immunities

42 (1) The members of the Complaints Committee, the Discipline Committee and the Registration Appeal Committee have all 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.

(2) The Registrar, when performing the powers and duties of the Registrar pursuant to this Act, and a person appointed by the Registrar pursuant to Section 31 when performing that person's functions pursuant to that Section, have all the privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* with the exception of the powers of contempt, arrest and imprisonment. 1992, c. 3, s. 43; 2000, c. 37, s. 7; 2015, c. 15, s. 7.

Secrecy

43 (1) The Registrar, a person entitled to enter premises pursuant to Section 31 and each member of the Complaints Committee, the Discipline Committee or the Registration Appeal Committee, shall preserve the secrecy of all matters that have come to the Registrar's, that person's or that member's, as the case may be, knowledge in the course of carrying out any duty, performing any function or exercising any power pursuant to this Act and shall not communicate any such matters to any other person except

- (a) as may be required in connection with the administration of or any proceedings pursuant to this Act or the regulations; or
- (b) with the consent of each person to whom the information relates.

(2) No person is required to give testimony in any civil suit or proceeding with regard to information obtained in the course of carrying out any duty, performing any function or exercising any power except in a proceeding pursuant to this Act or the regulations. 1992, c. 3, s. 44; 2000, c. 37, s. 8; 2015, c. 15, s. 8.

General regulations

44 (1) Subject to subsections (2) and (3), the Board may make regulations

- (a) prescribing the qualifications for registration and licensing to engage in the practice of dentistry and dental assisting;
- (b) prescribing the dates on or before which licensing fees must be paid;
- (c) providing for examinations to determine the qualifications of candidates for registration and licensing to engage in the practice of dentistry and dental assisting;
- (d) prescribing the minimum periods of time during which a person must engage in the practice of dentistry or dental assisting to qualify for annual licence renewal;
- (e) respecting the powers, authority and processes of the Registrar;
- (f) constituting a Registration Appeal Committee;
- (g) prescribing the powers and procedures of the Registration Appeal Committee;

(h) prescribing the actions, sanctions or other remedies that the Registration Appeal Committee may impose with respect to appeals;

(i) providing for the maintenance of various registers including the form, contents and publication of the registers;

(j) prescribing forms to carry out the procedures pursuant to this Act and the regulations;

(k) regulating the provision of dental services by dental assistants, including prescribing the functions of dentistry that constitute the practice of dental assisting and the conditions under which dental assistants may engage in those functions;

(l) prescribing the standards of ethics, conduct, competence and proficiency to be maintained by dentists and dental assistants;

(m) defining what constitutes unprofessional conduct and infamous conduct by dentists and dental assistants;

(n) providing for mandatory continuing education for dentists and dental assistants;

(o) prescribing advertising standards to be observed by dentists;

(p) establishing, prescribing and regulating mandatory malpractice insurance for licensed dentists;

(q) regulating the provision of dental services through corporations;

(r) defining specialties within dentistry;

(s) establishing and regulating the qualifications and the conditions that must be met for licensing as a specialist;

(t) providing for the use, regulation and prohibition of terms, titles or designations by specialists;

(u) providing for the suspension or revocation of the licence of a specialist;

(v) providing for practice assessment and evaluation;

(w) that are generally necessary to carry into effect the provisions of this Act.

(2) Where a proposed regulation may affect the members of the Dental Association or the Assistants Association, the Board shall consult with that association.

(3) A regulation is ineffective unless and until it is approved by the Governor in Council. 1992, c. 3, s. 45; 2000, c. 37, s. 9; 2007, c. 29, s. 109; 2015, c. 15, s. 9.

Regulations Act

45 The exercise by the Board of the authority contained in Section 32 or 44 is a regulation within the meaning of the *Regulations Act*. 2000, c. 37, s. 10.

Misleading re licensing

46 Every person who is not a licensed dentist and who wilfully or falsely misleads another person to believe that that person is licensed pursuant to this Act to engage in the practice of dentistry is guilty of an offence. 1992, c. 3, s. 46.

Dentistry without licence

47 Every person who employs or otherwise engages a person who engages in the practice of dentistry and is not a licensed dentist or a person exempted from Section 3 by subsection 3(2) is guilty of an offence except that a person does not contravene this Section by reason only of being a patient of the unlicensed person. 1992, c. 3, s. 47.

Liability of directors and officers

48 Where a corporation commits an offence contrary to this Act, 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 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. 1992, c. 3, s. 48.

Contravention of Act

49 A person who contravenes or fails to comply with this Act or a regulation or an order made pursuant to this Act is guilty of an offence punishable on summary conviction. 1992, c. 3, s. 49.

Penalties

50 (1) A person who is guilty of an offence contrary to this Act is liable

- (a) for the first offence, to a penalty not exceeding \$500;
- (b) for the second offence, to a penalty not exceeding \$1,000;
- (c) for every subsequent offence, to a penalty not exceeding \$3,000.

(2) Every day on which an offence occurs or continues is a separate offence. 1992, c. 3, s. 50.

Aid to those in urgent need

51 Nothing in this Act prevents a person from giving necessary aid to anyone in urgent need provided that such aid or attendance is not given for hire or gain, nor the giving of it made a business or way of gaining a livelihood by such person. 1992, c. 3, s. 51.

Transitional matters

52 (1) In this Section, "former Act" means Chapter 125 of the Revised Statutes, 1989, the *Dental Act*.

(2) An application for registration or for a licence that was made pursuant to the former Act but not completely dealt with pursuant to the former Act

prior to September 8, 1992, must be dealt with pursuant to the former Act as if this Act were not in force.

(3) Regulations made pursuant to the former Act continue in full force and effect and to the same extent as if made pursuant to this Act until they are revoked and replaced by regulations made pursuant to this Act.

(4) A person registered and licensed as a dentist or dental assistant pursuant to the former Act and the regulations made thereunder immediately prior to September 7, 1992, continues to be registered and licensed as if the person were registered and licensed pursuant to this Act.

(5) Every member of the Dental Association and the Executive Committee of the Association on September 7, 1992, continues as a member of the Association or a member of the Executive Committee, respectively.

(6) The members of the Board appointed pursuant to the former Act are deemed to be members of the Board pursuant to this Act and the additional members of the Board pursuant to this Act begin to serve once all have been appointed.

(7) Any discipline proceedings that were commenced but not concluded before September 8, 1992, must be dealt with pursuant to the former Act as though this Act had not come into force.

(8) Any discipline proceedings commenced on or after September 8, 1992, when the proceedings relate to conduct occurring all or partly before September 8, 1992, must be dealt with pursuant to this Act.

(9) Any order of the Discipline Committee or the Board made pursuant to the former Act continues in full force and effect as though this Act had not come into force. 1992, c. 3, s. 52; 2007, c. 29, s. 110.

Substituted reference

53 (1) A reference in any enactment or any document, including any deed, lease, will, trust or indenture to the Dental Association of the Province of Nova Scotia is to be, as regards any subsequent transaction, matter or thing, held and construed to be a reference to the Nova Scotia Dental Association.

(2) No rights, duties, obligations or liabilities of the Dental Association of the Province of Nova Scotia are in anywise affected by the change of name made by this Act and those rights, duties, obligations and liabilities continue to be vested in and are binding upon it by the name "Nova Scotia Dental Association". 1992, c. 3, s. 54.

CHAPTER D-7

An Act Respecting Dental Hygienists

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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 *Dental Hygienists Act*. 2007, c. 29, s. 1.

Interpretation

- 2** In this Act,
- “accredited dental hygiene program” means either a diploma, baccalaureate or masters-level dental-hygiene program that, at the date of graduation by an applicant for registration, had been accredited by the Commission on Dental Accreditation of Canada or the Commission on Dental Accreditation of the American Dental Association;
- “bylaw” means a bylaw of the College;
- “caution”, in the context of the powers of the Investigation Committee, is not a disciplinary finding, and means a determination that a member has breached the standards of professional ethics or practice expected of members in circumstances that do not constitute professional misconduct, conduct unbecoming the profession or incompetence;

“client” means the recipient of dental-hygiene procedures and services;

“College” means the College of Dental Hygienists of Nova Scotia;

“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 Section 53;

“conduct unbecoming the profession” means conduct in a member’s personal or private capacity that tends to bring discredit upon the profession of dental hygiene;

“Council” means the Council of the College as constituted under Section 11;

“counsel”, in the context of the powers of the Investigation Committee, is not a disciplinary finding, and means a determination that a member could benefit from professional guidance from the College with regard to the subject-matter of the complaint in circumstances that do not constitute professional misconduct, conduct unbecoming the profession or incompetence;

“Court” means the Supreme Court of Nova Scotia;

“Credentials Committee” means the committee appointed by Council that deals with the registration and licensing of members, applicants for registration and such other matters as provided by the regulations;

“dental corporation” means a corporation engaging in the practice of dentistry under the *Dental Act*;

“dental hygienist” means a person whose name appears in the Register and who is licensed to practise dental hygiene pursuant to this Act;

“dentist” means a person who is licensed to practise dentistry pursuant to the *Dental Act*;

“disciplinary matter” means any matter involving allegations of professional misconduct, conduct unbecoming the profession, incompetence or incapacity;

“discipline committee” means the Investigation Committee or the Hearing Committee;

“good standing” means that the member holds a current practising licence and is not subject to any disciplinary finding that would prohibit or restrict the practice of dental hygiene;

“Hearing Committee” means the Hearing Committee appointed pursuant to this Act;

“incapacity” means the status whereby a member, at the time of the subject-matter of a complaint suffered from a medical, physical, mental or emotional condition, disorder or addiction that rendered the member unable to practise with reasonable skill or judgement or that may have endangered the health or safety of clients;

“incompetence” means a display of lack of knowledge, skill or judgement in the member’s care of a client or the delivery of dental hygiene services that, having regard to all of the circumstances, rendered the member unsafe to practise at the time of such care of the client or delivery of services

or that render the member unsafe to continue in practice without remedial assistance;

“independent practice setting” means a setting where a dental hygienist engages at any time in the self-directed clinical practice of dental hygiene;

“individual scope of practice” means the roles, functions and accountabilities that an individual is educated and authorized to perform;

“Investigation Committee” means the Investigation Committee appointed pursuant to this Act;

“licence” means a valid and subsisting licence issued pursuant to this Act;

“licensing sanction” means

(a) the imposition of conditions or restrictions on a licence by the Investigation Committee or the Hearing Committee or their equivalent in another jurisdiction;

(b) a consent reprimand ordered by the Investigation Committee or its equivalent in another jurisdiction;

(c) a reprimand issued by the Hearing Committee or its equivalent in another jurisdiction;

(d) a suspension of a licence by the Investigation Committee or the Hearing Committee or its equivalent in another jurisdiction; or

(e) a revocation of registration or licence by the Hearing Committee or its equivalent in another jurisdiction;

“member” means a person who is registered in the Register;

“party” means the College or the person who is the subject of a complaint, as the context requires;

“permit” means a permit issued to a professional corporation pursuant to this Act;

“physician” means a person who is licensed to practise medicine pursuant to the *Medical Act*;

“practice of dental hygiene” means those activities set out in Section 27;

“practising licence” means a licence issued pursuant to this Act and the regulations that authorizes a dental hygienist to engage in the practice of dental hygiene;

“profession” means the profession of dental hygiene;

“professional corporation” means a company incorporated pursuant to the *Companies Act* and this Act for the purpose of exclusively carrying on the practice of dental hygiene;

“professional misconduct” includes such conduct or acts relevant to the practice of dental hygiene that, having regard to all of the circumstances would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, includes

(a) failing to maintain the standards of practice for the profession; or

(b) failing to uphold the Code of Ethics adopted by the College;

“provisional licence” means a temporary licence that authorizes the holder of the licence to engage in the practice of dental hygiene subject to the conditions, limitations or restrictions set out in Section 23;

“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. 2007, c. 29, s. 2.

Use of title or similar expressions

3 The words “dental hygienist” or any like words or expressions implying a person recognized by law as a dental hygienist 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 August 19, 2008, or when used in any public document, includes a person registered in the Register who holds a licence. 2007, c. 29, s. 3.

COLLEGE OF DENTAL HYGIENISTS OF NOVA SCOTIA

College incorporated

4 The College of Dental Hygienists of Nova Scotia is incorporated as a body corporate, is composed of its members and, subject to this Act, has the capacity and powers of a natural person. 2007, c. 29, s. 4.

Objects, office and powers

5 (1) In order that the public interest may be served and protected, the objects of the College are to

(a) regulate the profession of dental hygiene through

(i) the registration, licensing and disciplinary processes established pursuant to this Act and the regulations,

(ii) establishing, maintaining and developing standards of practice for members,

(iii) establishing, maintaining and developing standards of professional ethics for members, and

(iv) establishing, maintaining and developing standards for the education, knowledge, qualifications, professional responsibility and competence of its members and applicants for membership;

(b) subject to clause (a), advance and promote the profession of dental hygiene;

(c) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the College by this Act or the regulations; and

(d) do such other lawful acts and things as are incidental to the attainment of the objects referred to in clauses (a) to (c).

(2) The head office of the College must be in the Province at a location determined by the Council.

(3) 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.

(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 and execute any 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 dental hygiene 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) secure the repayment of money borrowed, in such manner and upon such terms and conditions as it considers fit, and, in particular, by the execution and delivery of mortgages of all or any part of the real or personal property of the College, both present and future; and

(j) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (i). 2007, c. 29, s. 5.

Annual meeting and report

6 (1) There must be an annual meeting of the College at such time and place as is determined by the Council.

(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 approved by the Council. 2007, c. 29, s. 6.

COUNCIL**Council**

7 (1) There is a Council of the College, constituted as provided in Section 11.

(2) The Council shall set fees payable pursuant to this Act by applicants and members and may set different fees for different classes of membership. 2007, c. 29, s. 7.

Bylaws

8 The Council shall, subject to this Act, govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make bylaws

(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 annual and special meetings of the College and regular meetings of the Council, quorum requirements and the conduct and content of such meetings;

(c) fixing the time and place for regular meetings of the Council, 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 Council considers expedient;

(e) respecting the composition, powers and duties of such committees as may be appointed by the Council, 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) respecting the fees and allowances of members of the Council and committees and providing for the payment of necessary expenses of the Council and committees;

(h) prescribing the seal of the College;

(i) providing for the execution of documents by the College;

(j) respecting the books, 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 books, records and accounts;

- (k) respecting the approval of forms and providing for their use;
 - (l) providing procedures not inconsistent with this Act for the making, amending and revoking of bylaws;
 - (m) respecting the information to be included in the Register;
 - (n) respecting the process for approving standards of practice and a code of ethical conduct for members;
 - (o) governing elections of members of the Council;
 - (p) establishing the minimum number of meetings of the Council in each calendar year;
 - (q) prescribing the manner in which resolutions are forwarded to the Council;
 - (r) prescribing the roles of the Chair and Chair-elect of the Council.
- 2007, c. 29, s. 7.

Regulations

9 (1) The Council may, with the approval of the Governor in Council and subject to this Act, make regulations

- (a) respecting registration and licensing, including the establishment of different classes of applicants and members and respecting the rights, privileges, qualifications and obligations of the persons in those classes and respecting the conditions for the entry and maintenance of such person's names in those classes;
- (b) respecting the limiting or qualifying of a member's licence, including procedures and interventions;
- (c) respecting the evaluation of, and licensing requirements of, members and applicants for registration who have not practised dental hygiene for such minimum period of time as specified by the regulations;
- (d) respecting a quality assurance program, including requirements for members to participate in any such program, and including continuing education requirements or practice-hour requirements of members for registration or licensing;
- (e) respecting practices included or excluded within the meaning of the practice of dental hygiene pursuant to Section 27;
- (f) respecting requirements required to practise in an independent practice setting;
- (g) prescribing the contraindications to a member performing or continuing to engage in the scaling of teeth and root planing, including curetting of surrounding tissue;
- (h) prescribing requirements for the practice of dental hygiene, which requirements may include the educational and experiential qualifications that must be obtained in order for a member to engage in the scaling of teeth and root planing, including curetting of surrounding tissue, on the member's own initiative;

- (i) respecting the reporting and publication of decisions in disciplinary matters;
- (j) providing that the licence of a member be suspended, without notice or investigation, upon contravention of any regulation or provision of this Act that requires the member to pay a fee, file a document or do any other specified act, and providing for the reinstatement of a licence so suspended;
- (k) respecting the type of professional liability insurance or other form of malpractice insurance coverage a member must hold;
- (l) 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 specified act, and providing for the reinstatement of a permit so suspended;
- (m) providing for the reinstatement or reissuance of any licence or permit suspended or revoked pursuant to this Act, and establishing the terms and conditions upon which reinstatement or reissuance of a licence or permit may be granted;
- (n) providing for the creation of a speciality register and matters related to it;
- (o) providing criteria for advertising services of dental hygienists and their professional corporations;
- (p) providing for the creation and maintenance of a register of professional corporations;
- (q) providing for the filing of periodic returns by professional corporations;
- (r) respecting the types of names and business names by which the following may be known:
 - (i) a member as a sole practitioner or member of a dental hygiene practice,
 - (ii) a professional corporation,
 - (iii) a partnership with one or more dental hygienists,
 - (iv) a partnership of two or more professional corporations, or
 - (v) a partnership of one or more professional corporations and one or more individual dental hygienists;
- (s) respecting access to the records of a professional corporation by the Registrar;
- (t) respecting the duties of a custodian appointed under Section 35 and the setting of the minimum amount of time required to pass before the College can destroy records;
- (u) defining any word or expression used but not defined in this Act;

(v) further defining any word or expression defined in this Act;

(w) 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.

(2) All 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.

(3) 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.

(4) No regulation pursuant to clause (1)(e), (f), (g) or (h) may be forwarded for consideration to the Governor in Council unless the College has first consulted with the Provincial Dental Board and the Nova Scotia Dental Association and has provided the feedback from such consultation to the Governor in Council. 2007, c. 29, s. 7.

Meetings of Council or committee

10 (1) A member of the Council, or of a committee of the Council or the College, may participate in any meeting of the Council, or committee of the Council or 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.

(2) A meeting of the Council or of a committee of the Council, 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.

(3) Where 10% or more of the membership of the College request in writing, whether by petition or otherwise, that a special general meeting be held, the Council shall hold such meeting within 15 working days of determining that 10% or more of the members have requested such a meeting. 2007, c. 29, s. 7.

Composition of the Council and terms of office

11 (1) The Council consists of

(a) not fewer than nine and not more than 13 members of the College, elected in the manner provided by this Act and the bylaws; and

(b) three persons appointed by the Governor in Council, who are not

(i) now or formerly dental hygienists,

- (ii) the immediate past Chair of the College, or
- (iii) persons regulated by the *Dental Act*.

(2) Members of the Council are elected or appointed to office for a term of two years.

(3) Notwithstanding subsection (2), 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 who are licensed and in good standing with the College are eligible to be nominated as and vote for a candidate for membership on the Council. 2007, c. 29, s. 8.

Limit of terms on the Council

12 (1) In this Section, “consecutive” means that 12 months or less occurred between the end of one term and the commencement of the next.

(2) Elected or appointed members of the Council may not be members of the Council for more than six consecutive years. 2007, c. 29, s. 9.

Vacancies

13 (1) The Registrar

(a) in case of failure in an election to elect the required number of duly qualified members of the Council; or

(b) in case of a vacancy occurring from the death or resignation of a member of the Council, or from any other cause,

shall hold an election 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 Council, the vacancy must be filled at such election.

(3) Where an election is held pursuant to subsection (1) to fill a vacant Council position, the term of office for the vacant Council position is the remainder of the unexpired term of such position. 2007, c. 29, s. 10.

Member ceases to hold office on the Council

14 An elected member of the Council ceases to hold office if the member

(a) resigns by notice in writing delivered to the Registrar;

(b) ceases to be a member in good standing of the College, as defined in the regulations; or

(c) is absent from three consecutive meetings of the Council, unless excused by the Council. 2007, c. 29, s. 11.

Executive Committee

15 (1) The Council shall elect annually from its members a Chair, a Vice-chair and two members at large, who constitute the Executive Committee.

(2) The Executive Committee

- (a) may exercise all of the powers; and
- (b) shall perform all the duties,

of the Council with respect to any matters that the Council may delegate to it or that, in the reasonable opinion of the Executive Committee, require urgent and immediate attention.

(3) The exercise of such powers or performance of such duties not specifically delegated by the Council to the Executive Committee must be reported to the Council at its next scheduled meeting.

(4) The Council shall appoint a Registrar, who holds office during the pleasure of the Council, at such salary or other remuneration, and upon such terms and conditions of employment, as the Council determines.

(5) The Council may appoint an Acting Registrar who shall exercise the powers and duties of the Registrar in the event of the death, incapacity or unavailability of the Registrar.

(6) The Council may appoint such other officers, agents or employees, upon such terms and conditions as the Council considers appropriate, to assist in the carrying out of the duties pursuant to this Act. 2007, c. 29, s. 12.

Committees

16 (1) The Council may appoint annually such committees of the Council, or the College, as the Council considers appropriate in carrying out duties pursuant to this Act.

(2) The Council shall appoint a Credentials Committee, consisting of such number of members as is determined by Council.

(3) The Credentials Committee shall carry out such functions as are prescribed by this Act, the regulations and the bylaws. 2007, c. 29, s. 13.

REGISTRATION**Register**

17 (1) The Council shall keep a Register in which the names of those persons who qualify for registration pursuant to this Act and the regulations are recorded.

(2) The Register must include the information required by the bylaws.

(3) The name of every person who, immediately before August 19, 2008, was a registered dental hygienist pursuant to the *Dental Act*, must be

entered in the Register, but must continue under any stipulations or limitations attached to the person's previous registration. 2007, c. 29, s. 14.

Entries in Register by Registrar

18 The Registrar shall enter in the Register the name, address and qualifications of any person who

- (a) satisfies the Registrar that the person possesses the qualifications required in the regulations for registration in the Register; and
- (b) complies with this Act and the regulations and any conditions imposed by the Registrar. 2007, c. 29, s. 15.

Referral to Credentials Committee

19 (1) Where the Registrar is not satisfied with the evidence presented by a person applying for registration, the Registrar may or, 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, following consultation with the Registrar, shall consider the eligibility of the applicant 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, the request must be granted.

(4) Where the Credentials Committee considers a matter pursuant to subsection (1), the Committee may determine that the application for registration be approved, or determine that the application for registration be refused.

(5) The decision of the Credentials Committee is final. 2007, c. 29, s. 16.

LICENSING

Issuance of practising licences

20 (1) The Registrar shall issue a practising licence to every person who immediately before August 19, 2008, was a registered dental hygienist pursuant to the *Dental Act* and was in possession of a valid annual licence.

(2) Every licence issued pursuant to subsection (1) is subject to any conditions or limitations attached to the registration or licence pursuant to the *Dental Act*.

(3) The Registrar shall issue a licence to an applicant for an initial licence or a renewal of licence if

- (a) the applicant's name is recorded in the Register;
- (b) the applicant satisfies the Registrar that the person possesses the qualifications required in the regulations for licensing; and

(c) the applicant complies with this Act and the regulations and any conditions imposed by the Registrar. 2007, c. 29, s. 17.

Referral to Credentials Committee

21 (1) Where the Registrar is not satisfied with the evidence presented by a person applying for a licence or the renewal of a licence, the Registrar may or, 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, following consultation with the Registrar, shall consider the eligibility of the applicant 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.

(4) Where the Credentials Committee considers a matter pursuant to subsection (2), and where the Credentials Committee refuses the licence of the applicant, the applicant may request the opportunity to appear before the next scheduled meeting of the Council, with or without legal counsel, at which meeting the Council shall consider the application in accordance with this Act. 2007, c. 29, s. 17.

Council's consideration of licence application

22 (1) No member of the Council who considered the application pursuant to subsection 21(2) may participate in the Council's consideration of the application.

(2) After hearing the applicant and the Registrar, the Council may

(a) direct the Registrar to issue to the applicant a practising licence or a provisional licence;

(b) direct the Registrar to issue to the applicant a practising licence or a provisional licence subject to such conditions, limitations or restrictions as the Council 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 Council may designate; or

(d) direct the Registrar to refuse the application. 2007, c. 29, s. 17.

Provisional licence

23 (1) Where

(a) a person is temporarily unable to provide written confirmation of a requirement for registration or licensing but such confirmation will be available within a reasonable period of time in the opinion of the Registrar, and the Registrar is able to verify the information through some other acceptable means;

(b) a person is registered or licensed to practise dental hygiene in another jurisdiction and plans to engage in the practice of dental hygiene in the Province for a limited period of time; or

(c) for such other reasons as the Registrar considers appropriate,

the Registrar, upon payment of the fee determined by Council, may approve, with or without limitations, or refuse an application for a provisional licence.

(2) A provisional licence issued pursuant to subsection (1) must

(a) be issued for a specified period of time, not to exceed six months in total; and

(b) set out any restriction on the practice of dental hygiene that applies to the provisional-licence holder.

(3) The College shall maintain a Record of Provisional Licences.

2007, c. 29, s. 18.

Fees

24 Every member shall pay to the Registrar, or such person as the Registrar designates,

(a) at the time that the member is registered, such fees as are approved by Council; and

(b) on or before a date or dates established by the Council in each year thereafter, the annual licensing fees approved by Council. 2007, c. 29, s. 19.

Inspection of records

25 The Registrar shall, at all reasonable times, make available for inspection by any persons a record showing

(a) the names of those persons who are registered in the Register and who hold a practising licence;

(b) any conditions or restrictions on a person's licence imposed pursuant to this Act, if the Registrar determines it is in the public interest to have such conditions or restrictions available to the public; and

(c) any licensing sanctions imposed on a member that are not otherwise subject to a publication ban. 2007, c. 29, s. 20.

Removal of name from Register

26 (1) The Registrar shall remove the name of a person from the Register

(a) at the request of the member, upon surrendering any licence held by the member;

(b) if the member's name has been incorrectly entered;

(c) if notification is received of the member's death;

(d) if the registration of the member has been revoked.

(2) Where a member ceases to be a member for any reason or 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. 2007, c. 29, s. 21.

SCOPE OF PRACTICE

Practice of dental hygiene

27 (1) The practice of dental hygiene means the application of professional dental hygiene knowledge for the purpose of providing therapeutic, preventative and maintenance services and programs for the promotion of optimal oral health and, without limiting the generality of the foregoing,

(a) includes assessment for dental hygiene services, the planning of dental hygiene interventions to prevent oral disease and the evaluation of the progress and results of dental hygiene interventions and services, oral health practices and behaviours;

(b) includes such practices as prescribed in this Act or the regulations; and

(c) excludes such practices as prescribed in this Act or the regulations.

(2) Where appropriate in the practice of dental hygiene, a dental hygienist collaborates with other health professionals for the provision of oral health services, health education and health promotion in order to integrate preventive oral healthcare into general preventative care.

(3) As part of the practice of dental hygiene, a dental hygienist may act as a researcher, clinician, consultant, administrator, manager, educator or health promoter. 2007, c. 29, s. 22.

Scope of practice

28 (1) A dental hygienist may engage in the practice of dental hygiene subject to the conditions, limitations or restrictions imposed on the member's licence and in accordance with the regulations, and may perform the practice of dental hygiene

(a) on the member's own initiative, if the practice does not involve the scaling of teeth and root planing, including curetting of surrounding tissue;

(b) on the member's own initiative if the practice does involve the scaling of teeth and root planing, including curetting of surrounding tissue, if none of the contraindications prescribed in the regulations to performing the procedure are present and if the member ceases the procedure when any of the prescribed contraindications to continuing the procedure are present; or

(c) if the procedure is ordered by a dentist licensed by the Provincial Dental Board of Nova Scotia.

(2) A dental hygienist shall engage in the practice of dental hygiene only to the extent that the practice is within the member's individual scope of practice. 2007, c. 29, s. 23.

PROHIBITIONS

Prohibition respecting practice and use of designations

- 29 (1) No person shall
- (a) engage in the practice of dental hygiene;
 - (b) publicly or privately, for hire, gain or reward, practise or offer to practise dental hygiene;
 - (c) purport in any way to be entitled to practise dental hygiene; or
 - (d) assume any title or description implying or designed to lead the public to believe the person is entitled to practise dental hygiene,

unless that person

- (e) holds a current practising licence and that person's name is entered in the Register;
- (f) holds a provisional licence;
- (g) is a student enrolled in an accredited dental hygiene program and is authorized by the administrators of the program to engage in the practice of dental hygiene as part of the program; or
- (h) is permitted to engage in the practice of dental hygiene as otherwise provided in this Act or the regulations.

(2) No person shall take or use the designation "dental hygienist", "registered dental hygienist", "D.H.", "R.D.H.", or any derivation or any abbreviation thereof, in the Province, either alone or in combination with other words, letters or description to imply that the person is entitled to practise as a dental hygienist, unless the person is entitled to engage in the practice of dental hygiene pursuant to clause (1)(e) or (h).

(3) No person, except a licensed dentist or dental corporation pursuant to the *Dental Act* or a person or professional corporation authorized to engage in the practice of dental hygiene pursuant to this Act, is entitled to receive a fee, reward, payment or remuneration of any kind for services rendered to any person, as would constitute the practice of dental hygiene. 2007, c. 29, s. 24.

Offences

30 (1) A person licensed pursuant to this Act who practises dental hygiene in violation of any condition or limitation contained in the person's licence is guilty of an offence.

- (2) A person who practises dental hygiene
- (a) while the person's licence is suspended or revoked;
 - (b) without a licence;

(c) in violation of any restrictions placed on the person's licence; or

(d) without otherwise being authorized to practise dental hygiene pursuant to this Act or the regulations,

is guilty of an offence. 2007, c. 29, s. 25.

Requirement respecting matters in another jurisdiction

31 (1) A member of the College who holds a licence, or who is applying for a licence with the College, shall immediately advise the Registrar in the event that such person ceases to be a member in good standing of another jurisdiction in which the person is practising, or has been subjected to any restriction on a licence in another jurisdiction or has been found guilty of any disciplinary matter in another jurisdiction.

(2) A member who fails to notify the Registrar pursuant to subsection (1) is guilty of an offence. 2007, c. 29, s. 26.

Offence respecting false information

32 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. 2007, c. 29, s. 27.

Proof and separate offences

33 (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 dental hygiene, 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 dental hygiene 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 dental hygiene on one occasion is sufficient to establish that a person has engaged in the practice of dental hygiene. 2007, c. 29, s. 28.

Penalties and laying of information

34 (1) A person who violates this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(3) 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.

(4) Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the College authorized by the Council. 2007, c. 29, s. 29.

CLIENT RECORDS

Custodian of records

35 (1) In this Section, “client records” includes all documents, charts, radiographs, photographic film or any other form of record relating to the clients of a member except that

(a) where the member is in an employment relationship with a dentist or dental corporation, the employer is deemed to own the client records unless otherwise varied by agreement between the parties; and

(b) where the member is in a contractual relationship with a dentist or dental corporation to provide dental hygiene services to clients of the dentist or dental corporation, the client records of those clients of the dentist or dental corporation are owned by the dentist or dental corporation unless otherwise varied by agreement between the parties.

(2) Where adequate provision has not been made for the protection of a member’s clients’ interests and

(a) the member dies, disappears, is imprisoned, leaves the Province or surrenders the member’s licence;

(b) the member is struck off the Register or is the subject of suspension of licence;

(c) the member has been found to be an incapacitated or incompetent member; or

(d) the Registrar has reasonable grounds to believe that the member has neglected the practice of dental hygiene

the College may, with or without notice as the Court directs, request the Court to appoint a custodian to take possession of the client records owned by the member.

(3) A custodian appointed pursuant to subsection (2) shall

(a) hold and protect all client records taken into custody; and

(b) distribute copies of the client records, as may be appropriate, to the dentists or dental hygienists of the clients concerned, and to the duly appointed representatives of the clients, or the clients themselves, subject to such fees as the Court may direct or the regulations may prescribe. 2007, c. 29, s. 30.

Powers of Court

36 In an order made pursuant to subsection 35(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 client records;

- (c) where there are reasonable grounds to believe that any client 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 client records to deal with, hold, deliver or dispose of such client records as the Court directs;
- (e) give directions to the custodian as to the disposition of client 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. 2007, c. 29, s. 30.

Client records

37 (1) Unless the Court otherwise directs, it is sufficient for the custodian to give notice to clients, dental hygienists or the general public that the custodian has possession of the client records of a member.

(2) Subject to any order of the Court or where one year has passed from the date of the Court order appointing the custodian, whichever is earlier, the custodian shall report to the Council, which may discharge the custodian or make any order it considers appropriate regarding any client records remaining in the hands of the custodian, and the custodian's compliance with the order of the Council discharges the custodian in respect of those client records affected.

(3) Unless otherwise ordered pursuant to subsection (2), upon discharge of a custodian pursuant to subsection (2) or Section 38, the College may take into permanent custody client records and assume the responsibilities of a custodian as provided in subsection 35(3).

(4) The College may destroy records after the passage of a minimum period of time as ordered by the Court, or as set by the regulations. 2007, c. 29, s. 30.

Removal of custodian

38 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. 2007, c. 29, s. 30.

Application to vary or set aside

39 A member in respect of whom an order has been made pursuant to Section 35 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 Section 35 and to direct the cus-

todian to place all or part of the client records back into the possession of the member, upon such terms as may be just. 2007, c. 29, s. 30.

Service of notice

40 The Court may give directions as to service of any notice required or order made pursuant to Sections 35 to 39. 2007, c. 29, s. 30.

No action lies

41 No action for damages lies against the College, the Council or any committee, member, officer or employee of the College for anything done or omitted to be done in good faith pursuant to Sections 35 to 40, or against a custodian or any other person acting in good faith pursuant to Sections 35 to 40 or an order issued pursuant to Sections 35 to 40. 2007, c. 29, s. 30.

Sections 35 to 41 apply to former members

42 Sections 35 to 41 apply to former members of the College. 2007, c. 29, s. 30.

INJUNCTION

Court may issue injunctions

43 (1) Where a member whose licence to practise has been suspended, restricted or revoked pursuant to this Act or the regulations, does or attempts to do anything contrary to this Act or the regulations or contrary to the imposed restrictions, the doing of such thing may be restrained by an injunction of the Court at the instance of the Council.

(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 Council. 2007, c. 29, s. 31.

DISCIPLINE

Initiation of complaints

- 44 (1)** Complaints may be initiated by
- (a) any body corporate or association;
 - (b) the Registrar;
 - (c) a member; or
 - (d) any other person.

(2) Where the College and the complainant agree, a complaint may be withdrawn. 2007, c. 29, s. 32.

Power to retain assistance

45 The College or a discipline committee may employ, at the expense of the College, such legal or other assistance as it considers necessary for the purpose of carrying out its functions pursuant to this Act or the regulations. 2007, c. 29, s. 33.

Duty to maintain confidentiality

46 Every person involved in the administration of this Act, and any member of the Council or a committee of the Council or the College, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding clients, except

- (a) in connection with the administration of this Act, 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. 2007, c. 29, s. 34.

Power to investigate other matters arising in investigation

47 A person or the Investigation 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. 2007, c. 29, s. 35.

Powers respecting other sanctions and offences under other enactments

- 48** (1) Where a discipline committee
- (a) learns that a licensing sanction has been issued against a member 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 discipline committee may take any of the actions contemplated by subsection 77(1).

(2) Notwithstanding anything contained in this Act, where a person has pleaded guilty to or 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 behavior of a dental hygienist, including a conviction under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) for which a pardon has not been granted, a discipline 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 discipline committee is conducting a hearing pursuant to this Section, it may, if it considers proper, take any of the actions contemplated by clause 76(2)(b) or subsection 77(1). 2007, c. 29, s. 36.

INVESTIGATION COMMITTEE

Composition of Investigation Committee

49 (1) The Council shall appoint an Investigation Committee composed of such number of members and lay representatives as is determined by the Council.

(2) The Council shall appoint a Chair and a Vice-chair of the Investigation Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available for a meeting, the Council may, for the purpose of such meeting, appoint a member of the Investigation Committee as Chair of the Committee. 2007, c. 29, s. 37.

Panel

50 (1) The Chair of the Investigation Committee shall appoint a panel of three persons from the Committee, one of whom is a lay representative, to act as the Investigation Committee for a particular complaint.

(2) The Chair of the Investigation Committee may sit on the panel and, in that case, acts as the chair of the panel.

(3) Where the Chair of the Investigation Committee is not appointed to the panel, the Chair of the Committee shall appoint a chair for such panel.

(4) Any two persons from the panel appointed pursuant to subsection (1), regardless of whether such persons are members or lay representatives, constitute a quorum of the Investigation Committee. 2007, c. 29, s. 37.

Notice of meeting and procedures

51 (1) Failure of one or more Investigation Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of meetings.

(2) All Investigation Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection 50(1).

(3) Where a proceeding has commenced before the Investigation Committee and the term of office of any person sitting on the Committee has expired, such person may remain part of the Committee until the proceeding has concluded. 2007, c. 29, s. 37.

Duties of Investigation Committee

52 The Investigation Committee shall

(a) investigate complaints regarding a disciplinary matter concerning any member of the College;

- (b) investigate any matter referred to the Investigation Committee by the Registrar; and
- (c) perform such other duties as may be assigned to it by the Council. 2007, c. 29, s. 38.

Referral by Registrar

53 The Registrar may refer a matter to the Investigation Committee, notwithstanding that a written complaint has not been filed with the Registrar. 2007, c. 29, s. 39.

Conduct of investigation

54 When conducting an investigation, the Investigation Committee may appoint a person or persons to conduct the investigation, or may conduct the investigation itself. 2007, c. 29, s. 40.

Powers of Investigation Committee

55 (1) Upon receipt of a written complaint, and upon giving to the member a copy of the complaint, the Investigation 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 dental hygiene; and
- (d) produce books, records and accounts kept with respect to the member's practice.

(2) Where the member fails to comply with subsection (1), the Investigation Committee may suspend or restrict the registration or licence of the member until the member complies.

(3) Where the Investigation Committee has, pursuant to subsection (1)(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.

(4) The members of the Investigation Committee have all the powers, privileges and immunities of a Commissioner appointed pursuant to the *Public Inquiries Act*. 2007, c. 29, s. 41.

Powers of Investigation Committee in course of investigation

56 The Investigation Committee, or person appointed to conduct an investigation, may

- (a) employ such 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 that arises in the course of the investigation, relevant to the conduct, capacity or fitness of a member to practise dental hygiene. 2007, c. 29, s. 42.

Disposition of complaint

57 (1) The Investigation Committee may

- (a) dismiss the complaint;
- (b) attempt to resolve the complaint informally; or
- (c) with the consent of both parties, refer the matter, in whole or in part, to mediation.

(2) In the event the complaint is not resolved pursuant to subsection (1), the Investigation Committee shall allow the complainant, the member or other persons as determined by the Committee, a reasonable opportunity to appear before the Committee and to submit representations or explanations, and then may

- (a) dismiss the complaint;
- (b) attempt to resolve the complaint informally;
- (c) with the consent of both parties, refer the matter, in whole or in part, to mediation;
- (d) refer the matter, in whole or in part, to the 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 education as the Committee considers appropriate.

(3) When making findings pursuant to subsection (1) or (2), the Investigation Committee may make any combination of the dispositions that are set out in those subsections, or the Committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(4) The member, the complainant and such others as determined by the Investigation Committee must be advised in writing of the disposition by the Committee.

(5) The Investigation Committee retains jurisdiction over a matter until the commencement of a hearing by the Hearing Committee or the resolution of the matter through a settlement agreement. 2007, c. 29, s. 43.

Suspension of registration or licence or imposition of restrictions

58 (1) Notwithstanding anything contained in this Act, where the Investigation Committee

(a) receives information that indicates that a member may be guilty of a disciplinary matter; and

(b) concludes that it is in the public interest to suspend from practice or restrict the practice of the member,

the 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 of the member on a temporary basis.

(2) The member must forthwith receive 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 discipline 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 revoke the decision imposed pursuant to subsection (1). 2007, c. 29, s. 44.

Hearing Committee to be appointed

59 Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 58(1), subject to any disposition made pursuant to subsection 58(5), the Hearing Committee must be appointed pursuant to subsection 62(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter. 2007, c. 29, s. 45.

Jurisdiction preserved

60 Notwithstanding that a member or members of the Investigation Committee or the 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 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. 2007, c. 29, s. 46.

SETTLEMENT AGREEMENT

Proposal, acceptance and rejection of settlement agreements

61 (1) After the Investigation Committee refers a matter to the Hearing Committee, the member complained of may, at any time prior to 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 or violations, and the member's consent to a specified disposition, conditional upon the acceptance of the agreement by the 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 hearing or Investigation Committee that considered the proposed settlement agreement may be a member of the new Hearing Committee; and
- (d) the Investigation Committee retains jurisdiction over a complaint until the commencement of the hearing by the Hearing Committee, either original or new. 2007, c. 29, s. 47.

HEARING COMMITTEE

Composition of Hearing Committee

62 (1) The Council shall appoint a Hearing Committee composed of such members and lay representatives as is determined by the Council.

(2) No person on the Hearing Committee may concurrently serve on the Investigation Committee.

(3) The Council shall appoint a Chair and a Vice-chair of the Hearing Committee.

(4) The Vice-chair shall act as chair in the absence of the Chair.

(5) Where for any reason neither the Chair nor the Vice-chair are available for a meeting or hearing, the Council may, for the purpose of such meeting or hearing, appoint a member of the Hearing Committee as chair of the Committee. 2007, c. 29, s. 48.

Panel

63 (1) The Chair of the Hearing Committee shall appoint a panel of five persons from the Committee, at least one of whom is a lay representative, to act as the Hearing Committee for purpose of the discipline process.

(2) The Chair of the Hearing Committee may sit on the panel and, in that case, acts as the chair of the panel.

(3) Where the Chair of the Hearing Committee is not appointed to the panel, the Chair of the Committee shall appoint a chair of such panel.

(4) Any three persons from the panel appointed pursuant to subsection (1) constitute a quorum of the Hearing Committee, as long as at least two of those persons are members and not lay representatives. 2007, c. 29, s. 48.

Notice of meeting and procedures

64 (1) Failure of one or more Hearing Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes Committee members from waiving notice of meetings.

(2) All Hearing Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection 63(1), or the quorum of such panel in the event the full panel is not sitting.

(3) Where a proceeding is commenced before the Hearing Committee and the term of office of any person sitting on the Committee has expired, such person may remain part of the Committee until the proceeding is concluded. 2007, c. 29, s. 48.

Duty to provide fair hearing

65 Subject to the regulations, the Hearing Committee shall do all things necessary to provide for a fair hearing. 2007, c. 29, s. 49.

Public Inquiries Act

66 In a matter over which the Hearing Committee has jurisdiction, the Committee and each member of the Committee has all the powers, privileges and immunities of a Commissioner appointed pursuant to the *Public Inquiries Act*. 2007, c. 29, s. 50.

Subpoenas

67 Upon the application of

- (a) any party to the hearing or their counsel;
- (b) the Chair of the Hearing Committee; or
- (c) legal counsel for the Hearing Committee,

the Registrar may sign and issue a subpoena to a witness, for the purpose of procuring the attendance and evidence of such witness before the Committee and, in the event the Registrar refuses to sign and issue the subpoena, the person requesting the subpoena may appear before the Committee to determine whether the subpoena should be issued. 2007, c. 29, s. 51.

Duty of member to attend at hearing

68 It is the duty of the member who is charged in a disciplinary matter to appear and participate 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 Committee of service of the notice, 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. 2007, c. 29, s. 52.

Notice of hearing

69 (1) Unless the member has agreed to a shorter notice period, a notice of hearing must be served upon the member whose disciplinary matter is being heard at least 30 days before the holding of the hearing.

(2) A notice of a hearing must state the particulars of the charges and the time and place of the hearing, and must be signed by the Registrar.

(3) The Council shall provide notice of such hearing to members and the public in such manner as is determined by Council. 2007, c. 29, s. 53.

Inadmissible evidence

70 (1) The following evidence is not admissible before the 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), the Hearing Committee may, in its discretion, allow the introduction of evidence that would otherwise be inadmissible under subsection (1), and may make directions it considers necessary to ensure that a party is not unduly prejudiced by failure to disclose in a timely manner. 2007, c. 29, s. 54.

Prohibition of communication

71 No member of the 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, except for communications that have as their sole purpose administrative arrangements. 2007, c. 29, s. 55.

Access of public to hearing

72 (1) Subject to subsection (2), a hearing before the Hearing Committee 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 Committee is reasonably satisfied that

(a) 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 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

(b) the safety of a person may be jeopardized.

(3) Where it reasonably considers necessary, the Hearing Committee may make orders 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.

(5) The Hearing Committee may make an order that the public be excluded from that part of a hearing dealing with a motion for 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 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. 2007, c. 29, s. 56.

Right to attend

73 Where the Hearing Committee makes an order pursuant to subsection 72(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 and their legal or personal representatives; and

(b) the Committee may allow such other persons as it considers appropriate,

to attend the hearing. 2007, c. 29, s. 57.

Publication ban

74 The Hearing Committee shall, on the request of a witness, other than the member complained of, whose testimony relates to allegations of misconduct of a sexual nature by a member, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness. 2007, c. 29, s. 58.

Transcript of hearing

- 75 (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, and to other persons as the Committee considers appropriate;
 - (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 the 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. 2007, c. 29, s. 59.

Procedure at hearing

76 (1) At a hearing of the Hearing Committee, a member is entitled to all the rights of natural justice and procedural fairness, including the right to be represented by legal counsel, to know all the evidence considered by the Committee, to present evidence and to cross-examine witnesses.

- (2)** The Hearing Committee
- (a) shall hear each case in such manner as it considers reasonable;
 - (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 or assessments as the Committee directs to determine whether the member is competent to practise dental hygiene, and
 - (iv) produce records and accounts kept with respect to the members' practice of dental hygiene; and
 - (c) where the member fails to comply with clause (b), may suspend the registration or licence of the member until the member complies.

(3) Where the Hearing Committee has, pursuant to subclause (2)(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, the Committee shall deliver to the member any report it receives from the designated qualified person. 2007, c. 29, s. 60.

Determinations by Hearing Committee

77 (1) The Hearing Committee shall determine whether the member is guilty of charges relating to a disciplinary matter, and

- (a) where there is a guilty finding, may determine that
 - (i) the registration or licence of the member be revoked and that member's name be stricken from the Register in which it is entered,
 - (ii) the licence of the member be suspended
 - (A) for a fixed period, or
 - (B) for an indefinite period, until the occurrence of some specified future event or until compliance with conditions prescribed by the Committee,
 - (iii) conditions, limitations or restrictions be imposed on the licence of the member,
 - (iv) the member undergo such treatment or education as the Committee considers appropriate,
 - (v) the member pay such fine as the Committee considers appropriate, to a maximum of \$15,000, to be paid towards such charitable purpose related to public oral health-care as is determined by the Committee,
 - (vi) the member be reprimanded,
 - (vii) such other disposition as it considers appropriate be imposed; or
- (b) where there is a not guilty finding, the Committee shall dismiss the charges,

and shall file its decision, including reasons, at the offices of the College.

(2) When making dispositions pursuant to clause (1)(a), the Hearing Committee may impose one or more of the penalties that are set out in that clause, or the Committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(3) Upon completion of the hearing, the Hearing Committee shall, subject to any publication ban, make its written decision available to members of the public.

(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 clients or other persons other than the complainant, those references as well as other per-

sonal information about those persons may be deleted if, in the Hearing Committee's opinion, it is reasonably appropriate. 2007, c. 29, s. 60.

Effective date of decision

78 The decision of the Hearing Committee has effect immediately upon service on the member, or from such time as the decision may direct. 2007, c. 29, s. 60.

Release of evidence

79 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. 2007, c. 29, s. 60.

Inadmissibility of evidence in legal proceeding

80 (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; 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 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 the Investigation Committee or the 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 the Investigation Committee, the 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 the Investigation Committee or the 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. 4.

Orders for costs

81 (1) In this Section, “costs of the proceedings” includes

(a) direct expenses incurred by the College, the Council, the Investigation Committee or the Hearing Committee, arising from the complaint; and

(b) solicitor-client costs and disbursements of the College relating to the investigation, prosecution and hearing of the complaint.

(2) When the Hearing Committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the proceedings, in whole or in part.

(3) Where a member is ordered to pay costs pursuant to subsection (2), the Hearing Committee 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 Committee determines. 2007, c. 29, s. 61.

Appeal on point of law

82 (1) A 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 the Hearing Committee consists of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the Committee, certified by the Chair of the 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, either the Hearing Committee or the Court of Appeal has jurisdiction to, pending a decision by the Court of Appeal, grant a stay of any order made pursuant to this Act if, in its discretion, it considers it fit. 2007, c. 29, s. 62.

Application for reinstatement

83 (1) A person whose licence has been revoked by a resolution of the Hearing Committee may apply to the Council for

- (a) the entering of the person's name, address and qualifications on the 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; or
- (b) 12 months after the previous application.

(3) Upon

- (a) being satisfied that the interest of the public will be reasonably protected and the integrity of the profession of dental hygiene will be reasonably preserved;
- (b) being satisfied as to the intention of such person to practise dental hygiene 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 dental hygiene, since the date of the resolution of the Hearing Committee; and

(e) such person undergoing such clinical or other examinations as the Credentials Committee may designate,

the Council may direct the Registrar to

(f) enter the name, address and qualifications of such person in the Register upon such terms and conditions as the Council may direct; and

(g) issue a licence to such person, upon such terms and conditions as the Council may direct. 2007, c. 29, s. 63.

EVIDENCE

Certificate as evidence

84 A certificate purporting to be signed by the Registrar stating that any person named in the certificate 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 of the Registrar's signature. 2007, c. 29, s. 64.

Effect of presence of name in document

85 The presence of the name of any person in a document purporting for any year to be an annual list published by the Registrar 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. 2007, c. 29, s. 65.

NOTICES

Service

86 Service of any notice, order, resolution or other document pursuant to this Act or the regulations may be made

(a) by personal service;

(b) upon a member by registered letter addressed to such person at the member's address as set forth in the Register; or

(c) upon any other person by registered letter. 2007, c. 29, s. 66.

Service by registered letter deemed five days after posting

87 Where service is made by registered letter, service is deemed to be made five business days after the notice, order, resolution or other document is posted, and proof that the notice, order, resolution or other document was addressed and posted in accordance with Section 86 is proof of service upon receipt of proof of delivery. 2007, c. 29, s. 67.

Service on College

88 Service of any document on the College may be made by service on the Registrar. 2007, c. 29, s. 68.

LIMITATIONS OF ACTIONS**No action lies**

89 (1) No action for damages lies against the College, the Council, the Registrar, an officer, agent or employee of the College or Council, a member of a committee or subcommittee of the College or the Council, 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, agent, 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 the 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.

(4) No member of the College, or any officer, agent or employee of the College is personally liable for any of the debts or liabilities of the College unless such person expressly agrees to be so liable. 2007, c. 29, s. 69.

INCORPORATION**Corporation may practise dental hygiene**

90 Subject to this Act and the regulations, a professional corporation may engage in the practice of dental hygiene and dental hygienists may be employed by a professional corporation for the purpose of engaging in the practice of dental hygiene. 2007, c. 29, s. 70

Ownership of shares

91 (1) A majority of the issued voting shares of a professional corporation, which shares represent a majority of the voting control of the corporation, must be legally and beneficially owned by one or more dental hygienists who hold a current licence.

(2) Subject to subsection (1), the spouse or child of a dental hygienist or approved health professional or any other person may own, beneficially or legally, shares of a professional corporation.

(3) Notwithstanding subsection (1), issued shares may be legally and beneficially owned by a corporation of which

- (a) all of the issued voting shares are legally and beneficially owned by one or more members who each hold a licence to practise, or by a trust of which all of the trustees and beneficiaries each hold a licence to practise; and
- (b) a majority of the officers and directors of each hold a licence to practise. 2007, c. 29, s. 71.

Qualifications of directors and president

92 (1) A majority of the directors of a professional corporation must be dental hygienists.

(2) The president of a professional corporation must be a dental hygienist. 2007, c. 29, s. 72.

Permit required

93 A professional corporation shall not engage in the practice of dental hygiene unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations. 2007, c. 29, s. 73.

Permits

94 (1) Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued pursuant to this Section may practise dental hygiene in its own name.

(2) Notwithstanding subsection (1), no professional corporation may be registered as a dental hygienist 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 approved by the Council;
- (b) pays all fees prescribed by the bylaws;
- (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 *Corporations 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 91 and 92 have been met;
- (f) satisfies the Registrar that the professional corporation holds such liability insurance as may be required by the Council;
- (g) satisfies the Registrar that the persons who will carry on the practice of dental hygiene for or on behalf of the professional corporation are dental hygienists; 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 the application and payment of such fee as may be required by the regulations if 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 Council 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 dental hygiene 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 dental hygienist. 2007, c. 29, s. 74.

Deemed revocation of permit

95 (1) Where a professional corporation practises dental hygiene only through the services of one dental hygienist and that dental hygienist dies, retires, becomes incompetent or is no longer licensed under this Act, or is suspended under this Act, the permit of such professional corporation is deemed to be immediately revoked and such professional corporation shall cease to practise dental hygiene.

(2) Where a professional corporation practises dental hygiene through the services of more than one dental hygienist and such professional corporation ceases to fulfill any requirement prescribed in subsection 94(3) by reason of

- (a) the death of a dental hygienist;
- (b) the incompetency of a dental hygienist;
- (c) the revocation of the licence of a dental hygienist pursuant to this Act;
- (d) the suspension of the licence of a dental hygienist pursuant to this Act; or
- (e) the retirement from practice by a dental hygienist,

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 dental hygienist, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise dental hygiene 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 94(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. 2007, c. 29, s. 75.

Notification of various changes respecting professional corporation

96 Where the shares of a professional corporation engaged in the practice of dental hygiene 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. 2007, c. 29, s. 76.

Effect of incorporation

97 The relationship of a dental hygienist 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 dental hygienist. 2007, c. 29, s. 77.

Liability respecting practice and prohibition of share pledge

98 (1) All persons who carry on the practice of dental hygiene 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 dental hygiene 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 dental hygiene.

(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 dental hygienist the authority to exercise the voting rights attached to any or all of the owner's shares. 2007, c. 29, s. 78.

Act does not affect other laws or duties

99 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between a dental hygienist and a client.

(2) The relationship between a professional corporation and a client of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between a dental hygienist and a client.

(3) All rights and obligations pertaining to communications made to or information received by a dental hygienist apply to the shareholders, directors, officers and employees of a professional corporation. 2007, c. 29, s. 79.

Compellable witnesses

100 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 2007, c. 29, s. 80.

Certificate as proof

101 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 dental hygiene according to the records of the Registrar, is admissible in evidence as prima facie proof of the facts stated therein without proof of the Registrar's appointment or signature. 2007, c. 29, s. 81.

Directors and officers also guilty

102 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. 2007, c. 29, s. 82.

Offence and penalty

103 (1) Every person who contravenes Sections 91 to 102 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 91 to 102 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. 2007, c. 29, s. 83.

GENERAL**Regulations Act**

104 All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*. 2007, c. 29, s. 84.

Practice requirements

105 Every member engaged in the practice of dental hygiene shall practise in accordance with this Act, the regulations, the bylaws and the standards of practice and the code of ethics approved pursuant to the bylaws. 2007, c. 29, s. 87.

Act does not affect practice pursuant to Dental Act

106 Nothing in this Act prohibits the practice of dental hygiene by a dentist or dental corporation pursuant to the *Dental Act*. 2007, c. 29, s. 88.

Act does not affect licensed dental assistant

107 Nothing in this Act prevents a dental assistant licensed pursuant to the *Dental Act* from engaging in the practice of a dental assistant prescribed in the regulations made pursuant to the *Dental Act*. 2007, c. 29, s. 89.

CHAPTER D-8

An Act to Incorporate the Nova Scotia Dental Technicians Association

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Short title

1 This Act may be cited as the *Dental Technicians Act*. R.S., c. 126, s. 1.

Interpretation

2 In this Act,

“Association” means the Nova Scotia Dental Technicians Association;

“Board” means the Examining Board appointed under Section 11;

“Council” means the Council of the Association;

“dental laboratory” means any place where the art or business of dental technology is practised or carried on;

“dental technician” means a person who practises the art or business of dental technology;

“dental technology” means the art or business of manufacturing or repairing any prosthetic denture, bridge, appliance or device to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue, or in the treatment of any condition thereof;

“dentist” means a person legally qualified to practise dentistry in the Province;

“physician” means a person legally qualified to practise medicine in the Province. R.S., c. 126, s. 2.

Association, membership and head office

3 (1) The Nova Scotia Dental Technicians Association incorporated by Chapter 111 of the Acts of 1949 is continued as a body corporate.

(2) The members of the Association consist of the persons who were members thereof immediately prior to July 1, 1965, together with such persons as, pursuant to this Act, become members thereof.

(3) The head office of the Association must be at the former City of Halifax or such other place as the Council decides. R.S., c. 126, s. 3.

Objects

4 The objects of the Association are to

- (a) increase the knowledge, ability and competence of its members;
- (b) improve the administration of dental laboratories;
- (c) improve the standard of the practice of dental technology so as to ensure that the public at all times receives the services of proficient and competent dental technicians of high ethical standards;
- (d) co-operate with the dental profession and others having like purposes in the attainment of the objects of the Association;
- (e) do such lawful things as are incidental or conducive to the attainment of such objects. R.S., c. 126, s. 4.

Acquisition of property, bylaws

5 (1) The Association may acquire and hold real and personal property, and may alienate, mortgage, lease or otherwise charge or dispose of the same or any part thereof.

(2) Subject to the approval of the Governor in Council, the Association may make bylaws not inconsistent with this Act respecting

- (a) the election or appointment and the powers, duties and qualifications of officers and employees of the Association;
- (b) the qualifications of members entitled to vote at meetings of the Association, or to hold office therein;
- (c) admission of members, the maintenance of a register of members and the annual renewal of such registration;
- (d) membership fees and fees on admission to study or apprenticeship and on examinations, on registration and annually or otherwise thereafter;
- (e) the discipline or control of members including the adoption and enforcement of any reasonable canons of ethics;

(f) the investigation of any complaint that a member has been guilty of misconduct or gross negligence or such incompetence in the member's business as to render it desirable in the public interest that the member's registration should be cancelled or suspended;

(g) the cancellation or suspension of the registration of any person found to be guilty of misconduct or gross negligence or to have been incompetent;

(h) the definition of "misconduct" for the purpose of this Act and the bylaws;

(i) the administration and disposal of property of the Association;

(j) the appointment of a Board of Examiners and the payment of reasonable fees and disbursements to members of the Board and members of the Council in respect to the discharge of their duties;

(k) the inspection of dental laboratories;

(l) such other matters that to the Association may seem proper or necessary for carrying this Act into effect. R.S., c. 126, s. 5.

Council

6 (1) There is a Council of the Association consisting of not more than 10 and not fewer than five members who shall, subject to this Act and the bylaws and to the directions of any general meeting of the Association, conduct the affairs and exercise the powers of the Association.

(2) The election of members of the Council must be held at annual meetings of the Association or in such other manner as provided by the bylaws. R.S., c. 126, s. 6.

Right to designation

7 (1) A person registered under this Act has the right to use the designation "Registered Dental Technician" or the letters "R.D.T.", and may describe the person's business as a dental laboratory.

(2) A person is not entitled to use the designation "Registered Dental Technician" or the letters "R.D.T.", or any other name, title, initials or description implying that the person is a registered dental technician unless the person is registered under this Act. R.S., c. 126, s. 7.

Application of Act

8 (1) Nothing in this Act or the bylaws applies to or affects the practice of any profession or calling by any person practising the profession or engaged in the calling under the authority of any general or special Act of the Legislature.

(2) Nothing in this Act or the bylaws limits, alters or affects the application of any provision of the *Dental Act* or of any bylaw made thereunder. R.S., c. 126, s. 8.

Dental technician services

9 (1) In this Section, “dentists in association” means dentists practising together in the same suite of offices in the same building and sharing the expenses of their practices.

(2) Nothing in this Act or the bylaws prohibits the performing of work or services ordinarily performed by a dental technician by

- (a) a dentist or physician;
- (b) a person in a hospital or a university or municipal clinic acting upon the prescription or order of a dentist or physician;
- (c) an apprenticed dental technician working under the direct supervision of a registered dental technician; or
- (d) a person who is not a registered dental technician and who is a full-time employee of one dentist or of not more than three dentists in association where no dental laboratory services are furnished by the dentist or dentists in association to persons other than their patients. R.S., c. 126, s. 9.

Operation of laboratory by company

10 (1) No corporation shall operate a dental laboratory unless

- (a) the majority of the directors are registered dental technicians;
- (b) a majority of each class of shares of the corporation is beneficially owned by registered dental technicians or spouses or children of deceased registered dental technicians; and
- (c) a registered dental technician is at all times in charge of the actual operations of the laboratory.

(2) Every member of the board of directors of a corporation that operates a dental laboratory and the registered dental technician in charge of the actual operations of the laboratory is deemed guilty of any contravention of this Act by the corporation.

(3) A corporation that was actively engaged in operating a dental laboratory prior to July 1, 1965, is exempt from the provisions of clauses (1)(a) and (b). R.S., c. 126, s. 10.

Examining Board

11 (1) There is an Examining Board of six members, four of whom must be appointed by the Council and two by the Dental Association of the Province of Nova Scotia.

(2) Two members of the Board first appointed by the Council and one member appointed by the Dental Association of the Province of Nova Scotia hold office for a period of two years, and the remaining members of the Board hold office for one year, and thereafter every member appointed holds office for a period of two years, but any member is eligible for reappointment at the expiration of the member’s term of office.

(3) Every vacancy on the Board caused by the death, resignation or incapacity of a member may be filled by appointment, by the appropriate body, of a person to hold office for the remainder of the term of such member. R.S., c. 126, s. 11.

Regulations

12 The Board, with the approval of the Governor in Council, may make regulations

- (a) prescribing the qualifications of candidates for and the conditions of admission to the study and to the practice of the art of a dental technician;
- (b) prescribing the subjects for the examination of candidates for admission to the study and to the practice of the art of a dental technician;
- (c) prescribing the proofs to be furnished as to education, good character and experience;
- (d) relating to examinations and the duties and functions of examiners; and
- (e) respecting such other matters as the Board considers necessary or advisable for the more effective discharge of its functions or the exercise of its powers. R.S., c. 126, s. 12.

Meetings of Association

13 Annual and general meetings of the Association must be held as determined by the bylaws of the Association. R.S., c. 126, s. 13.

Cancellation or suspension

14 (1) Subject to the bylaws, the Council may, after due inquiry, cancel or suspend the registration of any member who performs dental technology without first obtaining a written prescription or order from a dentist or physician, or who has been found by the Council to be guilty of misconduct, gross negligence or to be incompetent.

(2) The Council shall not cancel or suspend the registration of a member unless the member has been given at least 30 days notice in writing of the specific charge and of the time and place at which it will be considered by the Council, at which time the Council may hear evidence on oath, and the member is entitled to be heard and to be represented by counsel.

(3) When conducting an inquiry pursuant to this Section, the Council and each member of the Council have 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.

(4) Upon the cancellation or suspension of registration of a member, the member ceases to be entitled to use the designation "Registered Dental Technician" or to be entitled to any of the privileges conferred upon a Registered Dental Technician by this Act until the member is reinstated.

(5) Where a majority of the members of the Council are satisfied that the grounds leading to the cancellation or suspension of registration of a member have ceased to exist or that a person whose registration has been suspended or cancelled is a fit and proper person to be reinstated as an active member, the Council may rescind the order of cancellation or suspension. R.S., c. 126, s. 14; 2012, c. 48, s. 29.

Appeal

15 (1) Any person whose registration has been cancelled or suspended by the Council may appeal from the decision of the Council to a judge of the Supreme Court of Nova Scotia upon giving 15 days notice of appeal to the secretary of the Association.

(2) The judge hearing the appeal may make such order or give such direction as to the cancellation or suspension of registration and as to the costs of the appeal as to the judge seems just. R.S., c. 126, s. 15.

Offences

16 (1) Except as otherwise provided in this Act, every person who is not registered under this Act or whose registration is suspended, who

(a) practises the art of a dental technician or purports to carry on business as a dental technician;

(b) operates a dental laboratory;

(c) advertises or uses or affixes any prefix or suffix to the person's name signifying that the person is carrying on business as a dental technician or that the person is qualified to carry on business as a dental technician; or

(d) violates or contravenes any other provisions of this Act, is guilty of an offence, and on summary conviction is liable for the person's first offence to a fine not exceeding \$200, for a subsequent offence to a fine not exceeding \$500, and in either case, in default of payment, imprisonment for a period not exceeding six months.

(2) The provisions of subsection (1) do not apply to a person who, for at least two years immediately preceding July 1, 1965, was carrying on the art of a dental technician in the Province. R.S., c. 126, s. 16.

Certificate as evidence

17 A certificate signed or purporting to be signed by the Secretary of the Association that a person was or was not a registered member of the Association, or that a person's registration is suspended on a date or during a period specified in the certificate, is admissible in evidence without proof of the signature or election of the Secretary of the Association, and is prima facie proof of the facts certified. R.S., c. 126, s. 17.

Personal liability

18 No member or officer of the Association is personally liable for the debts or liabilities of the Association unless the member or officer expressly agrees to be liable. R.S., c. 126, s. 18.

Insolvency or death

19 In case of the insolvency or death of any registered dental technician who operates a dental laboratory, the technician's assignee, widow or widower or personal representative may continue to operate the laboratory for the sole benefit of the registered dental technician's estate under the personal supervision of a registered dental technician for a period not to exceed five years, or such longer period as may be approved of by resolution of the Council. R.S., c. 126, s. 19.

CHAPTER D-9

An Act Respecting the Practice of Denturism

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Short title

- 1** This Act may be cited as the *Denturists Act*. 2000, c. 25, s. 1.

Interpretation

- 2** In this Act,
- “alters any oral tissue” means any procedure involving the cutting into or use of lasers on the tissue;
- “Board” means the Denturist Licensing Board established pursuant to this Act;

“committee” means a committee of the Board, and includes a hearing panel unless otherwise excluded;

“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 licensee, former licensee or professional corporation or the employees thereof, or any similar complaint, report or allegation initiated by the Registrar;

“court” means the Supreme Court of Nova Scotia;

“denturism” means

(a) the making of impressions and the determining of jaw relations for the purpose of, or with a view to, the making, producing, reproducing, constructing, furnishing, supplying, altering or repairing of any removable denture to be fitted

(i) into an edentulous or partially edentulous arch or arches,

(ii) onto implant abutments if the denture is an implant-retained or tissue-supported denture, or

(iii) onto an implant bar if the denture is an implant-bar-supported denture;

(b) the placement of any patient-removable denture to the edentulous or partially edentulous arch or arches; and

(c) the making of impressions and determining jaw relations for the purpose of, or with a view to, the making, producing, reproducing, constructing, furnishing, supplying, altering or repairing of a mouth guard to protect the patient for sporting or recreational purposes and to protect against injury, but not for medical purposes,

and includes implant services in respect of which a service is performed under clause (a), (b) or (c), but does not include the alteration of the fixed components of a dental implant or any procedure that alters any oral tissue;

“denturist” means a person licensed under this Act to engage in the practice of denturism;

“disciplinary matter” means any matter involving an allegation of professional misconduct, conduct unbecoming a denturist or professional incompetence, including incompetence arising out of physical or mental incapacity;

“former Act” means Chapter 127 of the Revised Statutes, 1989;

“hearing panel” means a hearing panel appointed pursuant to this Act;

“implant abutment” means a separate component attached to a dental implant that serves to support or retain a patient-removable denture;

“implant-bar-supported denture” means a patient-removable denture attached to an implant bar that may or may not be supported by tissue;

“implant-retained or tissue-supported denture” means a patient-removable denture attached to one or more implant abutments that is also supported by tissue;

“implant services” means the making, producing, reproducing, constructing, furnishing, supplying, relining, rebasing, altering, repairing of and adding to any patient-removable denture, if the denture is an implant-bar-supported denture or an implant-retained or tissue-supported denture;

“implant team” means all oral health care providers involved in the provision of implant services, including a dentist;

“licence” means a valid and subsisting licence issued pursuant to this Act;

“licensee” means a person who is registered in the Register and holds a licence;

“mediation” means any form of alternative dispute resolution;

“patient-removable denture” means a denture designed to be removed by the wearer that replaces one or more natural teeth with artificial teeth, and includes a removable denture that replaces all teeth or a removable partial denture that use clasps to gain retention from remaining natural teeth, but does not include an appliance that does not replace oral structures and is worn by a patient in a course of treatment of a disease or an abnormal condition;

“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 denturism;

“Register” means the Register of the Board 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;

“removable partial denture” means a denture designed to be removed by the wearer that replaces one or more natural teeth with artificial teeth, and includes a removable denture that use clasps to gain retention from remaining natural teeth, but does not include

(a) a removable denture that replaces all teeth; and

(b) an appliance that does not replace oral structures but is worn by a patient in a course of treatment of a disease or an abnormal condition;

“Society” means the Denturist Society of Nova Scotia. 2000, c. 25, s. 2; 2019, c. 28, s. 1.

“denturist” and like words

3 The word “denturist” or any like words or expressions implying a person recognized by law as a denturist 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 August 1, 2003, or when used in any public document, means a person registered in the Register who holds a licence. 2000, c. 25, s. 3.

Exemptions

- 4** Nothing in this Act applies to or prevents
- (a) the practice of dentistry or dental surgery by a person who is registered pursuant to the *Dental Act*; or
 - (b) the practice of dental technology by a person registered pursuant to the *Dental Technicians Act*. 2000, c. 25, s. 4.

DENTURIST LICENSING BOARD**Continuation and powers**

5 (1) The Denturist Licensing Board as constituted by the former Act is continued and is a body corporate under the name “Denturist Licensing Board”.

(2) The Board has perpetual succession and a common seal and may sue and be sued.

(3) In addition to any other power conferred by this or any other Act, the Board may do such things as it considers appropriate to advance the objects of the Board 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 Board in the advancement of its objects and the interests of the profession of denturism 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 Board 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 Board;
- (h) borrow money for the use of the Board on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the Board 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). 2000, c. 25, s. 5.

Constitution and terms of office

6 (1) The Board consists of seven members appointed by the Governor in Council

- (a) four of whom are denturists; and
- (b) three of whom are persons who are not denturists.

(2) Two of the denturists appointed pursuant to clause (1)(a) must be the President and Vice-president of the Society, unless they choose not to accept the appointment.

(3) Denturists appointed by the Governor in Council pursuant to clause (1)(a) must, unless appointed pursuant to subsection (2), be appointed only after consultation by the Minister of Health and Wellness with the Society.

(4) The members of the Board, other than the President or Vice-president of the Society or a person appointed in the place of either of them, hold office for a period of two years and any member of the Board is eligible for reappointment at the expiration of that person's term of office.

(5) Notwithstanding subsection (4), 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.

(6) A vacancy on the Board caused by the death, resignation or incapacity of a Board member does not impair the ability of the remaining members to act.

(7) In subsection (8), "consecutive" means that 12 months or less occurred between the end of one term and the commencement of the next.

(8) Members of the Board may not be members of the Board for more than three consecutive terms. 2000, c. 25, s. 6.

Regulations by Board and meetings

7 (1) The Board may make regulations

- (a) providing for the management of the Board, including the keeping of the registers to be kept pursuant to this Act;
- (b) providing for the holding of meetings of the Board, quorum requirements for such meetings 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 Board;

(g) prescribing fees payable pursuant to this Act by applicants and licensees;

(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 licensees;

(k) prescribing the seal of the Board;

(l) providing for the execution of documents by the Board;

(m) prescribing examinations to be written by applicants for registration;

(n) prescribing forms and providing for their use;

(o) providing procedures not inconsistent with this Act for the making, amending and revoking of regulations;

(p) respecting the information to be included in the Register;

(q) prescribing a code of ethics and standards of practice.

(2) The Board may, with the approval of the Governor in Council, make regulations

(a) respecting the registration and licensing of licensees;

(b) respecting continuing-competency requirements, including continuing-education requirements or practice-hour requirements of licensees for registration;

(c) respecting the limiting or qualifying of a licensee's licence, including procedures and interventions;

(d) respecting the evaluation of, and licensing requirements of, licensees and applicants for registration who have not practised denturism for at least one year;

(e) respecting supervised practice, monitoring supervised practice and the delegation of acts of denturism and any other ancillary matters, and providing for the establishment of a committee or committees to deal with such matters;

(f) respecting the disciplining of licensees and the revocation or suspension of licences issued pursuant to this Act;

(g) respecting the reporting and publication of decisions in disciplinary matters;

(h) regulating, controlling and prohibiting the use of terms, titles or designations by licensees or groups or associations of licensees in respect of their practice;

(i) prescribing the records and accounts to be kept by licensees and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;

(j) providing that the licence of a licensee be suspended without notice or investigation upon contravention of any regulation that requires the licensee 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;

(k) determining the procedure to be followed at hearings by a hearing panel;

(l) prescribing the type of professional liability insurance or other form of malpractice coverage a licensee must hold;

(m) prescribing the manner of proof as to matters required to be proven by applicants for permits;

(n) fixing reasonable fees payable for the issuance and renewal of permits;

(o) 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;

(p) prescribing the grounds upon which the Board may review a decision of the Registrar pursuant to subsection 62(7) and the procedures to be followed in reviewing any such decision;

(q) 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;

(r) providing for the creation and maintenance of a register of professional corporations;

(s) providing for the filing of periodic returns by professional corporations;

(t) providing for the annual renewal of permits and prescribing the terms and conditions upon which renewals may be granted;

(u) prescribing the types of names and business names by which

(i) a licensee as a sole proprietor,

(ii) a professional corporation,

(iii) a partnership with one or more denturists,

(iv) a partnership of two or more professional corporations, or

(v) a partnership of one or more professional corporations and one or more individual denturists,

may be known;

(v) prescribing the nature of communications with the public, including advertising, that may be undertaken by a licensee as a sole proprietor, a partnership or a professional corporation;

(w) prescribing access to the minute book records of a professional corporation by the Registrar;

(x) defining any word or expression used but not defined in this Act;

(y) further defining any word or expression defined in this Act;

(z) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the objects of the Board and the intent and purpose of this Act.

(3) All regulations of the Board must be available for inspection by any person, free of charge, at the head office of the Board at all reasonable times during business hours.

(4) A certificate purporting to be signed by the Registrar stating that a certain regulation of the Board was, on a specified day or during a specified period, a duly enacted regulation of the Board 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.

(5) A member of the Board or a committee of the Board may participate in any meeting of the Board or committee of the Board, with the exception of the hearing panel 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.

(6) A meeting of the Board, or a committee of the Board, with the exception of the hearing panel when it is conducting a hearing, 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. 2000, c. 25, s. 7; 2019, c. 28, s. 2.

Chair and frequency of meetings

8 (1) The Board shall designate one of its members, other than a dentist, to be the Chair of the Board.

(2) Subject to subsection (3), the Chair of the Board shall preside at all meetings of the Board.

(3) Where the Chair of the Board is absent from a meeting, some other member chosen by the members present shall preside at the meeting.

(4) Except in the event of an equal number of votes being given for and against a resolution at any meeting, the Chair of the Board or other presiding officer shall not vote.

(5) The Board shall meet at least three times in each calendar year. 2000, c. 25, s. 8.

Committees

9 The Board may appoint annually such committees from among members of the Board as the Board considers necessary to assist it in carrying out its duties pursuant to this Act. 2000, c. 25, s. 9.

Registrar and other employees

10 (1) The Board shall appoint a Registrar, as defined by the regulations for the purpose of this subsection, who holds office during the pleasure of the Board, at such salary or other remuneration as the Board determines.

(2) 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.

(3) 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. 2000, c. 25, s. 10.

REGISTER

Form of register and effect of registration

11 (1) The Board shall keep a Register in which must be entered the name, address and qualifications of all persons who are entitled pursuant to this Act to be registered in the Register.

(2) The name, address and qualifications of every person who, immediately prior to August 1, 2003, had a licence pursuant to Section 6 of the former Act, must be entered in the Register, but continues under any stipulations or limitations attached to the person's previous licence.

(3) The Registrar shall issue a licence to every person who, as of August 1, 2003, had been issued a licence pursuant to Section 6 of the former Act.

(4) Every licence issued pursuant to subsection (3) is subject to any conditions or limitations attached to the licence pursuant to the former Act. 2000, c. 25, s. 11.

Direction of Board to Registrar

12 (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) satisfies the Board that the person possesses the qualifications required in the regulations for registration in the Register;
- (c) satisfies the Board that the person holds professional liability insurance or coverage in an amount approved by the Board;
- (d) complies with this Act and the regulations and any conditions imposed by the Registrar and the Board; and
- (e) complies with Section 15.

(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. 2000, c. 25, s. 12; 2019, c. 28, s. 3.

Referral of application to Board

13 (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 Board.

(2) Upon a referral pursuant to subsection (1), the Board, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Board sees fit, and the Board shall consider the application in accordance with this Act.

(3) Where the person requests the opportunity to appear before the Board, this request must be granted and the person may appear with legal counsel. 2000, c. 25, s. 13.

Effect of criminal conviction

14 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 denturist, 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. 2000, c. 25, s. 14.

Procedure for application

15 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. 2000, c. 25, s. 15.

Change of address

16 A licensee who changes address shall promptly inform the Registrar who shall enter the change in the Register. 2000, c. 25, s. 16.

Fees

17 (1) Every licensee shall pay to the Registrar, or such person as the Registrar may designate,

- (a) at the time that the licensee 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 licensee who fails to pay prescribed annual fees as required by subsection (1) or who fails to comply within the prescribed period with any continuing competence requirements established in 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 licensees pursuant to subsection (1) are determined by the Board. 2000, c. 25, s. 17.

Application for relicensing

18 (1) Where the licence of a licensee has been suspended pursuant to subsection 17(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 denturism 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 denturism;
- (d) as to the person's good standing in all jurisdictions in which the person has practised denturism 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 Board 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 Board.

(4) Upon a referral pursuant to subsection (3), the Board, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Board sees fit, and the Board shall consider the application in accordance with this Act.

(5) Where the person requests the opportunity to appear before the Board, this request must be granted and the person may appear with legal counsel.

(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 if the Board is not satisfied that the applicant meets the criteria set out in subsection (2). 2000, c. 25, s. 18.

Limitations on former licence

19 Every licence issued pursuant to Section 18 is subject to any conditions, limitations or restrictions contained in the licence that had expired, lapsed or been suspended pursuant to subsection 17(2), unless the Board orders otherwise. 2000, c. 25, s. 19.

Effect of ceasing to be registered

20 (1) The licence of a licensee may be surrendered by the licensee only after notice in writing to the Board and with the consent of the Board.

(2) Where a person ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the Board in respect of any disciplinary matter arising out of the person's conduct while a licensee or while registered. 2000, c. 25, s. 20.

PROHIBITIONS

Offences

21 (1) A person licensed pursuant to this Act who practises denturism in violation of any condition or limitation contained in the person's licence is guilty of an offence.

- (2)** A person who practises denturism
- (a) while the person's licence is suspended or revoked; or
 - (b) without a licence,

is guilty of an offence. 2000, c. 25, s. 21.

Absence from Province

22 (1) A licensee who leaves the Province and practises denturism on the licensee's return to the Province before providing the Registrar with a certificate of good standing from all jurisdictions in which the licensee 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 licensees from the requirements of subsection (1) if licensees have been absent from the Province for a period shorter than the maximum period prescribed in the regulations. 2000, c. 25, s. 22.

Practise by person other than denturist

23 (1) Except as provided in this Act or the regulations, no person, other than a denturist who holds a licence, shall

- (a) publicly or privately, for hire, gain or hope of reward, practise or offer to practise denturism;
- (b) purport to in any way to be entitled to practise denturism; or
- (c) assume any title or description implying or designed to lead the public to believe that that person is entitled to practise denturism.

(2) No person is entitled to receive a fee, reward or remuneration for

- (a) professional services rendered to any person in the practice of denturism; or
- (b) denturism appliances supplied to any person in the practice of denturism,

unless registered and licensed at the time the services were provided or the appliances were rendered. 2000, c. 25, s. 23.

Restrictions

24 (1) No denturist in the practice of denturism may perform root planing, teeth scaling or teeth polishing or perform any act for the diagnosis or treatment of any defect of teeth, mouth or maxillae or mandible, including

- (a) the prescription and taking of X-ray photographs;
- (b) local infiltration anaesthesia;
- (c) the trying, fitting, adjusting or replacement of bridges, including Maryland bridges, and crowns;
- (d) the trying, fitting, adjusting or replacement of
 - (i) dentures fitted directly onto osteointegrated implants, if the dentures cannot be removed by the wearer,
 - (ii) temporomandibular joint appliances,
 - (iii) alteration of the mouth or teeth structures such as tooth reduction or the preparation of support cavities and guiding planes,
 - (iv) acts related to orthodontics, or
 - (v) the trying, fitting, adjusting or replacement of temporomandibular joint appliances;
- (e) alteration of the mouth or teeth structures such as tooth reduction or the preparation of support cavities and guiding planes;
- (f) obturation of oral defects as a result of, but not limited to, cleft palate, trauma or oncological treatment; or
- (g) acts related to orthodontics.

(2) No dentist shall engage in the practice of denturism as defined in subclauses 2(a)(ii) and (iii) of the definition of “denturism” unless the dentist is practising in accordance with the educational requirements and standards of practice provided for by the Board.

(3) Notwithstanding subclause 24(1)(d)(ii), a dentist may engage in the trying, fitting, adjusting or replacement of mouth guards to protect the wearer for sporting or recreational purposes, but not for medical purposes. 2000, c. 25, s. 24; 2019, c. 28, s. 4.

False information

25 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. 2000, c. 25, s. 25.

Prosecutions

26 (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 denturism, 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 denturism 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 denturism on one occasion is sufficient to establish that a person has engaged in the practice of denturism. 2000, c. 25, s. 26.

Further offences

- 27 (1) A person who violates
- (a) this Act, except for Sections 58 to 70; or
 - (b) a regulation made pursuant to clause 7(2)(h) or (i),

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 Board belong to the Board.

(3) Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the Board where authorized by the Board, with the consent of the Minister of Health and Wellness. 2000, c. 25, s. 27.

Injunctions

28 (1) Where a person 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 licensee 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. 2000, c. 25, s. 28.

DISCIPLINE

Initiation of complaints

- 29 Complaints may be initiated by
- (a) any official body corporate or association; or
 - (b) any other person. 2000, c. 25, s. 29.

Expert assistance

30 The Board or a hearing panel may employ, at the expense of the Board, such legal or other assistance as it considers necessary for the purpose of the investigation of any disciplinary matter. 2000, c. 25, s. 30.

Confidentiality

31 Every person involved in the administration of this Act and any member of the Board, or a committee of the Board, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding clients, except

- (a) in connection with the administration of Sections 32 to 57 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. 2000, c. 25, s. 31.

Investigation of other matter

32 The Registrar, the hearing panel or a person investigating a disciplinary matter concerning a licensee may investigate any other disciplinary matter concerning the licensee that arises in the course of the investigation. 2000, c. 25, s. 32.

Power of Registrar or hearing panel

33 (1) Where the Registrar or hearing panel

(a) learns that the registration or licence of a licensee has been suspended or revoked for reasons of professional misconduct, conduct unbecoming or incompetence by another licensing or regulatory authority;

(b) has provided the licensee 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 licensee, if any, at the hearing as to why the licensee should not be subject to disciplinary action,

the Registrar or hearing panel may take any of the actions contemplated by clause 54(2)(e).

(2) Where a licensee 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 referred to in Section 14, the Registrar or hearing panel may, by such notice as it prescribes, require the licensee to attend a hearing to establish why the licensee should not be subject to disciplinary action.

(3) For the purpose of subsection (2), a certificate of conviction of a licensee is conclusive evidence that a person has committed the offence stated therein unless it is shown by the licensee that the conviction has been quashed or set aside.

(4) When a Registrar or hearing panel is conducting a hearing pursuant to this Section, it may, where it considers it proper, take any of the actions contemplated by clause 54(2)(e). 2000, c. 25, s. 33.

Duties and power of Registrar

34 (1) The Registrar shall

(a) investigate complaints regarding a disciplinary matter concerning any licensee;

(b) investigate any matter referred by the Board; and

(c) perform such other duties as may be assigned by the Board.

(2) The Registrar may investigate a matter notwithstanding that a written complaint has not been filed with the Registrar.

(3) With or without receipt of a written complaint, the Registrar 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.

(4) The Registrar or a person or persons appointed by the Registrar to conduct an investigation have 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. 2000, c. 25, s. 34; 2012, c. 48, s. 30; 2019, c. 28, s. 5.

Duties of licensee

35 (1) Upon receipt of a written complaint and upon giving to the licensee a copy of the complaint, the Registrar may require the licensee to

(a) submit to physical or mental examinations by such qualified persons as the Registrar designates;

(b) submit to an inspection or audit of the practice of the licensee by such qualified persons as the Registrar designates;

(c) submit to such examinations as the Registrar directs to determine whether the licensee is competent to practise denturism;

(d) produce records and accounts kept with respect to the licensee's practice.

(2) Where the licensee fails to comply with subsection (1), the Registrar may suspend or restrict the registration or licence of the licensee until the licensee complies. 2000, c. 25, s. 34.

Registrar to deliver report

36 Where the Registrar has, pursuant to clause 35(1)(a), (b) or (c), required a licensee to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the Registrar, the Registrar shall deliver to the licensee any report it receives from the designated qualified person. 2000, c. 25, s. 34.

Powers during investigation

37 The committee or person appointed to conduct an investigation pursuant to clause 34(3)(b) may

(a) employ such experts as the committee or person considers necessary;

(b) require the licensee or any other licensee, 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 licensee to practise denturism that arises in the course of the investigation. 2000, c. 25, s. 34.

Registrar's options

- 38 (1)** The Registrar 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 panel;
 - (e) counsel the licensee;
 - (f) caution the licensee;
 - (g) counsel and caution the licensee;
 - (h) reprimand the licensee with the licensee's consent; or
 - (i) with the consent of the licensee, require the licensee to undergo such treatment or re-education as the Registrar considers necessary.

(2) Where the Registrar is considering a decision to counsel, caution or counsel and caution a licensee pursuant to clause (1)(e), (f) or (g), the Registrar shall give notice to the licensee and the licensee must be given the opportunity to appear, with or without legal counsel, before the Registrar prior to the Registrar making a decision.

(3) When making findings pursuant to clause (1)(e), (f), (g), (h) or (i), the Registrar may make any combination of the dispositions that are set out in those clauses or the Registrar may make such other dispositions as the Registrar considers appropriate, in accordance with the objects of this Act.

(4) The licensee and the complainant must be advised in writing of the disposition of the Registrar. 2000, c. 25, s. 34.

Appeal

39 (1) A licensee who has consented to a requirement for treatment or re-education pursuant to clause 38(1)(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 panel within 15 days of receiving notice thereof.

(2) Parties to an appeal pursuant to subsection (1) shall bear their own costs.

(3) An appeal pursuant to subsection (1) must be conducted without oral testimony and a hearing panel shall review an agreed statement of facts supplied by the legal counsel for the Board and signed by the licensee.

(4) Where an agreed statement of facts is not filed within 30 days of filing the notice of appeal, the consent of the licensee is deemed to have been withdrawn and the matter referred back to the Registrar who may consider other actions or dispositions as authorized by this Act. 2000, c. 25, s. 34.

Further powers of Registrar

40 (1) Notwithstanding anything contained in this Act, where

(a) the Registrar receives reliable information that indicates that a licensee may be incompetent or guilty of professional misconduct or conduct unbecoming; and

(b) the Registrar concludes that it is in the public interest to suspend from practice or restrict the practice of the licensee,

the Registrar may, without a hearing,

(c) immediately suspend the registration or licence of the licensee on a temporary basis; or

(d) immediately impose restrictions on the registration or licence of the licensee on a temporary basis.

(2) The licensee 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 panel, which must occur without undue delay.

(4) The licensee who receives written notice pursuant to subsection (2) may request, in writing, an opportunity to meet with the Registrar.

(5) Where a request is received pursuant to subsection (4), the Registrar

(a) shall provide an opportunity for the licensee to meet with the Registrar within 10 days of the written request; and

(b) after meeting with the licensee, may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1). 2000, c. 25, s. 35.

Appointment of hearing panel

41 Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 40(1), subject to any disposition made pursuant to subsection 40(5), a hearing panel must be appointed pursuant to subsection 45(1) to proceed with a hearing to determine whether the licensee is guilty of charges relating to a disciplinary matter. 2000, c. 25, s. 36.

Jurisdiction of members of panel

42 Notwithstanding that members of a hearing panel have ceased to hold office by reason of the lapse of their appointments, such members are seized with the jurisdiction to complete any matter the panel has commenced if necessary to retain a quorum and, for this purpose, such members continue to have the same

powers, privileges, immunities and duties as are provided by this Act and the regulations. 2000, c. 25, s. 37.

Settlement agreement

43 (1) After the Registrar refers a matter to a hearing panel pursuant to clause 38(1)(d), the licensee complained of may, at any time before the commencement of the hearing, tender to the Registrar a proposed settlement agreement, in writing, consented to by legal counsel for the Board that includes an admission of a disciplinary matter violation or violations and the licensee's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing panel.

(2) The Registrar may, in the Registrar's discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by the hearing panel.

(3) Where the Registrar recommends the acceptance of the proposed settlement agreement, the Registrar shall instruct legal counsel for the Board to advise the hearing panel hearing the complaint of the recommendation.

(4) Where the Registrar refuses to recommend the proposed settlement agreement, the hearing must proceed without reference to the proposed settlement agreement.

(5) Where the hearing panel appointed to hear the complaint accepts the recommendation of the Registrar, it shall confirm such acceptance by written decision that incorporates the settlement agreement.

(6) Where the hearing panel appointed to hear the complaint rejects the recommendation of the Registrar,

- (a)** it shall advise the Board of its decision;
- (b)** it shall proceed no further with the hearing of the complaint;
- (c)** a new hearing panel must be appointed to hear the complaint and no member of the hearing panel that considered the proposed settlement agreement may be a member of the new hearing panel; and
- (d)** the Registrar retains jurisdiction over the complaint until the commencement of the hearing by a hearing panel. 2000, c. 25, s. 38.

Investigation of non-licensee

44 The Registrar may investigate the activities of a non-licensee but the Registrar has no compulsory powers in relation to the investigation of the non-licensee, except that the Registrar may require a licensee who may have information relevant to the investigation to attend before the committee or the person conducting the investigation to be interviewed. 2000, c. 25, s. 39.

Appointment of hearing panel

45 (1) A hearing panel must be appointed for the purpose of hearing any charges relating to a disciplinary matter against a licensee when a disciplinary matter is referred, in whole or in part, to a hearing panel.

(2) A hearing panel is composed of at least three persons of whom one member must be appointed by the Board as the chair.

(3) The hearing panel must have as members

(a) at least one person who does not hold a degree in denturism or equivalent, who is a member of the Board;

(b) at least one denturist who is a member of the Board; and

(c) at least one denturist who is a member of the Society, is not a member of the Board and is appointed by the Board.

(4) Notwithstanding subsection (3), two members of the panel constitute a quorum.

(5) Subject to the regulations, the hearing panel may do all things necessary to provide a full and proper inquiry.

(6) In a matter over which a hearing panel has jurisdiction, the hearing panel and each member of the panel has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, 2000, c. 25, s. 40.

Hearing panel procedure and notice

46 (1) Upon the application of

(a) any party to the hearing;

(b) the chair of the hearing panel; or

(c) legal counsel for the Board or hearing panel,

the Registrar shall sign and issue a summons to witness for the purpose of procuring the attendance and evidence of witnesses before the hearing panel.

(2) It is the duty of the licensee who is charged in a disciplinary matter to appear at the hearing, but in the event of non-attendance by such licensee, the hearing panel, upon proof by affidavit, statutory declaration or other evidence acceptable to the hearing panel of service of the notice pursuant to subsection (3), may proceed with the hearing and, without further notice to the licensee, render its decision and take such other action as it is authorized to take pursuant to this Act.

(3) Unless the licensee 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 licensee whose disciplinary matter is being heard.

(4) 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.

(5) The Board shall place the notice as provided for in subsection (4) in such publications as it considers necessary in order to inform the public. 2000, c. 25, s. 40.

Inadmissible evidence

47 (1) The following evidence is not admissible before a hearing panel 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 panel 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. 2000, c. 25, s. 41.

Duties of panel members

48 (1) No member of a hearing panel 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 exception of communications where the sole purpose is to make administrative arrangements.

(2) Any member of a hearing panel who is a Board member and who is present at a Board meeting where information is to be presented or discussed that has the potential of becoming a source of review by a hearing panel shall absent themselves during the Board's discussions of such matter.

(3) Notwithstanding subsection (2), a majority of the serving members of the Board who have not absented themselves pursuant to subsection (2) constitute a quorum and may transact any business of the Board. 2000, c. 25, s. 42.

Treatment of expert opinion

49 Where a hearing panel obtains expert opinion regarding denturism 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. 2000, c. 25, s. 43.

Hearings

50 (1) Subject to subsection (2), a hearing must be open to the public.

(2) The hearing panel 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 panel 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 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 panel 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 pursuant to subsection (3) that prevents the publication of anything that is contained in the Register and available to the public.

(5) The hearing panel 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 panel 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 panel shall state, at the hearing, its reasons for any order made pursuant to this Section. 2000, c. 25, s. 44.

Consequences of order to exclude public

51 Where a hearing panel makes an order pursuant to subsection 50(2), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected, the hearing panel

- (a) shall allow the parties, the complainant and their legal and personal representatives; and
- (b) may allow such other persons as the panel considers appropriate,

to attend the hearing. 2000, c. 25, s. 45.

Protection of identity

52 A hearing panel shall, on the request of a witness, other than the licensee, whose testimony is in relation to allegations of misconduct of a sexual nature by a licensee 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. 2000, c. 25, s. 46.

Recording and availability of evidence

- 53** (1) The hearing panel 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 panel 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 panel orders otherwise. 2000, c. 25, s. 47.

Procedure at hearing

54 (1) At a hearing of the hearing panel, a licensee 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 panel, to present evidence and to cross-examine witnesses.

(2) A hearing panel

(a) shall hear each case in such manner as it considers fit;

(b) may require the licensee to

(i) submit to physical or mental examinations by such qualified persons as the panel designates,

(ii) submit to an inspection or audit of the licensee's practice by such qualified persons as the panel designates,

(iii) undergo such examinations as the panel directs to determine whether the licensee is competent to practise denturism, and

(iv) produce records and accounts kept with respect to the licensee's practice;

(c) may, where the licensee fails to comply with clause (b), resolve that the registration or licence of the licensee be suspended until the licensee complies;

(d) shall, where the panel has, pursuant to subclause (b)(i), (ii) or (iii), required a licensee to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the panel, deliver to the licensee any report it receives from the designated qualified person;

(e) shall determine whether the licensee 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 licensee be revoked and that the licensee's name be stricken from the Register,
- (B) the licence of the licensee 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 panel,
- (C) conditions, limitations or restrictions be imposed on the licence of the licensee,
- (D) the licensee undergo such treatment or re-education as the panel considers necessary,
- (E) such fine as the panel considers appropriate, to a maximum of \$15,000, be paid by the licensee to the Board for the purpose of funding denturism education and research as determined by the Board,
- (F) the licensee be reprimanded,
- (G) such other disposition as it considers appropriate be imposed, or
- (ii) where there is a not guilty finding, the panel may dismiss the charges; and
- (f) shall file its decision, including reasons, at the offices of the Board.

(3) When making dispositions pursuant to clause (2)(e), the panel may impose one or more of the penalties that are set out therein, or the panel may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(4) The Registrar shall provide the licensee, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the hearing panel except that, where there are references identifying clients 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 panel has effect immediately upon service on the licensee or from such time as the decision may direct.

(6) The hearing panel 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. 2000, c. 25, s. 48.

Costs

- 55 (1) For the purpose of this Section, "costs of the Board" include

- (a) expenses incurred by the Board, the Registrar and the hearing panel;
- (b) honoraria paid to members of the hearing panel; and
- (c) solicitor and client costs and disbursements of the Board relating to the investigation and hearing of the complaint.

(2) Where a hearing panel finds a licensee guilty of charges relating to a disciplinary matter, it may order that the licensee pay the costs of the Board, in whole or in part.

(3) Where a licensee is ordered to pay costs pursuant to subsection (2), the Board may make it a condition of the registration or licence of the licensee that such costs be paid forthwith, or at such time and on such terms as the Board may fix. 2000, c. 25, s. 49.

Appeal

56 (1) The licensee complained against may appeal on any point of law from the findings of the hearing panel 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 panel consists of a copy of the transcript of the proceedings, the decision of the hearing panel and the evidence before the hearing panel certified by the chair of the hearing panel.

(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 if, in its discretion, it considers it appropriate. 2000, c. 25, s. 50.

Application by former licensee

57 (1) A person whose licence has been revoked by a resolution of a hearing panel pursuant to subclause 54(2)(e)(i), may apply to the Board for

- (a) the entering of the person's name, address and qualifications on the 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 denturism in the Province;
 - (c) being satisfied as to the activities of such person since the time of the resolution of the hearing panel;
 - (d) such person producing a letter of good standing from all jurisdictions in which the person had practised denturism since the date of such resolution of the hearing panel; 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; and
- (g) issue a licence to such person upon such terms and conditions as the Board may direct. 2000, c. 25, s. 51.

INCORPORATION

Capacity of professional corporation

58 Subject to this Act and the regulations, a professional corporation may engage in the practice of denturism and denturists may be employed by a professional corporation for the purpose of engaging in the practice of denturism. 2000, c. 25, s. 52.

Shareholding

59 (1) A majority of the issued shares of a professional corporation must be legally and beneficially owned by one or more denturists.

(2) A majority of the issued voting shares of a professional corporation must be legally and beneficially owned by one or more denturists.

(3) Subject to subsections (1) and (2), the spouse or child of a denturist 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 denturist, or the spouse or child of a denturist, or a group of such individuals if no one other than a denturist, or the spouse or child of a denturist, acts as such a trustee without the written consent of the Registrar. 2000, c. 25, s. 53.

Qualification of directors and president

60 (1) A majority of the directors of a professional corporation must be denturists.

(2) The president of a professional corporation must be a dentist. 2000, c. 25, s. 54.

Requirement for permit

61 A professional corporation shall not engage in the practice of denturism unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations. 2000, c. 25, s. 55.

Permit

62 (1) Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued pursuant to this Section may practise denturism in its own name.

(2) Notwithstanding subsection (1), no professional corporation may be registered as a dentist under this Act.

(3) The Registrar shall issue a permit to any professional corporation that

(a) files all required applications in the form prescribed by the regulations;

(b) pays all fees prescribed by the regulations;

(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 *Corporations 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 66 and 67 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 denturism for or on behalf of the professional corporation are denturists; 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 if 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 denturism 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 denturist. 2000, c. 25, s. 56.

Deemed revocation of permit

63 (1) Where a professional corporation practices denturism only through the services of one denturist and that denturist 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 denturism.

(2) Where a professional corporation practises denturism through the services of more than one denturist and such professional corporation ceases to fulfill any requirement prescribed in subsection 62(3) by reason of

- (a) the death of a denturist;
- (b) the incompetency of a denturist;
- (c) the revocation of the licence of a denturist pursuant to this Act;
- (d) the suspension of the licence of a denturist pursuant to this Act; or
- (e) the retirement from practice by a denturist,

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 denturist, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise denturism 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 62(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. 2000, c. 25, s. 57.

Changes in ownership, directors or location

64 Where the shares of a professional corporation engaged in the practice of denturism 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. 2000, c. 25, s. 58.

Effect of relationship with corporation

65 The relationship of a denturist 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 denturist. 2000, c. 25, s. 59.

Liability and restriction on shares

66 (1) All persons who carry on the practice of denturism 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 denturism 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 denturism.

(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 denturist the authority to exercise the voting rights attached to any or all of the owner's shares. 2000, c. 25, s. 60.

Confidential and ethical relationships

67 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between a denturist and a client.

(2) The relationship between a professional corporation and a client of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between a denturist and a client.

(3) All rights and obligations pertaining to communications made to or information received by a denturist apply to the shareholders, directors, officers and employees of a professional corporation. 2000, c. 25, s. 61.

Compellable witnesses

68 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 2000, c. 25, s. 62.

Certificate as evidence

69 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 denturism 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. 2000, c. 25, s. 63.

Effect of offence by corporation

70 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. 2000, c. 25, s. 64.

Offences and penalty

71 (1) Every person who contravenes Sections 58 to 70 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 58 to 70 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. 2000, c. 25, s. 65.

GENERAL

Application to former licensees

72 Sections 29 to 79 and all regulations pursuant to this Act that are applicable to licensees of the Board apply with necessary changes to former licensees, unless otherwise expressly provided by this Act or the regulations. 2000, c. 25, s. 66.

Certificate as evidence

73 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. 2000, c. 25, s. 67.

Mode of service

74 Service of any notice, order, resolution or other document pursuant to this Act or the regulations may be made

- (a) upon a licensee, by registered letter addressed to such person at the licensee's address as set forth in the Register; and
- (b) upon any other person, by registered letter. 2000, c. 25, s. 68.

Service by registered mail

75 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 74 is proof of service. 2000, c. 25, s. 69.

Effect of service on Registrar

76 Service of any document on the Board may be made by service on the Registrar. 2000, c. 25, s. 70.

Exemption from liability

77 Where a denturist entitled to practise denturism 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 denturist's office, or in any other place not having proper and necessary medical facilities, that denturist 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 the denturist that, where committed by a person of ordinary experience, learning and skill, would constitute negligence. 2000, c. 25, s. 71.

Immunity from action

78 (1) No action for damages lies against the Board, the Registrar, an officer or employee of the Board, a member of a committee or subcommittee of the Board or a member of the Board

(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 licensee 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 35(1)(d). 2000, c. 25, s. 72.

Publication of decisions

79 (1) Subject to any publication bans, the Board shall publish a hearing panel'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 licensee has been revoked or suspended or where conditions, limitations or restrictions are imposed on the licence of a licensee, the Board shall place a notice in such publications as it considers necessary in order to inform the public. 2000, c. 25, s. 73.

Regulations Act

80 All regulations made pursuant to this Act, except those made pursuant to subsection 7(1), are regulations within the meaning of the *Regulations Act*. 2000, c. 25, s. 74.

Collaborative care

81 A denturist shall

(a) take all reasonable steps to ensure that a patient who receives a removable partial denture, an implant-bar-supported denture or an implant-retained or tissue-supported denture has, within the preceding 90 days, had an oral health examination by a dentist to determine the patient's oral health status;

(b) communicate to a patient receiving an implant-bar-supported denture or an implant-retained or tissue-supported denture that a dentist is the primary care provider to manage the oral health condition of the patient; and

(c) work collaboratively with an implant team when providing implant services. 2019, c. 28, s. 6.

CHAPTER D-10

An Act Respecting the Practice of Dietetics

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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 *Dietitians Act*. 2009, c. 2, s. 1.

Interpretation

- 2** In this Act,
- “active-practising licence” means a licence to practise dietetics issued to a person who meets the criteria for entry in the active-practising roster as set out in the regulations;
- “Board” means the Board of the College;
- “bylaw” means a bylaw of the College;
- “candidate dietitian” means a person who has been issued a candidate licence pursuant to this Act;
- “candidate licence” means a licence to practise dietetics issued pursuant to this Act to a person who has completed a dietetics education program and who is eligible to write the entrance exam;

“client” means the individual, patient, group, community or population who is the recipient of dietetic services and, where the context requires, includes a substitute decision-maker for the recipient of dietetic services;

“College” means the Nova Scotia College of Dietitians and Nutritionists;

“competence” means the ability to integrate and apply the knowledge, skills and judgement required to practise dietetics safely and ethically in a designated role and practice setting and includes both entry-level and continuing competencies;

“complaint” means a notice in writing pursuant to Section 37, indicating possible professional misconduct, conduct unbecoming the profession, incompetence or incapacity of a member of the College;

“Complaints Committee” means the Complaints Committee established by this Act;

“continuing-competency program” means a continuing-competency program approved by the Board;

“dietetics education program” means a degree educational program in dietetics or applied human nutrition that is approved by the Board;

“dietitian” means an individual whose name appears on the Register and who is licensed to practise dietetics;

“electronic means” means the use of telephone, facsimile, television, video conferencing, cable, internet, intranet or any form of electronic or computerized communication;

“incapacity” means the status whereby a respondent, at the time of the subject-matter of a complaint, suffered from a medical, physical, mental or emotional condition, disorder or addiction that rendered the respondent unable to practise with reasonable skill or judgement or that may have endangered the health or safety of patients;

“incompetence” means the display of lack of knowledge, skill or judgement in the respondent’s care of a patient or delivery of dietetic services that, having regard to all the circumstances, rendered the respondent unsafe to practise at the time of such care of the patient or delivery of dietetic services or that renders the respondent unsafe to continue in practice without remedial assistance;

“individual scope of practice” means the roles, functions and accountabilities that an individual is educated and authorized to perform;

“investigator” means a person designated by the Registrar to conduct or supervise an investigation into a complaint;

“judge” means a judge of the Supreme Court of Nova Scotia;

“legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before any tribunal, board or commission or arbitration, in which evidence is or 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;

“licence” means an active-practising licence, an active-practising licence with conditions or restrictions or a temporary or a candidate licence issued in accordance with this Act and the regulations;

“licensing sanction” means

(a) the imposition of conditions or restrictions on a licence by the Complaints Committee or the Professional Conduct Committee or their equivalent from another jurisdiction;

(b) a consent reprimand ordered by the Complaints Committee or its equivalent from another jurisdiction;

(c) a reprimand issued by the Professional Conduct Committee or its equivalent from another jurisdiction;

(d) a suspension of a licence by the Complaints Committee or the Professional Conduct Committee or their equivalent from another jurisdiction; or

(e) a revocation of registration by the Professional Conduct Committee or its equivalent from another jurisdiction;

“party” means the College or a respondent, as the context requires;

“practice of dietetics” means the translation and application of scientific knowledge of food and nutrition to human health through

(a) comprehensive nutritional assessment to determine nutritional status, nutrition-related diagnosis and nutritional requirements of individuals or populations related to health status and disease;

(b) the planning, implementation and evaluation of nutrition interventions aimed at promoting health and preventing disease;

(c) nutrition prescription, including enteral and parenteral nutrition and the prescription or ordering of drugs or other agents to optimize nutrition status;

(d) ordering parameters required to monitor nutrition interventions and evaluate nutrition outcomes;

(e) the provision of nutrition education and counselling to clients, families, colleagues and healthcare professionals;

(f) development and evaluation of policies that affect food, food security and nutrition as it relates to health status;

(g) integration of food and nutrition principles in the development and management of food service systems;

(h) such delegated medical functions as are approved in accordance with the *Medical Act*; and

(i) such other aspects of dietetics as may be prescribed in regulations approved by the Governor in Council, and

research, education, consultation, management, administration, regulation, policy or system development relevant to clauses (a) to (i);

“practicum” means a period of preceptored practice of dietetics approved by the Board;

“profession” means the profession in which the practice of dietetics is conducted;

“Professional Conduct Committee” means the Professional Conduct Committee appointed pursuant to this Act;

“professional-conduct process” means the processes described in Sections 33 to 58 and the related processes described in the regulations;

“professional corporation” means one or more dietitians incorporated pursuant to the laws of the Province for the purpose of engaging in the practice of dietetics;

“professional misconduct” includes such conduct or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, may include

(a) failing to maintain the standards for the practice of dietetics;

(b) failing to uphold the code of ethics adopted by the College;

(c) abusing a person verbally, physically, emotionally or sexually;

(d) misappropriating personal property, drugs or other property belonging to a patient or to the employer of a member of the college;

(e) wrongfully abandoning a patient;

(f) neglecting to provide care to a patient;

(g) failing to exercise appropriate discretion in respect of the disclosure of confidential information;

(h) falsifying records;

(i) inappropriately using the professional status of dietitian for personal gain;

(j) promoting for personal gain any drug, device, treatment, procedure, product or service that is unnecessary, ineffective or unsafe;

(k) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading;

(l) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact when applying for or securing registration or a licence or taking any examination provided for in this Act, including using fraudulently procured credentials; and

(m) taking or using any of the designations set out in Section 21 or describing the person's activities as "dietetics" or "nutrition therapy" in any advertisement or publication, including business cards, websites or signage, unless the referenced activity falls within the practice of dietetics;

"public representative" means a member of the Board or of a committee of the Board who is not a member of the College;

"re-entry program" means a program approved by the Board that tests dietetic knowledge and provides for a period of preceptored practice of dietetics;

"Register" means the Register established pursuant to this Act;

"Registrar" means the Registrar appointed pursuant to this Act;

"Registration Appeal Committee" means the Registration Appeal Committee appointed pursuant to this Act;

"Registration Committee" means the Registration Committee appointed pursuant to this Act;

"registration examination" means such examination or examinations as may be approved by the Board as a prerequisite for qualification as a registered dietitian;

"Reinstatement Committee" means the Reinstatement Committee appointed pursuant to this Act;

"respondent" means the person who is the subject of a complaint or the subject of an appeal pursuant to Section 17;

"roster" means the record of the category of licensing established pursuant to this Act or the regulations;

"scope of practice of the profession" means the roles, functions and accountabilities that dietitians are educated and authorized to perform;

"settlement proposal" means a proposal for the settlement of a complaint as prescribed in the regulations;

"standards for the practice of dietetics" means the minimal professional practice expectations for any dietitian in any setting or role, approved by the Board or otherwise inherent in the profession;

"temporary licence" means a temporary licence to practise dietetics issued pursuant to this Act;

“witness” includes every person who, in the course of a legal proceeding, is examined for discovery or is cross-examined upon an affidavit made by that person, answers any interrogatories or makes an affidavit as to documents or is called upon to answer any question or produce any document, whether under oath or not, and includes the College or any representative of the College. 2009, c. 2, s. 2.

COLLEGE

Nova Scotia College of Dietitians and Nutritionists

3 (1) The Nova Scotia Dietetic Association, a society incorporated under the *Societies Act*, is continued as a body corporate under the name of the Nova Scotia College of Dietitians and Nutritionists and is composed of its members.

(2) All assets and property held by the Nova Scotia Dietetic Association became the assets and property of the College on January 24, 2023.

(3) 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. 2009, c. 2, s. 3.

Duties of College

4 In order to

- (a) serve and protect the public interest;
- (b) preserve the integrity of the profession; and
- (c) maintain public confidence in the ability of the profession to regulate itself,

the College shall

- (d) regulate the practice of dietetics and govern its members in accordance with this Act and the regulations;
- (e) establish, develop and promote standards for the practice of dietetics among its members;
- (f) establish, develop and promote a code of ethics for its members;
- (g) approve a continuing-competency program for members to the benefit of the public interest;
- (h) subject to clauses (d) to (g), and in the public interest, advance and promote the profession; and
- (i) do such other lawful acts and things as are incidental to the attainment of the purposes and objects set out in this Section. 2009, c. 2, s. 4.

Powers of College

5 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 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 considered expedient;
- (i) secure the repayment of money borrowed, in such manner and upon such terms and conditions as it considers fit and, in particular, by the execution and delivery of mortgages of all or any part of the real or personal property of the College, both present and future; and
- (j) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (i). 2009, c. 2, s. 5.

Annual meeting and annual report

6 (1) There must be an annual general meeting of the College at such time and place as prescribed by the Board.

(2) An annual report must be distributed at or before the annual meeting for review by the membership and must include a financial report by an auditor. 2009, c. 2, s. 6.

Board of College

7 (1) The Board shall govern the College and manage its affairs and may take any action consistent with this Act and the regulations that it considers necessary for the promotion, protection, interest or welfare of the College, including

- (a) the setting of fees payable by applicants and members;
 - (b) approving the processes for establishing, revising and monitoring the annual budget;
 - (c) submitting to each annual general meeting of the College an audited financial statement of the College's operations for the past fiscal year;
 - (d) appointing an auditor for the College; and
 - (e) approving proposed changes to this Act, the regulations and the bylaws.
- (2) The Board may take any action consistent with this Act by resolution.
- (3) The Board is composed of
- (a) the president, the president-elect, the past president and the treasurer, each of whom must hold an active-practising licence;
 - (b) such number of members at large as set out in the bylaws; and
 - (c) no fewer than two and no more than three public representatives appointed by the Governor in Council who
 - (i) are not members of the College, and
 - (ii) have shown an interest in serving on the Board.
- (4) Persons on the Board are elected or appointed or succeed to office in the manner prescribed by the bylaws.
- (5) A majority of the members of the Board constitute a quorum.
- (6) Notwithstanding subsection (4), public representatives on the Board continue to hold office until their successors are appointed or until such time as they are reappointed.
- (7) The persons on the Board of the Nova Scotia Dietetic Association immediately before January 24, 2023, and the officers in office immediately before January 24, 2023, continue in office until their successors are elected or appointed pursuant to the bylaws. 2009, c. 2, s. 7.

Registrar of College

- 8 (1) The Board shall appoint a Registrar of the College and determine the term of office of the Registrar.
- (2) The Registrar is the executive director of the College and has such other duties as the Board determines.

(3) The Registrar may delegate any functions assigned to the Registrar by this Act, the regulations or the bylaws.

(4) The Registrar shall hold such professional memberships as are set out in the bylaws.

(5) The Registrar is a non-voting member of the Board. 2009, c. 2, s. 8.

Bylaws

9 The Board may make bylaws not inconsistent with this Act, after consulting with the membership,

(a) respecting the holding of the annual general meeting and special meetings of the College, including the notice for such meetings, the content of such meetings, the quorum, the procedures to be followed and the manner of voting;

(b) respecting honoraria and expenses payable to persons sitting on the Board and any other committees established for the purpose of attending to the business of the College;

(c) establishing a Nominations Committee, including its composition and duties;

(d) establishing the composition and number of Board members and the eligibility for election or appointment to the Board;

(e) establishing the timing and manner of the election or appointment to the Board;

(f) establishing the composition, number, time and manner of the election or appointment of the Board;

(g) respecting the terms of office of the persons sitting on the Board, the manner in which vacancies on the Board may be filled and the manner of removing Board members;

(h) prescribing the manner in which resolutions are forwarded to the Board;

(i) prescribing the roles of the president and president-elect;

(j) respecting the holding of Board meetings, including required meetings, the notice for such meetings, the quorum and procedure to be followed and the manner of voting;

(k) respecting the establishment of, and quorum for, committees as may be appointed by the Board and providing for the holding and conduct of meetings of such committees;

(l) prescribing the professional memberships to be held by the Registrar;

(m) respecting the seal of the College;

- (n) respecting the location of the head office of the College;
- (o) respecting the approval of forms required for the conduct of the business of the College;
- (p) approving the code of ethics and standards for the practice of dietetics;
- (q) respecting all other things necessary for the administration of the affairs of the College. 2009, c. 2, s. 9.

Regulations

10 (1) Subject to the approval of the Governor in Council, the Board may make regulations

- (a) regulating the registration, licensing, discipline and reinstatement of members of the College as dietitians;
- (b) prescribing additional educational, experiential or other prerequisites necessary before a dietitian may engage in specific aspects of the practice of dietetics;
- (c) respecting conditions for which temporary and candidate licences may be issued, including designations authorized for use by holders of temporary or candidate licences;
- (d) creating one or more rosters of licensing and prescribing the rights, privileges, qualifications and obligations of the members of each roster and prescribing the conditions for the entry and maintenance of members' names in each roster;
- (e) creating categories of affiliation with the College, including honorary, associate and student categories, and prescribing the rights, privileges, qualifications and obligations of the persons in these categories and prescribing the conditions for the entry and maintenance of such persons' names in these categories;
- (f) setting requirements for the approval of continuing-competency programs;
- (g) setting requirements for professional liability insurance or other forms of malpractice coverage or liability protection;
- (h) respecting the information to be included on the Register;
- (i) respecting the revocation or suspension of licences issued pursuant to this Act and the reinstatement of such licences and allowing for conditions, limitations or restrictions to be attached to a reinstated licence;
- (j) allowing for an award of costs on a solicitor-client or other basis;

(k) providing that the licence of a member of the College be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, to file a document or do any other act by a specified or ascertainable date and providing for the reinstatement of a licence so suspended upon payment of such fee as is determined by the Board;

(l) respecting the ability of the Registrar, the Complaints Committee and the Professional Conduct Committee to impose a fine where members of the College have engaged in the practice of dietetics while not holding a current licence;

(m) respecting the reporting and publication of decisions in disciplinary matters;

(n) providing for the audits of some or all persons who hold a licence and their practice environments;

(o) prescribing legislation pursuant to Section 45 the violation of which may require a member of the College to attend a hearing;

(p) prescribing the requirements and processes for incorporation of dietitians;

(q) providing for the retention and destruction of patient records maintained by a custodian appointed pursuant to this Act and processes and procedures to be utilized by the custodian;

(r) defining any word or expression used but not defined in this Act;

(s) further defining any word or expression defined in this Act;

(t) governing such other matters as the Board considers necessary or advisable for the effective discharge of its functions or the exercise of its powers.

(2) The exercise by the Board of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

(3) All regulations and bylaws of the Board 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. 2009, c. 2, s. 10.

REGISTRATION AND LICENSING

Register

11 (1) The Board shall keep a Register in which must be entered the name of every person who is entitled, pursuant to this Act, to be registered in the Register.

(2) The Register must include such other information as may be required by the regulations.

(3) The Board shall cause to be kept a record available to the public showing

(a) the name and registration number of every person authorized to engage in the practice of dietetics;

(b) any conditions or restrictions on such person's licence if the Registrar determines it is in the public interest to have such conditions or restrictions available to the public; and

(c) any licensing sanctions imposed on a member of the College that are not otherwise subject to a publication ban. 2009, c. 2, s. 11.

Licences

12 (1) The categories of licences are as set out in the regulations.

(2) The Board shall cause to be maintained separate rosters for each category of licence as provided by the regulations. 2009, c. 2, s. 12.

Registration Committee

13 (1) The Board shall appoint a Registration Committee, the membership of which consists of one public representative and not fewer than two dietitians from the active-practising roster.

(2) The Board shall appoint one of the members of the Registration Committee as the Chair of the Committee.

(3) The majority of the Registration Committee members constitute a quorum.

(4) The Registration Committee shall perform such functions as are set out in this Act, the regulations and the bylaws.

(5) Each member of the Registration Committee has all the rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2009, c. 2, s. 13.

Active-practising licence

14 (1) The Registrar shall register and issue an active-practising licence to a person who meets the criteria for registration and entry in the active-practising roster as set out in the regulations.

(2) The Registrar may impose conditions or restrictions on the active-practising licence with the consent of the member of the College if such conditions or restrictions are necessary in the interest of the public.

(3) Where conditions or restrictions are imposed by the Registrar pursuant to subsection (2), the Registrar shall issue to the applicant an active-practising licence with conditions or restrictions.

(4) Where the Registrar imposes conditions or restrictions pursuant to subsection (2), such conditions or restrictions are not licensing sanctions. 2009, c. 2, s. 14.

Temporary licence

15 (1) Where a person

(a) fails to meet the requirements or conditions for an active-practising licence, with or without conditions or restrictions, as prescribed by the regulations; or

(b) is registered or licensed to practise dietetics in another jurisdiction,

and it is otherwise consistent with the objects of the College but impractical to issue an active-practising licence, with or without conditions or restrictions, the Registrar, upon payment of the prescribed fee, may approve or refuse an application for a temporary licence and shall notify the applicant accordingly.

(2) A temporary licence issued pursuant to subsection (1) may only be issued for a specified period of time, not to exceed 12 months in total.

(3) The Registrar may impose conditions or restrictions on a temporary licence if such conditions or restrictions are necessary in the interest of the public.

(4) Where conditions or restrictions are imposed by the Registrar pursuant to subsection (3), the Registrar shall issue to the applicant a temporary licence with conditions or restrictions.

(5) Where the Registrar imposes conditions or restrictions pursuant to subsection (3), such conditions or restrictions are not licensing sanctions.

(6) The College shall maintain a roster of temporary licences and a roster of temporary licences with conditions or restrictions.

(7) The decision of the Registrar respecting the issue of a temporary licence or a temporary licence with conditions or restrictions is final.

(8) Subsection (7) comes into force on such day as the Governor in Council orders and declares by proclamation. 2009, c. 2, s. 15.

Candidate licence

16 (1) Where a person meets the criteria for the issuing of a candidate licence pursuant to the regulations, the Registrar shall issue a candidate licence to such person.

(2) A candidate licence issued pursuant to subsection (1) may only be issued for a specified period of time, not to exceed 18 months in total.

(3) The College shall maintain a roster of candidate licences. 2009, c. 2, s. 16.

Appeal

17 Where an applicant

- (a) has been refused registration;
- (b) has been refused an active-practising licence or a candidate licence; or
- (c) has had conditions or restrictions imposed on registration or a licence without the applicant's consent,

the Registration Committee shall give written reasons for such decision and the applicant may, by written notice, appeal that decision to the Registration Appeal Committee within 30 days of receipt of the reasons. 2009, c. 2, s. 17.

Registration Appeal Committee

18 (1) The Board shall appoint a Registration Appeal Committee consisting of one public representative and not fewer than two dietitians from the active-practising roster.

(2) The Board shall appoint one of the members of the Registration Appeal Committee as the Chair of the Committee.

(3) A majority of the Registration Appeal Committee members constitute a quorum.

(4) The Registration Appeal Committee shall perform such functions as are set out in this Act, the regulations and the bylaws.

(5) Each member of the Registration Appeal Committee has all the rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2009, c. 2, s. 18.

Appeal procedure

19 (1) The Registration Appeal Committee, upon receipt of an appeal pursuant to Section 17, shall

- (a) set a date for the appeal that is not later than 60 days following receipt of the written notice of appeal;
- (b) serve written notice of the date, time and place of the appeal upon the appellant and the Registrar; and
- (c) advise the appellant of the right to

- (i) be represented by legal counsel,
- (ii) disclosure of any information to be provided to the Registration Appeal Committee, and
- (iii) a reasonable opportunity to present a response and make submissions.

(2) The parties to an appeal before the Registration Appeal Committee are the College and the appellant.

(3) The Registration Appeal Committee shall determine the procedure to be followed for the Appeal, and the Registration Appeal Committee may proceed by way of a review of the written record, without the necessity of an oral hearing. 2009, c. 2, s. 19.

Decision

20 (1) The Registration Appeal Committee may make any determination that, in its opinion, ought to have been made by the Registrar or the Registration Committee.

(2) The Registration Appeal Committee shall give its decision in writing and send to the applicant a copy of the written decision by registered mail or personal service.

(3) The decision of the Registration Appeal Committee is final.
2009, c. 2, s. 20.

Prohibitions

21 (1) No person shall engage in the practice of dietetics or describe the person's activities as "dietetics", "nutrition therapy" or "diet therapy" unless such person

- (a) holds an active-practising licence with or without restrictions or conditions;
- (b) is the holder of a temporary licence with or without restrictions or conditions;
- (c) is the holder of a candidate licence with or without restrictions or conditions; or
- (d) is otherwise authorized to engage in the practice of dietetics as set out in this Act or the regulations.

(2) No person shall

- (a) take or use the designations "Dietitian", "Registered Dietitian", "Nutritionist", "Professional Nutritionist", "Professional Dietitian", "R.D.", "P.Dt", "R.D.N." or any derivation, translation or abbreviation thereof; or

(b) describe the person's activities as "Dietetics", "Nutrition Therapy" or "Diet Therapy",

in the Province, either alone or in combination with other words, letters or descriptions to imply that the person is entitled to practise as a dietitian unless the person

(c) holds an active-practising licence with or without restrictions or conditions;

(d) is the holder of a temporary licence with or without restrictions or conditions; or

(e) is otherwise authorized to use such designation and to engage in the practice of dietetics as set out in this Act or the regulations.

(3) No person shall engage in the practice of dietetics or take or use the designation "Dietetic Intern" or any derivation, translation or abbreviation thereof unless the person is engaged in a practicum approved by the Board and is authorized by the administrators of the practicum or otherwise authorized pursuant to the regulations to engage in the practice of dietetics.

(4) No person shall engage in the practice of dietetics or take or use the designation "Candidate Dietitian" or any derivation, translation or abbreviation thereof unless the person meets the criteria for the issuing of a candidate licence pursuant to this Act and the regulations and is authorized pursuant to the regulations to engage in the practice of dietetics.

(5) In any advertisement or publication, including business cards, websites or signage, no person shall take or use the designation "Registered Dietitian", "Dietitian", "Professional Nutritionist", "Nutritionist", "Dietetic Intern", "Candidate Dietitian" or any derivation, translation or abbreviation thereof, or shall describe the person's activities as "dietetics", "nutrition therapy" or "diet therapy" unless the referenced activity falls within the definition of the "practice of dietetics". 2009, c. 2, s. 21.

Restrictions on practice

22 (1) No dietitian shall engage in the practice of dietetics that falls outside that dietitian's individual scope of practice.

(2) Unless otherwise authorized pursuant to this Act or the regulations, or any other law, no dietitian shall practise outside the scope of practice of the profession. 2009, c. 2, s. 22.

Practice in Province

23 For the purpose of this Act and the regulations,

(a) a member of the College in the Province who is engaged in practice by electronic means to patients or clients outside of the Province is deemed to be practising the profession in the Province;

(b) a person, other than a member of the College, who resides outside of the Province and who engages in practice by electronic means to patients within the Province is not deemed to be practising the profession in the Province if the person is licensed pursuant to an enactment of the other jurisdiction;

(c) a person, other than a member of the College, who resides outside of the Province and who engages in practice by electronic means to patients within the Province, while not holding a licence in the other jurisdiction, is deemed to be practising the profession in the Province; and

(d) nothing in this Act prohibits the practice of the profession in the Province or the recovery of fees or compensation for professional services rendered as a dietitian by a person registered in another country, state, territory or province and whose engagement requires that person to accompany and temporarily care for a patient during the period of the engagement, if that person does not represent or purport to be a person registered pursuant to this Act. 2009, c. 2, s. 23.

No action may be brought

24 Subject to clause 23(d), no person may bring an action in any court to collect fees, compensation or other remuneration for services performed as a dietitian, unless that person was the holder of a licence at the time the services were performed. 2009, c. 2, s. 24.

Certified statement as prima facie proof

25 A statement certified under the hand of the Registrar respecting the membership and entry in the appropriate roster of a person's name is admissible in evidence as prima facie proof of that person's entry in such roster. 2009, c. 2, s. 25.

Record of conditions or restrictions

26 Where the right of a person to practise as a dietitian has been limited by the imposition of conditions or restrictions pursuant to this Act or the regulations, particulars of all conditions or restrictions imposed on that person must be noted in the records of the College and may be disclosed to the public in accordance with this Act. 2009, c. 2, s. 26.

Register to be changed

- 27 (1)** The Registrar shall make a change in the Register if
- (a) data has been entered incorrectly;
 - (b) notification is received of the death of a member of the College;
 - (c) the registration of a member of the College has been revoked;
 - (d) the Complaints Committee, as part of an informal resolution of a complaint, or the Professional Conduct Committee author-

izes the resignation of a member of the College from the Register; and

(e) a member of the College has requested, in writing, and the Registrar, as part of an informal resolution of a complaint or otherwise, has approved the resignation of the member.

(2) Where a notation has been made on the Register pursuant to clause (1)(b), (c), (d) or (e), the person ceases to be a member of the College. 2009, c. 2, s. 27.

Removal of name from roster

28 (1) The Registrar shall cause the removal of the name of a member of the College from the appropriate roster

(a) if the member no longer meets the criteria for entry on the relevant roster;

(b) at the request of the member, upon surrendering any licence held by the member;

(c) if data has been incorrectly entered;

(d) if notification is received of the member's death;

(e) for non-payment of fees or other assessments levied under this Act or the regulations;

(f) if the member has been suspended, for the term of the suspension;

(g) if the registration of the member has been revoked; or

(h) if the Complaints Committee, the Professional Conduct Committee or the Registrar authorizes the resignation of a member from the Register.

(2) The name of a person removed from the appropriate roster pursuant to clauses (1)(a) to (f) must be restored upon

(a) payment of the prescribed fee; and

(b) compliance by the person with this Act and the regulations.

(3) The name of a person removed from the Register pursuant to clause 27(1)(d) or (e) or the appropriate roster pursuant to clause (1)(h) may be restored only if

(a) the Committee or the Registrar authorizing the resignation of the member permitted the member the opportunity to reapply for membership in the College; and

(b) the Reinstatement Committee determines, on such conditions or with such restrictions as it directs, that the registration or licence should be reinstated. 2009, c. 2, s. 28.

Requirement to hold licence

29 (1) Every member of the College who is engaged in the practice of dietetics shall hold a current licence.

(2) Every person, other than a client, who employs a person in the practice of dietetics and every agency or registry that procures employment for a person in the practice of dietetics shall

(a) ensure that the person, at the time of employment and each year employed thereafter, holds a current licence to practise dietetics; and

(b) where the person's employment is terminated or the person resigns because of allegations of professional misconduct, conduct unbecoming the profession, incompetence or incapacity, report the matter to the Registrar forthwith and provide a copy of the report to the person whose employment is terminated.

(3) Every person, other than a client, who employs an incorporated entity engaged in the practice of dietetics and every agency or registry that procures employment for an incorporated entity in the practice of dietetics shall comply with subsection (2) with respect to each dietitian who is in the employ of the incorporated entity. 2009, c. 2, s. 29.

Disciplinary findings or complaints from outside the Province

30 (1) A member of the College who engages in the practice of dietetics outside the Province, who was subject to any disciplinary findings while outside the Province or has outstanding complaints from outside the Province, shall not engage in the practice of dietetics upon returning to the Province before providing the Registrar with notice of such disciplinary findings or complaints and receiving from the Registrar a notice authorizing the member to resume the practice of dietetics in the Province.

(2) Where the Registrar receives a notice pursuant to subsection (1), the Registrar may file a complaint. 2009, c. 2, s. 30.

Offences

31 (1) Every person who

(a) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act or the regulations;

(b) engages in the practice of dietetics in the Province without complying with Section 29;

(c) engages in the practice of dietetics in violation of any condition or limitation contained in the person's licence; or

(d) otherwise contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(3) All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the College belong to the College.

(4) Any information to be laid pursuant to this Act or the *Summary Proceedings Act* may be laid by the Registrar or any person authorized by the Registrar.

(5) In a prosecution of an offence contrary to this Act or the regulations, the onus to prove that a person accused of an offence has the right to practise dietetics, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(6) Where a violation of this Act or the regulations by a person or employer continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(7) For the purpose of this Act or the regulations, proof of the performance by a non-member of the College of one act in the practice of dietetics is sufficient to establish that a person has engaged in the practice of dietetics. 2009, c. 2, s. 31.

Injunctions

32 (1) In the event of a threatened or continuing violation of this Act or the regulations, the College may apply to a judge for an injunction to restrain the person from continuing or committing the violation and the judge, where the judge considers it to be just, may grant an injunction.

(2) A judge may, on 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 violation of this Act or the regulations.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section. 2009, c. 2, s. 32.

PROFESSIONAL CONDUCT

Professional conduct process

33 (1) In accordance with the objects of the College, the professional-conduct process must seek to inhibit professional misconduct, conduct unbecoming a dietitian, incompetence and incapacity by investigating, on its own initiative or on the complaints of others, alleged instances of such misconduct, conduct unbecoming a dietitian, incompetence or incapacity and, when appropriate, disposing of the matter or matters in accordance with the regulations.

(2) Except when considered prejudicial to the attainment of the objects of the College, the professional-conduct process must take into account the potential for the rehabilitation of the respondent. 2009, c. 2, s. 33.

Jurisdiction of College continues

34 Where a member of the College ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College for the purpose of the professional-conduct process if the subject-matter of the professional-conduct process arose out of the person's conduct while registered or licensed. 2009, c. 2, s. 34.

Complaints Committee

35 (1) The Board shall appoint a Complaints Committee composed of such number of members and public representatives as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Complaints Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available for the purpose of subsections (5), (6) and (7), the Board may, for such purpose, appoint a member of the Complaints Committee as chair of the Complaints Committee.

(5) The Chair of the Complaints Committee shall appoint a panel of not fewer than three persons from the Complaints Committee, one of whom is a public representative, to act as the Complaints Committee for purpose of the professional-conduct process.

(6) The Chair of the Complaints Committee may sit on the panel and shall act as the Chair of the panel in this event.

(7) Where the Chair of the Complaints Committee is not appointed to the panel, the Chair of the Complaints Committee shall appoint a chair for such panel.

(8) A majority of members from the panel appointed pursuant to subsection (5), regardless of whether such persons are members or public representatives, constitute a quorum of the Complaints Committee.

(9) Failure of one or more Complaints Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of meetings.

(10) All Complaints Committee decisions require the vote of a majority of the panel of the Complaints Committee appointed pursuant to subsection (5).

(11) Where a proceeding is commenced before the Complaints Committee and the term of office of any person sitting on the Complaints Committee expires, that person remains part of the Committee until the proceeding is concluded. 2009, c. 2, s. 35.

Fitness to Practise Committee

36 (1) The Board shall appoint a Fitness to Practise Committee composed of such number of members and public representatives as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Fitness to Practise Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever, for any reason, neither the Chair nor the Vice-chair are available for the purpose of subsections (5), (6) and (7), the Board may, for such purpose, appoint a member of the Fitness to Practise Committee as chair of the Committee.

(5) The Chair of the Fitness to Practise Committee shall appoint a panel of not fewer than three persons from the Committee, one of whom is a public representative, to act as the Fitness to Practise Committee for the purpose of the professional-conduct process.

(6) The Chair of the Fitness to Practise Committee may sit on the panel and shall act as the Chair of the panel in this event.

(7) Where the Chair of the Fitness to Practise Committee is not appointed to the panel, the Chair of the Committee shall appoint a chair for such panel.

(8) A majority of members from the panel appointed pursuant to subsection (5), regardless of whether the persons are members of the College or public representatives, constitute a quorum of the Fitness to Practise Committee.

(9) Failure of one or more Fitness to Practise Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of meetings.

(10) All Fitness to Practise Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection (5).

(11) Where a matter is referred to the Fitness to Practise Committee and the term of office of any person sitting on the Committee expires, that person may remain part of the Committee until the matter is concluded.

(12) The Fitness to Practise Committee shall perform such functions as set out in this Act and the regulations.

(13) Each member of the Fitness to Practise Committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(14) The Fitness to Practise Committee may set its own procedures for meetings. 2009, c. 2, s. 36.

Complaints

- 37 (1) A complaint may be initiated by
- (a) any body corporate or association;
 - (b) the Registrar;
 - (c) a committee of the College; or
 - (d) any other person.

(2) Where the College and the complainant agree, a complaint may be withdrawn. 2009, c. 2, s. 37.

Public Inquiries Act

38 Each member of the Complaints Committee and any investigator appointed by the Committee has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. 2009, c. 2, s. 38.

Complaint procedure and jurisdiction

39 (1) The Complaints Committee may set its own procedure for meetings and hearings under Section 45.

(2) The Complaints Committee retains jurisdiction over a matter until such time as a hearing commences before the Professional Conduct Committee or the matter is otherwise resolved by the Professional Conduct Committee or the Fitness to Practise Committee. 2009, c. 2, s. 39.

Complaint to be processed under regulations

40 Upon receipt of a complaint, the complaint must be processed in accordance with the regulations. 2009, c. 2, s. 40.

Incapacity may be referred to Fitness to Practise Committee

41 (1) Notwithstanding anything contained in this Act or the regulations, where a complaint involves allegations of incapacity or where a member of the College, in the absence of a complaint, discloses to the College that a member may be incapacitated, the Registrar may refer the matter to the Fitness to Practise Committee in accordance with the regulations.

(2) Where a matter is referred to the Fitness to Practise Committee, the matter must be disposed of in accordance with the regulations.

(3) The Fitness to Practise Committee or the Registrar may refer a matter to the Complaints Committee in the circumstances set out in the regulations.

(4) Where a matter is referred by the Fitness to Practise Committee or the Registrar to the Complaints Committee pursuant to subsection (3), the matter must be considered a complaint and be processed as any other complaint pursuant to this Act. 2009, c. 2, s. 41.

Publication ban

42 With respect to any decision issued by the Complaints Committee that is available to the public pursuant to this Act or the regulations, the Committee may impose a publication ban on such portions of its decision as considered necessary by the Committee. 2009, c. 2, s. 42.

Proceeding on complaint

43 (1) A complaint must be disposed of in accordance with the regulations.

(2) When a complaint is forwarded to the Complaints Committee for disposition, the Committee shall give its decision in writing and send a copy of the written decision, by registered mail or personal service, to the respondent and the complainant and may send some or all of the written decision to such other persons as the Committee determines.

(3) In a proceeding before the Complaints Committee, a respondent has the right to

- (a) be represented by legal counsel;
- (b) disclosure of the complaint, any written reports of the investigator provided to the Complaints Committee and any other document produced or received by the Committee; and
- (c) a reasonable opportunity to present a response and make submissions. 2009, c. 2, s. 43.

Suspension of licence or restrictions

44 (1) The Complaints Committee, where it is reasonably necessary to protect the public interest, may, at its discretion, direct the Registrar to

- (a) suspend a licence;
- (b) impose restrictions or conditions on a respondent's licence;
- (c) where a person does not hold a current licence, suspend the ability of the person to obtain a licence,

pending or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by the Committee or the Professional Conduct Committee, as the case may be.

(2) The member of the College shall receive forthwith, in writing, notice with reasons of a decision made pursuant to subsection (1).

(3) A member of the College who receives written notice pursuant to subsection (2) may request, in writing, within 30 days, an opportunity to meet with the Complaints Committee.

(4) Where a request is received pursuant to subsection (3), the Complaints Committee shall

- (a) provide an opportunity for the member of the College 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 imposed pursuant to subsection (1).

(5) Where a meeting is held pursuant to subsection (4), the member of the College has the right to

- (a) be represented by legal counsel;
- (b) disclosure of the complaint, any written report of an investigator provided to the Committee and any other document produced or received by the Committee; and
- (c) a reasonable opportunity to present a response and make submissions.

(6) Where a Complaints Committee issues an interim suspension or imposes conditions or restrictions on a respondent's licence, the Committee shall provide a copy of the decision to the complainant and the respondent and determine whether any aspects of the Committee's decision should be provided to other affected individuals, other dietetic regulating bodies, any past, present or intended employer of the respondent or the public. 2009, c. 2, s. 44.

Charges or other proceedings

45 (1) Notwithstanding anything contained in this Act or the regulations, where a person

(a) has been charged with, pleaded guilty to, been convicted or found to be guilty of any offence in or out of Canada that is inconsistent with the proper professional behaviour of a member of the College, including a conviction under

- (i) the *Criminal Code* (Canada);
- (ii) the *Controlled Drugs and Substances Act* (Canada); or
- (iii) such other legislation as prescribed in the regulations,

unless a pardon has been issued;

(b) has been found guilty of a disciplinary finding in another jurisdiction;

(c) has had a licensing sanction imposed by another jurisdiction; or

(d) is the subject of an investigation or disciplinary process in any jurisdiction,

and such person is a member of the College or applies for registration or a licence or the renewal of a licence, the Registrar may, by such notice as the Registrar prescribes, require the person to attend a hearing before the Complaints Committee to fully disclose the facts and circumstances of the matters referred to in clauses (a) to (d).

(2) For the purpose of a hearing pursuant to subsection (1), the Complaints Committee may take any of the actions authorized to be taken by the Committee pursuant to this Act or the regulations.

(3) For the purpose of subsection (1), a certificate of conviction of a member of the College is conclusive evidence that the member has committed the offence stated in the certificate, unless it is proven that the conviction has been quashed or set aside.

(4) When a person holding a licence meets the criteria pursuant to subsection (1), the person shall report the matter to the Registrar immediately. 2009, c. 2, s. 45.

Confidentiality

46 (1) All complaints received or under investigation, all information gathered in the course of the professional-conduct process and all proceedings and decisions of the Complaints Committee, the Fitness to Practise Committee and the Professional Conduct Committee that are not open to or available to the public

in accordance with this Act or the regulations must be kept confidential by the person or persons who possess such information.

(2) Notwithstanding subsection (1), where it is consistent with the objects of the College,

(a) the Registrar, on the recommendation of the Complaints Committee, the Fitness to Practise Committee or the Professional Conduct Committee, may disclose to law enforcement authorities any information about possible criminal activity on the part of a member of the College that is obtained during an investigation pursuant to this Act;

(b) the Complaints Committee, the Fitness to Practise Committee or the Professional Conduct Committee may authorize the Registrar to release specific information to a specific person or persons;

(c) the Registrar may disclose information with respect to the complaint or a matter before the Fitness to Practise Committee to an extra-provincial dietetics regulatory body if it is relevant and concerns the fitness of the member for membership in the extra-provincial dietetics regulatory body; and

(d) the Registrar may disclose information with respect to a complaint for the purpose of administration of this Act or to comply with the objects of the College.

(3) A witness in any legal proceeding, whether a party thereto or not, is excused from answering any question as to any proceedings of the Complaints Committee, the Fitness to Practise Committee, the Professional Conduct Committee or the Reinstatement Committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the professional-conduct process, including any information gathered in the course of an investigation or produced for the Complaints Committee, the Fitness to Practise Committee, the Professional Conduct Committee or the Reinstatement Committee.

(4) Subsection (3) does not apply to documents or records that have been made available to the public by the College.

(5) Unless otherwise determined by a court of competent jurisdiction, a decision of the Complaints Committee, the Fitness to Practise Committee or the Professional Conduct Committee is not admissible in a civil proceeding other than an appeal or review pursuant to this Act. 2009, c. 2, s. 46.

Professional Conduct Committee

47 (1) The Board shall appoint a Professional Conduct Committee composed of such number of members and public representatives as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Professional Conduct Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever, for any reason, neither the Chair nor the Vice-chair are available for the purpose of subsections (5), (6) and (7), the Board may, for such purpose, appoint a member of the Professional Conduct Committee as chair of the Committee.

(5) The Chair of the Professional Conduct Committee shall appoint a panel of not fewer than three persons from the Committee, at least one of whom is a public representative, to act as the Professional Conduct Committee for the purpose of the professional-conduct process.

(6) The Chair of the Professional Conduct Committee may sit on the panel and shall act as the Chair of the panel in this event.

(7) Where the Chair of the Professional Conduct Committee is not appointed to the panel, the Chair of the Professional Conduct Committee shall appoint a chair for such panel.

(8) A majority of members from the panel appointed pursuant to subsection (5), regardless of whether such persons are members of the College or public representatives, constitute a quorum of the Professional Conduct Committee.

(9) No person on the Professional Conduct Committee may concurrently serve on the Complaints Committee.

(10) Failure of one or more Professional Conduct Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes Committee members from waiving notice of meetings.

(11) All Professional Conduct Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection (5) or the quorum of such panel in the event the full panel is not sitting.

(12) Where a proceeding is commenced before the Professional Conduct Committee and the term of office of any person sitting on the Committee expires, that person remains part of the Committee until the proceeding is concluded. 2009, c. 2, s. 47.

Hearing

48 (1) Where the Complaints Committee refers a matter to the Professional Conduct Committee, the Registrar shall, within 30 days from the date of the referral, fix a date, time and place for holding a hearing, which shall commence not later than 90 days from the date of the referral by the Complaints

Committee, or such later date as the respondent and the College may agree or the Professional Conduct Committee may order following an opportunity for submissions from both parties as to the date.

(2) A notice of hearing, containing such information as required by the regulations, must be forwarded by the Registrar to the respondent and the complainant at least 30 days prior to the hearing. 2009, c. 2, s. 48.

Service of documents

49 At any stage of the professional-conduct process, any document required to be served on or provided to a respondent or any other individual is deemed to be served or provided if

- (a) the intended recipient or their counsel acknowledges receipt of the document;
- (b) a registered mail receipt is provided from Canada Post;
- (c) an affidavit of service on the respondent is provided; or
- (d) the College provides evidence satisfactory to the Professional Conduct Committee that all reasonable efforts to effect service have been exhausted. 2009, c. 2, s. 49.

Settlement proposal

50 Where the Complaints Committee refers a matter to the Professional Conduct Committee, the College, before the commencement of a hearing by the Professional Conduct Committee, may enter into a settlement proposal with the respondent, which proposal must be dealt with in accordance with the regulations. 2009, c. 2, s. 50.

Public Inquiries Act

51 Each person on the Professional Conduct Committee has all the rights, powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. 2009, c. 2, s. 51.

Proceedings of Professional Conduct Committee

52 (1) A hearing held by the Professional Conduct Committee must be conducted in accordance with the regulations.

(2) In a hearing before the Professional Conduct Committee, the parties have the right to

- (a) be represented by legal counsel;
- (b) present evidence and make submissions, including the right to cross-examine witnesses; and
- (c) receive written reasons for a decision within a reasonable time.

(3) Evidence is not admissible before the Professional Conduct Committee unless the opposing party has been given, at least 10 days before a 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 any other witness, the identity of the witness.

(4) Notwithstanding subsection (3), the Professional Conduct Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced. 2009, c. 2, s. 52.

Disposition of matters

53 (1) Where the Professional Conduct Committee finds professional misconduct, conduct unbecoming the profession, incompetence or incapacity, the Committee shall dispose of the matter or matters in accordance with the regulations.

(2) Where the Professional Conduct Committee has revoked the registration of a member of the College, the Committee shall determine whether the member is entitled to apply for reinstatement of registration or whether the revocation is final.

(3) Where the Professional Conduct Committee determines that a member of the College whose registration has been revoked may apply for reinstatement, the Committee shall determine the time when the member may apply for reinstatement, which cannot be earlier than two years from the date of the Committee's decision. 2009, c. 2, s. 53.

Reinstatement Committee

54 (1) The Board shall appoint a Reinstatement Committee, composed of not fewer than three members of the Board, at least one of whom is a public representative.

(2) The Board shall appoint the Chair of the Reinstatement Committee.

(3) The Reinstatement Committee shall, in the circumstances set out in this Act and the regulations, review applications for reinstatement of registration and licence, and shall perform such other duties as set out in this Act and the regulations.

(4) A quorum of the Reinstatement Committee consists of a majority of the members of the Committee, regardless of whether such members are members of the College or public representatives.

(5) Applications for reinstatement must proceed in accordance with the regulations.

(6) Where a licence has been reinstated pursuant to this Section, the Reinstatement Committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public.

(7) The Reinstatement Committee has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(8) In a proceeding before the Reinstatement Committee, a member of the College has the right to

- (a) be represented by legal counsel, a union representative or another representative at the member's expense;
- (b) disclosure of any information to be provided to the Committee; and
- (c) a reasonable opportunity to present a response and make submissions.

(9) Evidence is not admissible before the Reinstatement Committee unless, at least 10 days before the hearing, the opposing party has been given

- (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; and
- (c) in the case of evidence of any other witness, the identity of the witness.

(10) Notwithstanding subsection (9), the Reinstatement Committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (9) and may make directions it considers necessary to ensure that a party is not prejudiced. 2009, c. 2, s. 54.

Records and publication

55 (1) Subject to any publication bans in existence, where a licensing sanction has been issued by the Complaints Committee or the Professional Conduct Committee, the Registrar shall

- (a) make such entries in the records of the College and on the licence as set out in the regulations;
- (b) publish such information on the website of the College and in official publications of the College as set out in the regulations;
- (c) notify other dietetics licensing bodies as set out in the regulations;
- (d) provide such information to individuals or the public as set out in the regulations.

(2) Where the Professional Conduct Committee dismisses a matter, it shall disclose its decision in such manner as it determines. 2009, c. 2, s. 55.

Expiry of suspension

56 (1) Where the period of suspension of a member of the College has expired, the conditions imposed on the member have been satisfied or the restrictions imposed on the member have been removed, the Registrar shall restore the licence to the member in the form it existed before the imposition of the suspension, conditions or restrictions, if the member otherwise meets the criteria for the issuing of a licence but, where the licence has expired, the member shall pay the prescribed fee for renewal of the licence before its reissue.

(2) Where action has been taken pursuant to subsection (1), the Registrar shall

- (a) make the appropriate entries in the records of the College;
- (b) where registering bodies in other Canadian dietetic jurisdictions had previously been informed of the suspension, conditions or restrictions, notify such registering bodies of the lifting of such suspension, conditions or restrictions; and
- (c) notify such other persons as directed by the committee that initially imposed the suspension, conditions or restrictions. 2009, c. 2, s. 56.

Power to retain assistance

57 (1) For the purpose of the execution of their duties under this Act, the College or any committee of the College may retain such legal or other assistance as the College or the committee may think necessary or proper.

(2) Where authorized by this Act or the regulations, the costs of such legal or other assistance may be included, in whole or in part, as costs ordered by the committee. 2009, c. 2, s. 57.

Appeal

58 (1) A party may appeal on any point of law from the findings of the Professional Conduct Committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be filed at the Nova Scotia Court of Appeal and served upon the other party not later than 30 days after service of the decision of the Professional Conduct Committee.

(3) The record on appeal from the findings of the Professional Conduct Committee consists of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Committee certified by the Chair of the 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 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 decision of the Professional Conduct Committee takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act if, in its discretion, it considers fit. 2009, c. 2, s. 58.

PROFESSIONAL INCORPORATION**Nothing in Act prevents incorporation**

59 Subject to any regulations made pursuant to clause 10(1)(t), nothing in this Act prevents the incorporation of a dietitian, but every dietitian continues to be personally responsible for compliance with this Act and the regulations, notwithstanding any such incorporation. 2009, c. 2, s. 59.

Liability for acts or omissions

60 All persons who carry on the practice of dietetics as, by, through or on behalf of an incorporated entity are liable in respect of acts or omissions done or omitted to be done by them in the course of their practice to the same extent and in the same manner as if such practice were carried on by them as an individual or a partnership carrying on the practice of the profession. 2009, c. 2, s. 60.

Relationship with client

61 Where a member of the College is engaged in the practice of dietetics as an incorporated entity, the existence of the incorporated entity does not affect, modify or limit any law or standard applicable to the confidential or ethical relationship between a dietitian and a client. 2009, c. 2, s. 61.

Compellability of witnesses

62 All shareholders, directors, officers and employees of an incorporated entity engaged in the practice of dietetics are compellable witnesses in any proceedings pursuant to this Act. 2009, c. 2, s. 62.

Powers of inspection, investigation or inquiry apply

63 Where the conduct of a dietitian is the subject of a complaint, investigation or inquiry and the dietitian was an officer, director, shareholder or employee of an incorporated entity at the time the conduct occurred, any power of inspection, investigation or inquiry that may be exercised in respect of the dietitian or the dietitian's records may be exercised in respect of the incorporated entity or its records. 2009, c. 2, s. 63.

Offence by incorporated entities

64 (1) Every incorporated entity engaged in the practice of dietetics that contravenes this Act or the regulations is guilty of an offence and liable to the same penalties as any person who is guilty of an offence pursuant to this Act.

(2) Sections 31 and 32 apply with necessary changes to all incorporated entities engaged in the practice of dietetics. 2009, c. 2, s. 64.

GENERAL**Member's duty to report**

65 (1) A member of the College has a duty to report to the Registrar if the member has reasonable grounds to believe that another member

- (a) has engaged in professional misconduct, incompetence or conduct unbecoming the profession;
- (b) is incapacitated; or
- (c) is practising in a manner that otherwise constitutes a danger to the public.

(2) A member of the College has a duty to report to the regulator of another health profession if the member has reasonable grounds to believe that a member of that health profession

- (a) has engaged in professional misconduct, incompetence or conduct unbecoming the profession;
- (b) is incapacitated; or
- (c) is practising in a manner that otherwise constitutes a danger to the public.

(3) No action for damages or other relief lies against a member of the College for any report made pursuant to subsection (1) or (2), if the report was made in good faith. 2009, c. 2, s. 65.

Fines and costs are debts due to College

66 Any fine or cost ordered to be paid pursuant to this Act or the regulations is a debt due to the College recoverable by civil action, in addition to any other remedy available to the College for non-payment of a fine or cost. 2009, c. 2, s. 66.

No action lies

67 (1) No action for damages or other relief lies against the College, the Board, the persons on the Board, committees or subcommittees of the College or the Board, or the persons on the committees or subcommittees, or the Registrar, officers, agents or employees of the College

(a) for any act or failure to act, or any proceeding initiated or taken within the jurisdiction of the College, or in carrying out the duties or obligations under this Act;

(b) for any decision, order or resolution made or enforced within the jurisdiction of the College; or

(c) for any act or failure to act, proceeding initiated or taken, or any decision, order or resolution made or enforced outside the jurisdiction of the College, in good faith.

(2) No member of the College, the Board, committees or subcommittees of the College or the Board, or any officer, agent, or employee thereof is personally liable for any of the debts or liabilities of the College unless such person expressly agrees to be liable.

(3) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless the disclosure is made with malice. 2009, c. 2, s. 67.

Deemed eligibility for registration

68 Notwithstanding this Act or the regulations, for a period of one year following proclamation of this Act, every person who, on January 24, 2023, has received the certification “Professional Dietitian” from the Nova Scotia Dietetic Association and has engaged in the practice of dietetics in the previous 24 months, is deemed eligible for registration with the College and is eligible for the issuing of an active practising licence upon payment of the appropriate fee and the submission of the appropriate application. 2009, c. 2, s. 68.

Power to appoint additional committee members

69 Whenever, for any reason, a quorum of members of any committee may not be available for a meeting or hearing, the Board may, for the purpose of such meeting or hearing, appoint to the committee such additional members as are needed for a quorum. 2009, c. 2, s. 69.

Act does not prohibit

70 Nothing in this Act prohibits

- (a) the private care of a person without remuneration;
 - (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 right of employees to engage in a lawful strike;
 - (d) the practice of any health profession authorized pursuant to a statute of the Province, by a health professional authorized pursuant to such statute, practising within the authorized scope of practice of the profession and the individual scope of practice, if such person does not describe the practice as “Dietetics”, “Nutrition Therapy”, “Diet Therapy” or words of similar meaning; or
 - (e) the carrying out of specific tasks constituting part of the practice of dietetics by persons authorized under the regulations and under the supervision and control of a dietitian. 2009, c. 2, s. 70.
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CHAPTER D-11

An Act Respecting the Regulation of Direct Sellers

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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 *Direct Sellers Regulation Act*. R.S., c. 129, s. 1; 1998, c. 8, s. 27.

Interpretation

2 (1) In this Act,

“continuing-services contract” means a direct sales contract that provides for the performance of services, including the supply of any goods used in conjunction with such services, on a continuing basis;

“direct sale” means a sale by a direct seller acting in the course of business as such;

“direct sales contract” means an agreement whether verbal or in writing for the direct sale of goods or services;

“direct seller” means a person who sells or offers for sale or solicits orders for the future delivery of goods or services by direct selling;

“direct selling” means selling or offering for sale or soliciting orders for future delivery of goods or services

(a) if there is no prior request from a prospective purchaser and contact is made by or on behalf of the seller

(i) in person at a dwelling, or

(ii) by telephone or other personal communication, and any resulting sale is negotiated or entered into at a place other than in person at the seller’s usual place of business in the Province;

(b) in response to a request made by a prospective purchaser, if the request was itself solicited by or on behalf of the seller and any resulting sale is negotiated or entered into at a place other than in person at the seller’s usual place of business in the Province;

(c) if the seller does not operate a retail outlet in the Province and solicits, advertises or otherwise requests prospective purchasers to present themselves at a dwelling, hotel, motel or temporary or short term establishment where the seller sells or offers for sale or solicits orders for future delivery of goods or services;

(d) by a multi-level marketing wholesaler or a multi-level marketing distributor; or

(e) if the goods or services are hearing aids or hearing-aid services, regardless of the circumstances of the sale;

“goods” include any articles, commodities, substances or things and any agreement that entitles the holder thereof to purchase or obtain goods;

“hearing aid” means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories including earmold, but excluding batteries;

“Minister” means the Minister of Service Nova Scotia;

“purchaser” means a person who agrees to purchase goods or services under a direct sales contract;

“Registrar” means the person appointed as Registrar for the purpose of this Act;

“salesperson” means an individual who sells or offers to sell or solicits orders for the future delivery of goods or services for or on behalf of a direct seller;

“services” include

(a) the application or installation of goods sold under a direct sales contract;

(b) the performance of work, labour or services of any type;

“trade-in” means consideration given by a purchaser in a form other than money or an obligation to pay money.

(2) For greater certainty, neither a listing of the name of a seller in a telephone, professional or trade directory, including a directory published electronically, nor a website maintained by or on behalf of a seller, is a solicitation for the purpose of clause (b) of the definition of “direct selling”. R.S., c. 129, s. 2; 1999, c. 8, ss. 1, 9; 2014, c. 12, s. 1.

Registrar

3 (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. 2014, c. 39, s. 7.

Permit required

4 (1) Subject to subsection (2), no person shall carry on the business of direct selling unless the person is

- (a) the holder of a permit under this Act; or
- (b) a salesperson authorized by the holder of a permit as a direct seller to act on the permit holder's behalf.

(2) An individual engaged in the direct selling of hearing aids or hearing-aid services must hold a permit as a salesperson. 2014, c. 12, s. 2.

Act does not apply

5 (1) This Act does not apply to any sales contract

- (a) the subject of which is the sale of food or drink for consumption by either humans or animals;
- (b) the subject of which is the sale of a newspaper;
- (c) the subject of which is the sale of goods or services that are sold by corporations that are owned or controlled or are agencies of either the Crown in right of Canada or the Crown in right of the Province or of any city, town or municipality;
- (d) made between a manufacturer or distributor and a wholesaler in respect of goods that the wholesaler intends to resell in the course of the wholesaler's business;
- (e) made between a manufacturer, distributor or wholesaler and a retailer in respect of goods that the retailer intends to resell in the course of the retailer's business;
- (f) under which a person engaged in business for gain is the purchaser of goods or services intended to be used in or in respect of the person's business but not for resale;
- (g) made by a person selling goods or services on behalf of an organization or corporation having objectives of a benevolent or charitable nature and not formed for gain; or
- (h) of a class of direct sales contracts that is prescribed by the regulations.

(2) This Act does not apply to

- (a) a member of a category of persons exempted by the regulations; or
- (b) a person who participates in a category of sales exempted by the regulations. R.S., c. 129, s. 6; 1999, c. 8, s. 2; 2014, c. 12, s. 3.

Permits

6 (1) The Registrar may grant permits under this Act to direct sellers and salespersons.

(2) The holder of a permit as a salesperson may act as a direct seller only for or on behalf of the salesperson's employer direct seller, whose name must be specified in the salesperson's permit.

(3) No direct seller or salesperson shall in the course of carrying on the business of a direct seller sell or offer for sale or solicit orders for the future delivery of goods or services of any class or sort other than those specified in the person's permit.

(4) Subsection (3) does not apply to a salesperson unless the salesperson is engaged in the direct selling of hearing aids or hearing-aid services. R.S., c. 129, s. 8; 1998, c. 8, ss. 28, 41; 1999, c. 8, ss. 3, 9; 2014, c. 12, s. 5.

Issuance of permit

7 (1) Subject to subsection (2), upon receipt of an application for a permit, payment of the prescribed fee, delivery of such bond as may be required and meeting such conditions as may be required by this Act and the regulations, the Registrar shall issue to the applicant a permit authorizing the holder during the term thereof to carry on the business of a direct seller or a salesperson within the Province.

(2) The Registrar may refuse to issue a permit if the Registrar is satisfied that

- (a) the applicant or any director, manager or officer of the applicant
 - (i) has been convicted of an offence under
 - (A) this Act or any other enactment of the Province, or
 - (B) an enactment of another province of Canada, of Canada or of a foreign jurisdiction,
 - for conduct that shows, in the Registrar's opinion, that the applicant is unfit to hold a permit,
 - (ii) has contravened or failed to comply with this Act or the regulations,
 - (iii) has failed to comply with the requirements of any applicable enactment of the Province, of another province of Canada or of Canada,
 - (iv) has engaged in a pattern of conduct that shows, in the Registrar's opinion, that the applicant is unfit to have a permit,
 - (v) has made a material misstatement in the application for a permit, or
 - (vi) is an undischarged bankrupt; or
- (b) the circumstances are such that, in the Registrar's opinion, it would not be in the public interest to issue a permit.

(3) Every permit must be issued for a period of one year or such other period prescribed by the regulations and may be renewed on due application to the Registrar and payment of the prescribed fee and bonding unless previously cancelled or suspended.

(4) No person whose permit has been cancelled is entitled to apply for a new permit for one year after the cancellation.

(5) When a permit has been suspended or cancelled by or under this Act, the holder of the permit shall forthwith return the permit to the Registrar. R.S., c. 129, s. 9; 1998, c. 8, ss. 29, 41; 1999, c. 8, ss. 4, 9; 2014, c. 12, s. 6.

Application for permit or renewal and bonding

8 (1) Every application for a permit or a renewal of a permit must be made in writing upon the prescribed form to be provided by the Registrar and must be accompanied by such fee as may be prescribed.

(2) Every application for an original permit must be accompanied by a bond in such amount and form as may be prescribed by the regulations.

(3) Every application for a renewal of a permit must be accompanied by a bond in such amount and form as is prescribed by the regulations.

(4) Notwithstanding the fact that the Crown in right of the Province has not suffered any loss or damages, every bond delivered to the Registrar under this Act is to be construed as being a penal bond and, where any such bond is forfeited pursuant to this Act, the amount due and owing as a debt to the Crown in right of the Province by the person bound thereby must be determined as if the Crown suffered such loss or damages as would entitle the Crown to be entitled to the maximum amount of the liability prescribed by the bond. R.S., c. 129, s. 10; 1998, c. 8, s. 41.

Address for service

9 Every applicant for a permit or renewal of a permit shall state in the application a civic address for service in the Province, which address must be at a place situate in the Province and all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S., c. 129, s. 11; 1998, c. 8, s. 41; 1999, c. 8, s. 5.

Further information

10 The Registrar may require at any time any further information or material to be submitted by any applicant or any person issued a permit pursuant to this Act within a specified time limit and may require, if the Registrar so desires, verification by affidavit or otherwise of any information or material then or previously submitted. R.S., c. 129, s. 12; 1998, c. 8, s. 30.

Further information

11 Every direct seller and salesperson issued a permit pursuant to this Act shall notify the Registrar in writing of

- (a) any change in address for service; and

(b) in the case of a direct seller, any partnership arrangements with other direct sellers or change in partnership arrangements. R.S., c. 129, s. 13; 1998, c. 8, s. 31; 1999, c. 8, s. 9; 2014, c. 12, s. 7.

Salespersons

12 (1) Every application for a permit as a salesperson must be accompanied by a notice given by a direct seller issued a permit pursuant to this Act stating that the applicant, if granted a permit, is authorized to act as a salesperson representing that direct seller.

(2) A permit issued to a salesperson must specify as the principal of the salesperson the direct seller who has given the notice accompanying the application for that permit pursuant to subsection (1). R.S., c. 129, s. 14; 1998, c. 8, ss. 32, 41; 1999, c. 8, s. 9.

Deemed agent

13 A salesperson who is the holder of a subsisting permit is deemed to be authorized by the direct seller specified in the permit to act for and on behalf of that direct seller. R.S., c. 129, s. 15; 1998, c. 8, s. 41; 1999, c. 8, s. 9.

Limit on sales and solicitation

14 (1) A salesperson who is not required to hold a permit is deemed to be an agent of the direct seller on whose behalf the salesperson is acting.

(2) No salesperson shall sell or offer for sale or solicit orders for the future delivery of goods or services of any class or sort other than those specified in the permit of the direct seller on whose behalf the salesperson is acting. 2014, c. 12, s. 8.

Cancellation of salesperson's permit

15 (1) Where a salesperson who is the holder of a permit under this Act ceases to represent a direct seller, that direct seller shall forthwith give notice in writing to the Registrar that that salesperson has ceased to represent the direct seller and the receipt of such notice by the Registrar shall operate as a cancellation of the permit of the salesperson.

(2) A direct seller who fails to give the notice mentioned in subsection (1) within five days after the salesperson has ceased to represent the direct seller is guilty of an offence under this Act. R.S., c. 129, s. 16; 1998, c. 8, s. 41; 1999, c. 8, s. 9; 2014, c. 12, s. 9.

Firms

16 (1) In this Section the word "firm" means

(a) a person who is the sole proprietor of a business and who uses as the person's business name a name other than the person's own or uses the person's own name with the addition of some other word or phrase; or

(b) persons who are associated as partners in a business, and the name in which the firm carries on its business is called the firm name.

(2) A firm may apply for and obtain a permit as a direct seller in the firm name and no firm shall carry on a business as a direct seller under a name other than the name shown in its permit.

(3) Notwithstanding subsection (2), a limited partnership is not eligible to apply for or obtain a permit under this Act.

(4) Every firm shall in its application for a permit state the firm name and, if a sole proprietor, the name of the sole proprietor or, if a partnership, the names of the partners.

(5) The permit, if granted to the firm, is deemed to be issued in the name of the sole proprietor or in the names of the partners as the person or persons carrying on the business in the firm name.

(6) Any change in the membership of a firm or in the name thereof is deemed to create a new firm and to terminate any existing permit. R.S., c. 129, s. 17; 1998, c. 8, s. 41; 2014, c. 12, s. 10.

Restrictions on, suspension or cancellation of permit

17 (1) Every permit granted under this Act is subject to such terms, conditions and restrictions as may be prescribed by the regulations.

(2) The Registrar may suspend or cancel a permit if satisfied of the existence of a ground on which the Registrar might have refused to issue the permit under subsection 7(2) or if the Registrar is satisfied that the permit holder

(a) has failed to comply with any of the terms, conditions or restrictions to which the permit is subject;

(b) has made a material misstatement in any information or material submitted by the permit holder to the Registrar;

(c) has been found guilty of misrepresentation, fraud or dishonesty;

(d) has demonstrated the permit holder's incompetency or untrustworthiness to carry on the business in respect of which the permit was issued;

(e) is not carrying on business in the Province; or

(f) being a corporation, has been dissolved or struck off the register of companies.

(3) Where the permit of a direct seller is suspended or cancelled, the permits of all salespersons of the direct seller are likewise automatically suspended or cancelled as the case may be. R.S., c. 129, s. 18; 1998, c. 8, ss. 33, 41; 1999, c. 8, ss. 6, 9; 2014, c. 12, s. 11.

Transfer of permit prohibited

18 (1) The transfer of the permit of a salesperson from one direct seller to another is prohibited.

(2) Where a salesperson engaged in the direct selling of hearing aids or hearing-aid services whose permit is cancelled is appointed by another direct

seller or is reappointed by the direct seller with whom the salesperson previously held a permit, a new application must be made to the Registrar for a permit. R.S., c. 129, s. 19; 1998, c. 8, ss. 34, 41; 1999, c. 8, s. 9; 2014, c. 12, s. 12.

Direct sales contract

19 (1) A direct sales contract must be in writing if required by this Act or the regulations.

(2) A copy of the direct sales contract must be supplied to the purchaser at the time the contract is made.

(3) A written direct sales contract must include

(a) a statement of cancellation rights that conforms with the requirements in the regulations; and

(b) the information required by the regulations.

(4) Where a direct sales contract is not required to be in writing, the direct seller shall notify the purchaser of cancellation rights in a form and manner prescribed by the regulations.

(5) Except as provided in the regulations, a direct seller shall not give or offer to give directly or indirectly any gift, premium, prize or other benefit of any kind to a purchaser or prospective purchaser for assistance in furthering the sale to another person of any goods or services if that gift, premium, prize or other benefit is contingent on a sale being made to the other person. 1999, c. 8, s. 7.

Continuing-services contract

20 (1) Subject to subsection (3), the term of a continuing-services contract, including the cumulative total of all options and rights to extend or renew the contract, must not exceed three years.

(2) Where a continuing-services contract is about to expire, the direct seller shall, between 30 and 60 days before the expiry date of the contract, provide written notice to the purchaser stating

(a) the date that the contract is set to expire, and that this notice is written notice that the contract will terminate on that date; or

(b) the date that the contract is set to expire, but that the contract will be automatically extended, on a monthly basis and on otherwise the same terms as at present, until either the purchaser or the direct seller gives notice to the other that the contract is not to be further extended.

(3) On the expiry date of a continuing-services contract, where

(a) notice has been given to the purchaser under subsection (2); and

(b) neither the direct seller nor the purchaser has given notice to the other that the contract is not to be extended,

the contract is automatically extended, on the same terms, for an additional one-month term, and the direct seller shall continue to automatically extend the contract,

for additional one-month terms, until either the supplier or the customer gives notice to the other that the contract is not to be further extended.

(4) No direct seller shall charge a purchaser a fee for the extension of a continuing-services contract or any other fee, charge, penalty, interest or other amount or consideration for the extension of a contract under this Section.

(5) For the purpose of subsection (1), all continuing-services contracts, except a contract extended under subsection (3), that

(a) are in effect between the same direct seller and the same purchaser at the same time; and

(b) provide for the performance of the same or similar services,

are deemed to be a single contract, regardless of whether services are being supplied concurrently under two or more of the contracts.

(6) Where a continuing-services contract does not comply with subsection (1),

(a) the contract is not binding on the purchaser in respect of the period in excess of three years;

(b) the direct seller shall refund to the purchaser, within 15 days after receiving a request from the purchaser, all money paid under the contract for the period in excess of three years; and

(c) where the direct seller does not comply with clause (b), the purchaser may recover as a debt due all money paid under the contract for the period in excess of three years. 2014, c. 12, s. 13.

Cancellation of contract

21 (1) A direct sales contract is cancelled if

(a) the purchaser serves a written notice of cancellation on the direct seller within 10 days after the day on which the purchaser receives a copy of the direct sales contract or, where a contract is not required, a notice of cancellation rights; or

(b) the purchaser cancels the contract by providing written notice to the direct seller within one year after the day on which the purchaser entered into the contract and

(i) the direct seller was not in compliance with the requirements for a permit contained in this Act or the regulations at the time the purchaser entered into the contract,

(ii) the goods or services to be supplied under the contract are not supplied to the purchaser within 30 days after the supply date specified in the contract,

(iii) where a written contract is required, the contract does not contain the information required pursuant to this Act or the regulations, or

(iv) where a written contract is not required, the notice of cancellation rights does not conform with the requirements of this Act or the regulations.

(2) A notice given pursuant to subsection (1) may be served on the direct seller in any manner that permits the purchaser to produce evidence that the purchaser cancelled the contract, including registered mail or personal delivery to the direct sellers' last known address.

(3) Where a method of sending or delivering the cancellation notice other than personal delivery is used, a notice of cancellation is deemed to be given when sent.

(4) Where a purchaser accepts delivery of goods or supply of services after the 30-day period referred to in subclause (1)(b)(ii) has expired, the purchaser is not entitled to cancel the contract pursuant to that subclause. 1999, c. 8, s. 7.

Cancellation of continuing-services contract

22 (1) In addition to the cancellation rights provided for in Section 21, a continuing-services contract may be cancelled by the purchaser at any time for any reason by giving written notice to the direct seller.

(2) A notice given pursuant to subsection (1) may be served on the direct seller in any manner that permits the purchaser to produce evidence that the purchaser cancelled the contract, including registered mail or personal delivery to the direct seller's last known address.

(3) Where a method of sending or delivering the cancellation notice other than personal delivery is used, a notice of cancellation is deemed to be given when sent.

(4) For greater certainty, where a purchaser cancels a continuing-services contract under subsection (1), Sections 24 and 25 apply. 2014, c. 12, s. 14.

Cancellation of certain multi-level marketing contracts

23 (1) In addition to the cancellation rights provided for by Section 21, a contract between a multi-level marketing distributor and a multi-level marketing wholesaler in relation to a multi-level marketing plan may be cancelled by the multi-level marketing distributor at any time for any reason by giving written notice to the multi-level marketing wholesaler.

(2) A notice given pursuant to subsection (1) may be served on the multi-level marketing wholesaler in any manner that permits the multi-level marketing distributor to produce evidence that the multi-level marketing distributor cancelled the contract, including registered mail or personal delivery to the multi-level marketing wholesaler's last known address.

(3) Where a method of sending or delivering the cancellation notice other than personal delivery is used, a notice of cancellation is deemed to be given when sent.

(4) Where a multi-level marketing distributor cancels a contract under subsection (1), Sections 24 and 25 apply with necessary changes. 2014, c. 12, s. 14.

Extension or arrangement of credit

24 Where, in connection with a direct sales contract, credit is extended or arranged by a direct seller,

- (a) the credit contract is conditional on the direct sales contract; and
- (b) where the direct sales contract is cancelled pursuant to Section 21, 22 or 23, the credit contract is cancelled. 1999, c. 8, s. 7; 2014, c. 12, s. 15.

Effect of cancellation of contract

25 (1) Where a direct sales contract is cancelled, the direct seller, within 15 days of the cancellation, shall

- (a) refund to the purchaser all money received under the contract; and
 - (b) return to the purchaser any trade-in or an amount equal to the value of the trade-in received under the contract.
- (2) The value of the trade-in referred to in subsection (1) is the greater of
- (a) the market value of the goods when taken in trade; and
 - (b) the price or value of the goods as set out in the direct sales contract.
- (3) In a contract respecting goods, the purchaser, on receiving the refund, shall return the goods to the direct seller.
- (4) Where a purchaser cannot return the goods to the direct seller in substantially the same condition as when the purchaser received the goods because of an act or fault for which the purchaser is responsible, the purchaser may not cancel the contract.
- (5) Notwithstanding subsection (1), a direct seller is entitled to recover or retain reasonable compensation as prescribed in the regulations for goods that cannot be returned or for services already provided. 1999, c. 8, s. 7; 2014, c. 12, s. 16.

Copy of contract for buyer and no contingent benefits

26 (1) Immediately upon the execution of a direct sales contract, the direct seller or the salesperson shall deliver to the buyer a true copy of the contract.

(2) No direct seller or salesperson shall give or offer to give directly or indirectly any gift, premium, prize or other benefit of any kind whatsoever to a purchaser or prospective purchaser for services in furthering the sale to another person of any goods or services, if such gift, premium, prize or other benefit is contingent on a sale being made to such other person. R.S., c. 129, s. 24; 1999, c. 8, s. 9.

Application of Sections 19 to 25

27 Sections 19 to 25 apply to all sales that are solicited, negotiated or entered into in any dwelling, motel, hotel or motor vehicle or at any exhibition, trade show, fair, parking lot or similar temporary or short term establishment by a person who is not carrying on the business of direct selling and is not required to be issued a permit pursuant to this Act. 2014, c. 12, s. 17.

Forfeiture of bond

28 Any bond delivered under this Act must be forfeited upon the demand of the Registrar where

(a) the person in respect of whose conduct the bond is conditioned or any representative, agent or salesperson of that person has been convicted of

(i) an offence under this Act or any regulation,

(ii) an offence involving fraud, theft or conspiracy to commit an offence involving fraud, theft or conspiracy under the *Criminal Code* (Canada), or

(iii) an offence in relation to competition or deceptive marketing practices under the *Competition Act* (Canada) or any other Act of the Parliament of Canada;

(b) judgment in respect of a claim arising out of a direct sales contract has been given against the person in respect of whose conduct the bond is conditioned or against any representative, agent or salesperson of that person;

(c) the person in respect of whose conduct the bond is conditioned commits an act of bankruptcy, whether or not proceedings have been taken under the *Bankruptcy and Insolvency Act* (Canada); or

(d) a decision has been rendered by the Registrar in writing stating in effect that after consideration and investigation of a complaint, the Registrar is satisfied that the person in respect of whose conduct the bond is conditioned or any representative, agent or salesperson of that person

(i) has contravened any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions to which the person's permit is subject or is in breach of contract, and

(ii) has departed from the Province or been out of the Province, remains out of the Province or departs from the person's normal place of abode or otherwise absents the person's own self or, in the case of a corporation, the name thereof has been struck off the register of companies,

and such conviction or judgment, order or decision has become final by reason of lapse of time or having been confirmed by the highest court to which any appeal may be taken. R.S., c. 129, s. 26; 1998, c. 8, s. 41; 1999, c. 8, s. 9; 2014, c. 12, s. 18.

Effect of bond

29 (1) Notwithstanding any other provision of this Act, the total liability of the insurer under a bond may not at any time exceed the face value of the bond.

(2) Where a bond secured by the deposit of collateral security with the Registrar is forfeited under this Act, the Registrar may sell the collateral security at the current market price.

(3) The Registrar may assign any bond forfeited under the provisions of this Act or may pay over any money recovered thereunder or recovered from the sale of any collateral security to any person or to the prothonotary of the Supreme Court in trust for such persons as may become entitled thereto in respect of direct sales contracts with the person named in the bond or any representative, agent or salesperson of that person, judgment creditors of the person so bonded or to any trustee, custodian, interim receiver, receiver or liquidator of such judgment creditors as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in regulations or in any special order of the Governor in Council. R.S., c. 129, s. 27; 1999, c. 8, s. 9.

Investigations by Registrar

30 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. R.S., c. 129, s. 28.

Powers on investigation

31 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. R.S., c. 129, s. 29.

Compliance order

32 (1) After giving a person an opportunity to be heard, the Registrar may issue a compliance order requiring the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order must

- (a) name the person in respect of whom the order is issued;
- (b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations;
- (c) identify the provision of this Act or the regulations that is being contravened, is about to be contravened or has been contravened; and
- (d) be dated and signed by the Registrar.

(3) In a compliance order, the Registrar may order a person to stop engaging in or to not engage in a specified act or practice and to comply with this Act and the regulations.

(4) The Registrar shall serve a copy of the compliance order on the person named in the order. 2014, c. 12, s. 19.

Order of Supreme Court

33 (1) Where the Registrar is satisfied that a person in respect of whose conduct a compliance order has been issued is not complying with the order, the Registrar may apply to the Supreme Court of Nova Scotia for an order directing the person to comply with the compliance order.

(2) Upon hearing an application of the Registrar made under subsection (1), the Supreme Court may make any order that the Court considers necessary, in addition to the order directing the person to comply with the compliance order. 2014, c. 12, s. 19.

Publication of information by Registrar

34 (1) The Registrar may publish any of the following information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*:

- (a) the name and business address of a permit holder;
- (b) any information appearing on a permit;
- (c) any information relating to the status of a permit issued under this Act, including the suspension or cancellation of a permit;
- (d) details of any compliance order issued under Section 32;
- (e) details of any court order made under this Act;
- (f) details of any conviction for an offence under this Act;
- (g) 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. 12, s. 19.

Contract unenforceable

35 (1) No action may be brought by a direct seller against a purchaser for the enforcement of a direct sales contract unless the direct seller and salesperson were issued a permit under this Act at the time that the purchaser entered into the contract.

(2) Subsection (1) does not apply in a case where the direct seller and the salesperson are not required to be issued a permit pursuant to this Act. R.S., c. 129, s. 30; 1998, c. 8, s. 37; 1999, c. 8, s. 9.

Agent to have permit

36 No person shall engage, employ, appoint, authorize or permit any other person to do any of the things in respect of which a permit is required under

this Act unless such other person holds a permit under this Act. R.S., c. 129, s. 31; 1998, c. 8, s. 41.

False representations prohibited

37 No person shall falsely purport to be engaged, employed or appointed by or authorized to act on behalf of a direct seller. 2014, c. 12, s. 20.

Holding out and right to inspect

38 (1) Subject to subsection (2), no person shall in any manner purport to be bonded or issued a permit under this Act.

(2) A person issued a permit under this Act shall produce the person's permit for inspection when requested to do so by any person whom the permit holder has solicited. R.S., c. 129, s. 32; 1998, c. 8, ss. 38, 41.

Pyramid selling prohibited

39 (1) In this Section, "scheme of pyramid selling" has the same meaning as in subsection 55.1(1) of the *Competition Act* (Canada).

(2) No direct seller or salesperson shall establish, operate, advertise or promote a scheme of pyramid selling. 2014, c. 12, s. 21.

Certificate prima facie proof

40 A certificate under the hand of the Registrar stating that on a specified day

- (a) a direct seller, salesperson or any other person named in the certificate was or was not issued a permit under this Act;
- (b) a permit was issued to a direct seller or salesperson; or
- (c) the permit of a direct seller or salesperson was suspended, cancelled or reinstated,

is admissible in evidence as prima facie proof of the facts stated in the certificate. R.S., c. 129, s. 33; 1998, c. 8, ss. 39, 41; 1999, c. 8, s. 9.

Certain agreements void

41 Every agreement or bargain, verbal or written, express or implied, that any of the provisions of this Act or the regulations do not apply or that any benefit or remedy provided by those provisions is not available, or that in any way limits or abrogates or in effect limits, modifies or abrogates any such benefit or remedy, is null, void and of no effect, and money paid under or by reason of any such agreement or bargain is recoverable in any court of competent jurisdiction. R.S., c. 129, s. 34.

Assignee of rights of direct seller

42 (1) Notwithstanding any other enactment or law but subject to this Act, the assignee of any rights of a direct seller in any direct sale has no greater rights than, and is subject to the same obligations, liabilities and duties as, the direct seller, and this Act applies equally to such an assignee.

(2) The liability of the assignee is limited to the total amount owing to the direct seller at the date of assignment under the direct sales contract. 2014, c. 12, s. 22.

No action lies

43 No action or other proceeding may be brought against the Crown in right of the Province, the Minister, the Registrar, any person acting under the authority of the Registrar or any other employee or agent of the Crown in right of the Province for anything done or not done, or for any neglect,

(a) in the performance or intended performance of a duty under this Act or the regulations; or

(b) in the exercise or intended exercise of a power under this Act or the regulations,

if the person was acting in good faith. 2014, c. 12, s. 22.

Regulations

44 (1) The Governor in Council may make regulations

(a) respecting what constitutes the usual place of business of a seller for the purpose of the definition of “direct selling”;

(b) prescribing classes of direct sales contracts to which this Act does not apply;

(c) prescribing categories of persons exempt from the application of this Act;

(d) prescribing categories of sales exempt from the application of this Act;

(e) prescribing the period during which a permit is valid;

(f) respecting the qualifications, education and training that a salesperson or an applicant for a permit as a salesperson must possess, and the testing and other requirements that a salesperson or an applicant for a permit as a salesperson must pass or satisfy, including authorizing the Registrar to determine or approve the qualifications, education and training that a salesperson or an applicant for a permit as a salesperson must possess and the testing and other requirements that a salesperson or an applicant for a permit as a salesperson must pass or satisfy;

(g) prescribing requirements respecting applicants for permits;

(h) prescribing the terms, conditions and restrictions of permits;

(i) providing for and requiring direct sellers and salespersons or representatives of direct sellers to be issued a permit and prescribing fees for permits;

(j) relating to the suspension or cancellation of permits;

(k) relating to the bonding of direct sellers and salespersons of direct sellers and prescribing the form of the bonds;

- (l) authorizing the Registrar, at any time, to alter the amount of the bond posted by an applicant for or a holder of a permit as a direct seller;
- (m) prescribing information that may be published by the Registrar for the purpose of Section 34;
- (n) prescribing the form of contracts by direct sellers;
- (o) exempting any class of purchaser, seller or direct seller from any or all of the provisions of this Act;
- (p) exempting any class of transaction by a direct seller from all or any of the provisions of this Act;
- (q) prescribing categories of direct sellers;
- (r) respecting the types of contracts or the categories of direct sales for which a written contract is required, including setting the minimum value at which a written contract may be required;
- (s) respecting the form and content of identification cards direct sellers are to provide to salespersons and the circumstances in which an identification card is required;
- (t) respecting the content of direct sales contracts or any category of direct sales contracts;
- (u) respecting the form and content of a statement of cancellation rights;
- (v) respecting the manner of giving notice that a continuing-services contract is not to be extended or further extended, which may include oral notice and, where notice is provided by the purchaser, how it must be acknowledged by the direct seller;
- (w) respecting the content and form of notices required under Section 20;
- (x) respecting codes of conduct for a direct seller;
- (y) exempting a salesperson or a class of salespersons from the requirement to hold a permit;
- (z) respecting reasonable compensation for the purpose of Section 25, including, without limiting the generality of the foregoing, prescribing the reasonable compensation that a direct seller is entitled to recover in respect of goods that cannot be returned or services already provided under a cancelled direct sales contract, including different amounts of or standards for determining reasonable compensation in respect of different classes of direct sales contracts;
- (aa) respecting the return of goods to a direct seller by the purchaser upon the cancellation of a direct sales contract, including
 - (i) the location at which, and method by which, goods are to be returned to the direct seller, and
 - (ii) the condition of goods being returned to the direct seller;
- (ab) defining any word or expression used but not defined in this Act;

(ac) prescribing any other matter or thing that is required or authorized by this Act to be prescribed by regulation;

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

(2) A regulation made under subsection (1) may adopt or incorporate by reference, in whole, in part or with modifications, a written standard, rule, regulation, guideline, designation, code or document relating to any matter in respect of which a regulation may be made under subsection (1).

(3) A standard, rule, regulation, guideline, designation, code or document that is adopted or incorporated by reference under subsection (2) may be adopted or incorporated as it reads on a prescribed day or as it is amended from time to time.

(4) Where a standard, rule, regulation, guideline, designation, code or document is adopted or incorporated by reference under subsection (2), the Minister shall ensure that a copy of the standard, rule, regulation, guideline, designation, code or document is made publicly available.

(5) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. R.S., c. 129, ss. 35, 40; 1998, c. 8, s. 40; 1999, c. 8, ss. 8, 9; 2014, c. 12, s. 23.

Offences and penalties

45 (1) A person is guilty of an offence who

- (a) contravenes this Act or the regulations;
- (b) fails to comply with a compliance order or fails to do anything required by the Registrar under this Act or the regulations;
- (c) knowingly furnishes false information in any application, statement, information or material required to be provided or submitted under this Act or the regulations; or
- (d) fails to comply with a term, condition or restriction to which the person's permit is subject.

(2) Subject to subsections (3) and (4), every person who is guilty of an offence under this Act is liable on summary conviction to a fine of not less than \$500 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), where a corporation is convicted of an offence under this Act, the corporation is liable to a fine of not less than \$1,000 and not more than \$300,000.

(4) Where a person is guilty of an offence for having contravened Section 4 or having failed to comply with a compliance order, the minimum fine that may be imposed upon the person is

- (a) for a first offence
 - (i) in the case of an individual, \$750, and

- (ii) in the case of a corporation, \$2,000;
- (b) for a second offence
 - (i) in the case of an individual, \$1,000, and
 - (ii) in the case of a corporation, \$5,000; and
- (c) for a third or subsequent offence
 - (i) in the case of an individual, \$2,000, and
 - (ii) in the case of a corporation, \$10,000.

(5) Where a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, a monetary benefit has accrued to the offender, the court may order the offender to pay, in addition to a fine imposed under this Section, a fine in an amount equal to the estimation by the court of the amount of the monetary benefit.

(6) 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.

(7) Where a corporation is guilty of an offence under this Act, a director, officer, manager or agent of the corporation who directed, authorized, permitted, acquiesced in or participated in the contravention is also guilty of an offence and is liable on summary conviction to the penalties set out in subsections (2) and (4), whether or not the corporation has been prosecuted or convicted. 2014, c. 12, s. 24.

Prima facie proof

46 Where in a prosecution under this Act it is alleged that the accused carried on the business of direct selling without being the holder of a subsisting permit under this Act, evidence of one transaction is prima facie evidence that the accused carried on such business. R.S., c. 129, s. 37; 1998, c. 8, s. 41.

Limitation period for prosecution

47 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. 17.

Appeals

48 (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, 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 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.

(5) Notice of such petition must be given to the Registrar at least two clear days before the presentation of such petition.

(6) 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 and the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 129, s. 39; 2014, c. 12, s. 26; 2018, c. 43, s. 18.

CHAPTER D-12

An Act to Dismantle Racism and Hate

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

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WHEREAS a committee consisting of Assembly members from all currently sitting parties was created to support the development of equity and anti-racism legislation;

AND WHEREAS the all-party committee developed the equity and anti-racism legislation through the work and co-operation of the following Assembly members:

Ali Duale, member for Halifax Armdale,
(Honourable) Pat Dunn, Minister responsible for the Office of Equity and Anti-Racism Initiatives and member for Pictou Centre,
Suzy Hansen, member for Halifax Needham,
(Honourable) Tony Ince, member for Cole Harbour,
Lisa Lachance, member for Halifax Citadel–Sable Island,
Angela Simmonds, member for Preston,
Kent Smith, member for Eastern Shore;

AND WHEREAS it is recognized that marginalized and racialized individuals and communities in Nova Scotia experience harmful and unjustifiable inequities and disparities because of systemic hate, inequity and racism;

AND WHEREAS systemic hate, inequity and racism is often caused by government and public body policies, practices and procedures that appear neutral but have the effect of disadvantaging marginalized and racialized groups and can be perpetuated by a failure to identify, monitor and correct disparities and inequities;

AND WHEREAS eliminating systemic hate, inequity and racism and advancing racial equity supports the economic success and well-being of society, and everyone benefits when individuals and communities are no longer marginalized;

AND WHEREAS this Act is intended to establish a commitment by the Government to address systemic hate, inequity and racism to enhance the economic success and well-being of all Nova Scotians;

AND WHEREAS it is important to recognize the heritage of Mi'kmaw communities and the contributions they have made and continue to make to Nova Scotia;

AND WHEREAS it is important to recognize the heritage of African Nova Scotian communities and the contributions they have made and continue to make to Nova Scotia:

Short title

1 This Act may be cited as the *Dismantling Racism and Hate Act*. 2022, c. 3, s. 1.

Interpretation

2 In this Act,

“hate” means provocation, hostility or intolerance by means of threats, harassment, abuse, incitement or intimidation motivated by the actual or perceived race, religion, national origin, ethnicity, gender, gender identity, gender expression, disability or sexual orientation of any person;

“Minister” means the Minister of Justice;

“Office” means the Office of Equity and Anti-Racism;

“prescribed” means prescribed by the regulations;

“public body” means

- (a) the Government;
- (b) a prescribed municipality;
- (c) a prescribed university; or
- (d) a prescribed organization;

“racism” means the discrimination or antagonism by, or the prejudice of, an individual, community or institution against a person or people based on the person’s or people’s membership or perceived membership in a racial or ethnic group, and having the power to carry out that discrimination, antagonism or prejudice through institutional policies and practices that shape cultural beliefs and values of a society. 2022, c. 3, s. 2.

Supervision and management of Act

3 The Minister is responsible for the general supervision and management of this Act and the regulations. 2022, c. 3, s. 3.

Implementation of Act

4 (1) The Office is responsible for the implementation of this Act on behalf of and under the supervision of the Minister.

- (2)** In implementing this Act, the Office's responsibilities include
- (a) facilitating education on equity and anti-racism;
 - (b) facilitating equity and anti-racism policy development;
 - (c) evaluating existing policy to address systemic hate, inequity and racism;
 - (d) implementing initiatives that address systemic hate, inequity and racism;
 - (e) coordinating equity and anti-racism actions, policies and programs within the Government and its agencies;
 - (f) enabling and facilitating meaningful engagement with marginalized communities; and
 - (g) enabling and facilitating public reporting and accountability for equitable and anti-racism outcomes. 2022, c. 3, s. 4.

Principles of Act

5 This Act is based on the following principles:

- (a) everyone deserves to be treated with dignity and respect;
- (b) the Government is committed to eliminating systemic hate, inequity and racism;
- (c) the achievement of equity and anti-racism is a shared responsibility among governments, the private sector and all Nova Scotians;
- (d) systemic hate, inequity and racism require urgent action;
- (e) appreciating the impact of intersectionality is crucial in addressing systemic hate, inequity and racism; and
- (f) such other principles as may be prescribed. 2022, c. 3, s. 5.

Objective of Government

6 (1) The objective of the Government is to achieve equity and anti-racism and to eliminate disparities, hate and inequities that negatively impact marginalized and racialized individuals and communities in the Province.

- (2)** To achieve its objective, the Government shall
- (a) raise awareness of the importance of equity and anti-racism and the elements that contribute to equity and anti-racism;
 - (b) create the conditions necessary for equity and anti-racism, including regulation, programs and initiatives to encourage actions and innovation by local governments, businesses, non-government organizations and Nova Scotians for the purpose of making progress in achieving equity and anti-racism; and

(c) adopt, support and enable initiatives that are aligned with the principles and focus areas established under this Act and the regulations. 2022, c. 3, s. 6.

Focus areas

7 Actions and initiatives established under this Act and the regulations must align with the following focus areas:

- (a) the demonstration of leadership and commitment to equity and anti-racism;
- (b) the transition to stronger equity and anti-racism policies within the Government;
- (c) better and sustained engagement with marginalized and racialized communities;
- (d) the creation of conditions supporting equity and anti-racism;
- (e) better public reporting on progress towards equity and anti-racism; and
- (f) such other focus areas as may be prescribed. 2022, c. 3, s. 7.

Government strategy to address systemic hate, inequity and racism

8 (1) The Government shall, by July 31, 2023, create a strategy to address systemic hate, inequity and racism within the Province.

(2) The strategy must include

- (a) specific initiatives that the Government will advance to address systemic hate, inequity and racism;
- (b) actions and initiatives, identified through community engagement,
 - (i) that recognize the unique history and contributions of Indigenous Nova Scotians and the impact of systemic anti-Indigenous hate, inequity and racism,
 - (ii) that recognize the unique history and contributions of African Nova Scotians and the impact of systemic anti-Black hate, inequity and racism,
 - (iii) to address hate, inequity and discrimination based on gender identity, gender expression or sexual orientation,
 - (iv) to address psychological safety, including systemic hate, inequity and racism in workplaces within the Province, and
 - (v) to address the impact of intersectionality in relation to systemic hate, inequity and racism;
- (c) definitions of specific types of systemic hate, inequity and racism that are informed by marginalized and racialized communities, including definitions of anti-Black racism, anti-Indigenous racism, Islamophobia, anti-Semitism, anti-Asian racism, ableism,

gender-based discrimination and hate based on gender identity, gender expression or sexual orientation;

(d) a health equity framework, developed and implemented through community engagement, including engagement with African Nova Scotians, Indigenous Nova Scotians, other racialized communities and those who have experienced hate, inequity and discrimination based on gender identity, gender expression or sexual orientation;

(e) public reporting requirements, including measures and indicators to evaluate the strategy's effectiveness; and

(f) public engagement plans demonstrating

(i) that the Government meaningfully engaged with marginalized and racialized communities in the creation of the strategy, and

(ii) how the Government will sustain meaningful engagement with marginalized and racialized communities through the implementation of the strategy. 2022, c. 3, s. 8.

Public body plans to address systemic hate, inequity and racism

9 All prescribed public bodies shall, by the date prescribed, create a plan to address systemic hate, inequity and racism in the form and with the content as prescribed. 2022, c. 3, s. 9.

Community network

10 (1) The Minister shall, by July 31, 2023, create a community network to engage and work with marginalized and racialized communities on the actions and initiatives established under this Act and the regulations.

(2) The network referred to in subsection (1) must be created in collaboration with, and include ongoing participation from, traditional, elected and nominated leadership representing communities negatively impacted by systemic hate, inequity and racism.

(3) The network referred to in subsection (1) must focus on

(a) intersectionality in addressing systemic hate, inequity and racism; and

(b) eliminating systemic intercultural hate, inequity and racism. 2022, c. 3, s. 10.

Data standards

11 (1) The Minister shall establish data standards for the Government for the collection and use of information to identify, monitor and address systemic hate, inequity and racism.

(2) The Minister shall ensure marginalized and racialized communities are engaged in the development of the data standards referred to in subsection (1). 2022, c. 3, s. 11.

Annual report

12 (1) The Minister, in consultation with other members of the Executive Council as appropriate in relation to their respective mandates, shall report annually to the House of Assembly on the progress made towards the objective of achieving equity and anti-racism, including progress in relation to the measures and indicators referred to in clause 8(2)(e).

(2) Beginning in 2023, the Minister shall table the annual report referred to in subsection (1) in the House of Assembly on or before July 31st of each calendar year or, where the House is not then sitting, file it with the Clerk of the House. 2022, c. 3, s. 12.

Review of Act

13 The Minister shall conduct a review of this Act, the regulations and the strategy referred to in Section 8 no later than five years after September 13, 2022, and at any other time as the Minister considers necessary or advisable. 2022, c. 3, s. 13.

Regulations

- 14 (1)** The Governor in Council may make regulations
- (a) establishing further principles and focus areas for achieving equity and anti-racism;
 - (b) respecting initiatives to achieve equity and anti-racism consistent with the principles and focus areas established under this Act and the regulations;
 - (c) governing reporting and record-keeping requirements for any purpose related to this Act;
 - (d) respecting data standards for the collection and use of information to identify, monitor and address systemic hate, inequity and racism;
 - (e) prescribing municipalities, universities and organizations as public bodies;
 - (f) respecting the form, content, due date and any other aspect of public bodies' plans to address systemic hate, inequity and racism;
 - (g) defining any word or expression used but not defined in this Act;
 - (h) further defining any word or expression defined in this Act;
 - (i) 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*. 2022, c. 3, s. 14.

CHAPTER D-13

An Act Respecting Dispensing Opticians

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Short title

- 1** This Act may be cited as the *Dispensing Opticians Act*. 2005, c. 39, s. 1.

Interpretation

- 2** In this Act,
- “Board” means the Board of Directors of the College;
- “certified contact lens fitter” means a dispensing optician who holds a practising licence endorsed with a contact lens certificate;
- “College” means the Nova Scotia College of Dispensing Opticians;
- “Complaints Committee” means the Complaints Committee established pursuant to this Act;
- “contact lenses” means lenses designed to fit over the cornea of the eye;
- “contact lens provisional permit” means a permit issued to a specialty student optician to allow the student to engage in the measuring, fitting or adjusting of contact lenses to the extent required to gain eligibility for registration on the specialty register;
- “customer” means the person for whom a dispensing optician provides, fits or adjusts subnormal vision devices, contact lenses or eyeglasses;
- “dispensing optician” means a person registered under this Act;
- “dispensing optician education program” means a course of study approved by the Board, that is a prerequisite for a person to have completed before the taking by that person of the registration examination;
- “former Act” means Chapter 131 of the Revised Statutes, 1989, the *Dispensing Opticians Act*;
- “licence” means a licence issued pursuant to Section 11;
- “member” means a person whose name appears on the Register and, for the purpose of the professional conduct process, includes a student optician;
- “optical appliances” means lenses, spectacles, eyeglasses, contact lenses or appurtenances thereto for the aid or correction of visual or ocular anomalies of the eyes;
- “optical dispensing” means the provision, fitting and adjustment of contact lenses, eyeglasses or subnormal vision devices for customers;
- “practising licence” means a licence issued pursuant to subsection 11(1) or (3);
- “practising licence endorsed with a contact lens certification” means a licence issued pursuant to subsection 11(4);

“prescription” means a formula given by a qualified medical practitioner or optometrist that indicates

- (a) the power of the lens necessary to correct the refractive error in an eye; and
- (b) the reading adds, prisms and back vertex distance;

“Professional Conduct Committee” means the Professional Conduct Committee established pursuant to this Act;

“provisional permit” means a permit issued to a student optician that authorizes the holder of the permit to engage in the practice of a dispensing optician to the extent required to gain eligibility for registration on the register;

“qualified medical practitioner” means a person authorized to practise medicine under the *Medical Act*, who is permitted by the College of Physicians and Surgeons of Nova Scotia to provide vision care services;

“Registrar” means the Registrar of the College;

“registration examination” means an examination approved by the Board that is a prerequisite to registration pursuant to this Act;

“specialty student optician” means a dispensing optician who

- (a) is enrolled in a program in the Province approved by the Board that leads to entry as a person qualified to fit contact lenses on the specialty register of the College; or
- (b) following completion of such program, is fitting contact lenses to the extent required by the Board to gain eligibility for registration on the specialty register;

“sponsor” means an optometrist approved by the Board to sponsor a student optician or a specialty student optician, an ophthalmologist approved by the Board to sponsor a specialty student optician or a dispensing optician approved by the Board to sponsor a student optician or specialty student optician, who

- (a) holds an active practising licence;
- (b) for purpose of sponsoring a student optician, is engaged in the practice of optical dispensing and, for purpose of sponsoring a specialty student optician, is registered on the specialty register as qualified to fit contact lenses; and
- (c) has not been subject to any disciplinary findings within the two-year period immediately before the commencement of sponsorship;

“student optician” means a person who is not a dispensing optician who

- (a) is enrolled in a program in the Province approved by the Board to lead to registration and licensing under this Act; and
- (b) following completion of such program, is engaging in the practice of a dispensing optician to the extent required by the Board to gain eligibility to write the registration examination. 2005, c. 39, s. 2.

BOARD

Board continued

3 (1) The Board of Dispensing Opticians, as constituted immediately before August 17, 2007, is continued as a body corporate and, subject to this Act, has the capacity, rights, powers and privileges of a natural person.

(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. 2005, c. 39, s. 3.

Objects of College

4 In order that the public interest may be served and protected, the objects of the College are to

(a) regulate the practice of optical dispensing through registration, licensing and the establishment of a professional conduct process in accordance with this Act and the regulations;

(b) establish, maintain and develop standards of professional practice among its members;

(c) establish, maintain and develop standards of professional ethics and a code of conduct for its members; and

(d) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under any Act. 2005, c. 39, s. 4.

Board of Directors

5 (1) The Board of Directors of the College is composed of

(a) the officers of the Board, who are the Chair, the Past Chair, the Vice-chair and the Treasurer, each of whom must hold a practising licence;

(b) three persons, at least two of whom hold practising licences; and

(c) no fewer than two and no more than three persons appointed by the Governor in Council who

(i) are not members of the College,

(ii) are not optometrists or ophthalmologists, and

(iii) have shown an interest in serving on the Board.

(2) Members of the Board are elected or appointed in the manner set out in the regulations.

(3) A majority of the members of the Board constitute a quorum.

(4) Notwithstanding subsection (2), persons appointed by the Governor in Council hold office until their successors are appointed or until such time as they are reappointed, notwithstanding that such appointment or reappointment does not occur until after their specified terms of office have expired.

- (5) The Board shall
- (a) approve the investment and disbursement of the funds of the College, including the annual budget;
 - (b) prepare and submit to each annual general meeting of the College a financial statement of the College's operations for the past year;
 - (c) appoint the Registrar of the College;
 - (d) appoint an auditor and solicitor for the College;
 - (e) approve dispensing optician education programs required for registration or licensing pursuant to this Act or the regulations;
 - (f) approve professional development courses required in order to maintain a licence pursuant to the requirements of the regulations; and
 - (g) generally govern the affairs of the College. 2005, c. 39, s. 5.

Regulations

6 (1) Subject to the approval of the Governor in Council, the Board may make, amend or repeal regulations to

- (a) regulate the registration, licensing and reinstatement of members and the professional conduct process for members of the College;
- (b) create one or more categories of membership and set out the rights, privileges, qualifications and obligations of the members of each category;
- (c) set out the conditions for entry and maintenance of members' names in the categories and on the registers of the College, including education requirements for registration and conditions for continuing education or professional development;
- (d) establish the process for setting the criteria required for the issuing of a practising licence endorsed with a contact lens certification;
- (e) establish the criteria for the issuing of a practising licence, including conditions for continuing education or professional development;
- (f) establish the process for the adoption of a code of ethics and standards of practice;
- (g) establish procedures related to the professional conduct process, including the powers of the Registrar, investigators, the Professional Conduct Committee and the Complaints Committee and the ability to award solicitor-client costs or other forms of costs;
- (h) establish the role and duties of a sponsor for student opticians and specialty student opticians;

- (i) establish procedures related to the writing of registration examinations, and the number of times authorized for the writing of such registration examinations;
- (j) prescribe the registers to be maintained by the Registrar;
- (k) prescribe processes respecting the revocation or suspension of licences issued pursuant to this Act and the reinstatement of such licences and allow for conditions, limitations or restrictions to be attached to a reinstated licence and allow for an award of costs on a solicitor-client or other basis;
- (l) prescribe processes respecting the development and approval of settlement proposals;
- (m) provide that the licence of a member may be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, to file a document or to do any other act by a specified or ascertainable date and provide for the reinstatement of a licence that was suspended upon payment of such fee as is determined by the Board;
- (n) define any word or expression used but not defined in this Act;
- (o) further define any word or expression defined in this Act;
- (p) govern such other matters as the Board considers necessary or advisable for the effective discharge of its functions or the exercise of its powers.

(2) The exercise by the Board of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2005, c. 39, s. 6.

Bylaws

- 7 The Board may make bylaws not inconsistent with this Act to
- (a) fix the method of setting the amounts of fees payable by applicants and members and provide for the collection of those fees;
 - (b) fix and regulate the time, place and conduct of annual and special meetings of the College;
 - (c) establish fees and expenses payable to persons sitting on the Board and other committees established for the purpose of attending to the business of the College;
 - (d) govern the acquisition, management and disposal of the property and affairs of the College;
 - (e) provide for the appointment and remuneration of consultants, persons hired by contract or employees of the College;
 - (f) establish the terms of office of the Board members, the timing and manner in which elections are to be held or appointments are to be made and the manner in which vacancies may be filled;

(g) establish committees as are necessary from time to time and provide for the powers and duties of such committees, and the holding and conduct of meetings of such committees;

(h) establish other powers and obligations of the Board considered necessary by the Board to govern the affairs of the College;

(i) do all other things necessary for the administration of the affairs of the College. 2005, c. 39, s. 7.

REGISTRATION

Registrar

8 (1) The Board shall appoint a Registrar who meets the criteria for the position as determined by the Board.

(2) The Registrar is responsible for maintaining the registers prescribed pursuant to the regulations, and for ensuring that the persons whose names appear on the registers and who hold practising licences satisfy the criteria for registration and licensing according to this Act and the regulations. 2005, c. 39, s. 8.

Register

9 (1) The Board shall cause to be kept a register in which must be entered the name, registration number, date of entry in the register, address and the category of membership of every person who qualifies for registration according to this Act and the regulations.

(2) The name of every person who, immediately prior to August 17, 2007, was registered pursuant to the former Act, must be entered in the register, but continues under any conditions or limitations attached to the person's previous registration.

(3) When the Registrar is satisfied that an applicant for registration as a dispensing optician is entitled to be registered, the Registrar shall enter the name of the applicant in the register and shall issue a certificate of registration to the applicant. 2005, c. 39, s. 9.

Appeal of refusal

10 (1) The Registrar shall give to an applicant who is refused registration or a licence written reasons for the refusal and the applicant may, by written notice, appeal that decision to a registration committee to be appointed by the Board and composed of such members as the Board determines.

(2) The registration committee, upon receipt of an appeal pursuant to subsection (1), shall

(a) set a date for the hearing of the appeal, which is not later than 60 days following receipt of the written notice of appeal;

(b) serve written notice of the date, time and place for the hearing of the appeal upon the applicant and the Registrar; and

(c) advise the appellant of the right to

(i) be represented by legal counsel at the expense of the appellant,

(ii) disclosure of any information provided to the registration committee, and

(iii) a reasonable opportunity to present a response and make submissions.

(3) Evidence is not admissible before the registration committee unless, at least 10 days before the appeal, the opposing party has been given

(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; and

(c) in the case of evidence of any other witness, the identity of the witness.

(4) Notwithstanding subsection (3), the registration committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (3) and make directions it considers necessary to ensure that a party is not prejudiced.

(5) The registration committee shall set the procedure for the hearing of the appeal, which procedure must not be in conflict with this Act.

(6) The registration committee, in accordance with the information it receives, when hearing an appeal, may make any determination that, in its opinion, ought to have been made by the Registrar.

(7) The registration committee shall give its decision in writing and shall send to the applicant a copy of the written decision by registered mail or personal service.

(8) The decision of the registration committee is final. 2005, c. 39, s. 10.

Licences

11 (1) The Registrar shall issue a practising licence to every person who, immediately prior to August 17, 2007, was licensed pursuant to the former Act.

(2) Every licence issued pursuant to subsection (1) is subject to any conditions or limitations attached to the licence pursuant to the former Act.

(3) The Registrar shall issue a practising licence to a member who meets the criteria for such licence as set out in the regulations.

(4) The Registrar shall endorse the practising licence to indicate that the holder of the licence is qualified to fit contact lenses if the holder of a licence is registered on the specialty register and meets the criteria for the issuing of

a practising licence endorsed with a contact lens certification according to this Act and the regulations. 2005, c. 39, s. 11.

Right to practise

12 A person registered in any register may practise optical dispensing in the manner and subject to the conditions and limitations prescribed by the regulations. 2005, c. 39, s. 12.

Provisional permits

13 (1) The Registrar shall issue a provisional permit to those persons who meet the criteria for the issuing of a provisional permit pursuant to the regulations.

(2) A person who holds a provisional permit may practise optical dispensing in the manner and subject to the conditions and limitations prescribed by the regulations. 2005, c. 39, s. 13.

Consequences of conviction for offences

14 (1) 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 dispensing optician, including a conviction under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada), for which a pardon has not been granted, and such person applies for registration or a licence, the Registrar may refuse to register or license the person, as the case may be, but the registration committee may, at any time, permit such person to be registered or licensed or to remain registered or licensed upon such terms and conditions as the committee may direct following an appeal to the committee.

(2) Upon application for registration or a licence, an applicant shall advise the Registrar in writing of any convictions referred to in subsection (1).

(3) A person holding a provisional permit or a person whose name is entered on any register, who is convicted of an offence referred to in subsection (1), shall advise the Registrar in writing of the conviction within 30 days of the conviction being entered. 2005, c. 39, s. 14.

Use of titles

15 (1) Except as otherwise provided in this Act, no person other than a dispensing optician who holds a practising licence shall assume or use the title “Optician” or “Dispensing Optician”, or use the abbreviations DO or D.O. to imply that the person is a dispensing optician.

(2) No person other than an optician whose name appears on the specialty register and who holds a practising licence endorsed with a contact lens certification shall assume or use the title “Certified Contact Lens Fitter”, or use the abbreviations CCLF or C.C.L.F. to imply that the person is a certified contact lens fitter. 2005, c. 39, s. 15.

Prohibitions

16 (1) Except as otherwise provided in this Act or the regulations, no person other than a dispensing optician who holds a practising licence, a person whose name is entered on the student optician register or the specialty student optician register or a person who holds a provisional permit shall

- (a) practise optical dispensing;
- (b) dispense prescriptions of qualified medical practitioners or optometrists for optical appliances; or
- (c) dispense optical appliances.

(2) No dispensing optician shall supply or dispense an optical appliance except upon receipt of a prescription from a qualified medical practitioner or an optometrist.

(3) Notwithstanding subsection (2), a dispensing optician may supply and dispense duplications, replacements, reproductions or repetitions of any optical appliance and may convert the prescription for one optical appliance in order to supply and dispense another type of optical appliance.

(4) Except as otherwise provided in this Act or the regulations, no person shall measure, fit or adjust contact lenses unless the person

- (a) is a dispensing optician who is registered on the specialty register and who holds a practising licence endorsed with a contact lens certification;
- (b) is entered on the specialty student optician register; or
- (c) holds a contact lens provisional permit. 2005, c. 39, s. 16.

Duties of employer of dispensing optician

17 (1) In this Section and Section 19, “employer” means a person, corporation, partnership or any entity with legal capacity to sue or be sued.

(2) Every employer who employs a person as a dispensing optician shall

- (a) ensure that the person at the time of employment and each year employed thereafter, holds a current practising licence and, where applicable, a practising licence endorsed with a contact lens certification; and
- (b) where the person’s employment is terminated because of professional misconduct, conduct unbecoming the profession, incompetence or incapacity, report the matter to the Registrar forthwith and provide a copy of the report to the person whose employment is terminated.

(3) Every employer who employs a person as a dispensing optician shall ensure that the practising licence of each optician or, where applicable, the practising licence with a contact lens certification is displayed in a location of the employer that is visible to customers. 2005, c. 39, s. 17.

Duty of dispensing optician

18 Every dispensing optician has a duty to display in a location visible to customers the member's practising licence or, where applicable, the member's practising licence endorsed with a contact lens certification. 2005, c. 39, s. 18.

Offences and penalties

19 (1) Every person or employer who

(a) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act or the regulations;

(b) engages in the practice of optical dispensing in the Province or permits an employee to engage in the practice of optical dispensing in the Province without holding a practising licence or, where applicable, a practising licence with a contact lens certification; or

(c) otherwise contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(3) All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the College belong to the College.

(4) Any information to be laid pursuant to this Act or pursuant to the *Summary Proceedings Act* may be laid by the Registrar or any member of the College authorized by the Board.

(5) 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 optical dispensing, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(6) Where a violation of this Act or the regulations by a person or employer continues for more than one day, the person or employer is guilty of a separate offence for each day that the violation continues.

(7) For the purpose of this Act, proof of the performance of one act in the practice of optical dispensing on one occasion is sufficient to establish that a person has engaged in the practice of optical dispensing. 2005, c. 39, s. 19.

Injunction

20 (1) In the event of a threatened or continuing violation of this Act or the regulations, the Board may apply to a judge for an injunction to restrain the person from continuing or committing the violation and the judge, where the judge considers it to be just, may grant such an injunction.

(2) A judge may, on 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 violation of this Act or the regulations.

(3) A judge may make such order as to costs as the judge considers proper in any proceedings pursuant to this Section. 2005, c. 39, s. 20.

PROFESSIONAL CONDUCT PROCESS

Interpretation of Sections 21 to 42

21 In this Section and Sections 22 to 42,

“complaint” means a notification in writing to the College from any person indicating potential professional misconduct, conduct unbecoming the profession, incompetence or incapacity by a member;

“incapacity” means the status whereby a respondent is suffering from a physical, mental or emotional condition, disorder or addiction that may endanger the health or safety of customers;

“incompetence” means the display of lack of knowledge, skill or judgement in the respondent’s delivery of optical dispensing services that, having regard to all of the circumstances, renders the respondent unsafe to practise or unsafe to practise without remedial assistance;

“investigator” means a person or persons designated by the Registrar to conduct an investigation into a complaint, and may include members of the Complaints Committee;

“party” means the College or the respondent, as the context requires;

“professional conduct process” means the processes and procedures set out in this Part and in the regulations that deal with professional conduct issues;

“professional misconduct” includes such conduct or acts relevant to the practice of optical dispensing that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional which, without limiting the generality of the foregoing, may include

- (a) failing to maintain standards of practice;
- (b) failing to uphold any code of ethics adopted by the College;
- (c) violating this Act, the regulations or the bylaws;
- (d) abusing a person verbally, physically, emotionally or sexually;
- (e) misappropriating personal property or other property belonging to a customer or an employer;
- (f) allowing a person who is not licensed by the College to practise optical dispensing, unless the person is a student optician or a specialty student optician or is otherwise authorized to practise optical dispensing pursuant to this Act;

- (g) the committing of an indictable offence;
- (h) falsifying records;
- (i) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading;
- (j) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact when applying for or securing registration or a licence, or the taking of any examinations provided for in this Act or the regulations, including using fraudulently procured credentials;

“respondent” means the person who is the subject of a complaint;

“settlement proposal” means a proposal for the settlement of a complaint as prescribed in the regulations. 2005, c. 39, s. 21.

Objects of process

22 The objects of the professional conduct process are the protection of the public and the preservation of the integrity of the optical dispensing profession. 2005, c. 39, s. 22.

Jurisdiction continues

23 Where a member of the College ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any professional conduct matter arising out of the person’s conduct while registered or licensed. 2005, c. 39, s. 23.

Complaints Committee

24 (1) The Board shall appoint a Complaints Committee composed of such number of members and non-members as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Complaints Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Where for any reason the Chair or the Vice-chair are unavailable for a meeting, the Board may, for the purpose of such meeting, appoint a member of the Complaints Committee as Chair of the Complaints Committee. 2005, c. 39, s. 24.

Panel

25 (1) The Chair of the Complaints Committee shall appoint a panel of three persons from the Complaints Committee, one of whom must be a non-member, to act as the Complaints Committee for the purpose of the professional conduct process.

(2) The Chair of the Complaints Committee may sit on the panel and, in such case, shall act as the chair of the panel.

(3) Where the Chair of the Complaints Committee is not appointed to the panel, the Chair of the Complaints Committee shall appoint a chair for the panel.

(4) Any two persons from the panel appointed pursuant to subsection (1), regardless of whether such persons are members or non-members, constitute a quorum of the Complaints Committee.

(5) Failure of one or more Complaints Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of a meeting.

(6) All Complaints Committee decisions require the vote of a majority of the panel of the Complaints Committee appointed pursuant to subsection (1).

(7) Where a proceeding is commenced before the Complaints Committee, and the term of office of any person sitting on the Complaints Committee expires, that person may remain part of the Complaints Committee until the proceeding is concluded. 2005, c. 39, s. 25.

Complaint

- 26 A complaint may be initiated by
- (a) any body corporate or association;
 - (b) the Registrar; or
 - (c) any other person. 2005, c. 39, s. 26.

Investigation

27 (1) Upon receipt of a complaint, the Registrar and the investigator shall take such steps as are required by the regulations.

(2) The Registrar and the investigator have 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.

(3) When an investigation is conducted pursuant to the regulations, the investigator, upon concluding the investigation, shall prepare a written report of the investigation and forward it to the Complaints Committee.

(4) Upon receipt of the results of an investigation from an investigator, the Complaints Committee shall dispose of the matter in accordance with the regulations.

(5) The Complaints Committee shall give its decision in writing and shall send a copy of the written decision, by registered mail or personal service, to the respondent, the complainant and such other persons as the Committee determines. 2005, c. 39, s. 27; 2012, c. 48, s. 31.

Rights of member

28 In a proceeding before the Complaints Committee, a member has the right to

- (a) be represented by legal counsel or another representative;
- (b) disclosure of the complaint, any written reports of the investigator provided to the Complaints Committee and any other document produced or received by the Complaints Committee; and
- (c) a reasonable opportunity to present a response and make submissions. 2005, c. 39, s. 28.

Suspension of member

29 A Complaints Committee, acting in good faith and in the public interest, may, at its discretion, direct the Registrar to suspend a member from the practice of optical dispensing pending or following the completion of the investigation until the suspension is lifted, superseded or annulled by the Complaints Committee or the Professional Conduct Committee, as the case may be. 2005, c. 39, s. 29.

Professional Conduct Committee

30 (1) The Board shall appoint a Professional Conduct Committee composed of such number of members and non-members as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Professional Conduct Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Where for any reason the Chair or the Vice-chair are unavailable for a meeting or a hearing, the Board may, for the purpose of the meeting or hearing, appoint a member of the Professional Conduct Committee as Chair of the Professional Conduct Committee. 2005, c. 39, s. 30.

Panel

31 (1) The Chair of the Professional Conduct Committee shall appoint a panel of five persons from the Professional Conduct Committee, at least one of whom must be a non-member, to act as the Professional Conduct Committee for the purpose of the professional conduct process.

(2) The Chair of the Professional Conduct Committee may sit on the panel and, in such case, shall act as the chair of the panel.

(3) Where the Chair of the Professional Conduct Committee is not appointed to the panel, the Chair of the Professional Conduct Committee shall appoint a chair for the panel.

(4) Any three persons from the panel appointed pursuant to subsection (1), regardless of whether such persons are members or non-members, constitute a quorum of the Professional Conduct Committee.

(5) No person on the Professional Conduct Committee may concurrently serve on the Complaints Committee.

(6) Failure of one or more Professional Conduct Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes committee members from waiving notice of a meeting.

(7) All Professional Conduct Committee decisions require the vote of a majority of the panel of the Professional Conduct Committee appointed pursuant to subsection (1) or the quorum of the panel in the event the full panel is not sitting.

(8) Where a proceeding is commenced before the Professional Conduct Committee, and the term of office of any person sitting on the Professional Conduct Committee expires, that person may remain part of the Professional Conduct Committee until the proceeding is concluded. 2005, c. 39, s. 31.

Date and notice of hearing

32 (1) Where a Complaints Committee refers a matter to the Professional Conduct Committee, the Professional Conduct Committee shall, within 30 days from the date of the referral, fix a date, time and place for holding the hearing, which must commence not later than 90 days from the date of the referral by the Complaints Committee, or such later date as the respondent and the Professional Conduct Committee agree.

(2) A notice of hearing, containing such information as required by the regulations, must be forwarded to the respondent and the complainant at least 30 days prior to the hearing. 2005, c. 39, s. 32.

Settlement

33 Where a Complaints Committee refers a matter to the Professional Conduct Committee, the Complaints Committee, prior to the commencement of a hearing by the Professional Conduct Committee, may enter into a settlement proposal with the respondent, which proposal must be dealt with in accordance with the regulations. 2005, c. 39, s. 33.

Powers and privileges

34 (1) Each person on the Professional Conduct Committee has all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*.

(2) Each person on the Complaints Committee has the same power to subpoena documents as a commissioner appointed pursuant to the *Public Inquiries Act*. 2005, c. 39, s. 34.

Conduct of hearing

35 (1) A hearing held by the Professional Conduct Committee must be conducted in accordance with the regulations.

(2) In a proceeding before the Professional Conduct Committee, the parties have the right to

- (a) be represented by legal counsel or another representative;
- (b) the opportunity to present evidence and make submissions, including the right to cross-examine witnesses; and
- (c) receive written reasons for a decision within a reasonable time.

(3) Evidence is not admissible before the Professional Conduct 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 witnesses.

(4) Notwithstanding subsection (3), the Professional Conduct Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced. 2005, c. 39, s. 35.

Disposal of matter

36 Where the Professional Conduct Committee finds professional misconduct, conduct unbecoming the profession, incompetence or incapacity, the Committee shall dispose of the matter or matters in accordance with the regulations. 2005, c. 39, s. 36.

Inadmissibility of evidence in legal proceeding

37 (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; 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 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 the Complaints Committee or the Professional Conduct Committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hear-

ing processes of the College, including any information gathered in the course of an investigation or produced for the Complaints Committee, the Professional Conduct 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 the Complaints Committee or the Professional Conduct Committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 5.

Application for reinstatement

38 (1) Any member whose registration has been revoked by the Professional Conduct Committee may apply to the Board, in writing, at any time following two years from the date of the revocation for reinstatement and the burden of proof is on the respondent to prove to the satisfaction of the Board that the objects of the professional conduct process will be served by terminating the order of revocation.

(2) In considering an application for reinstatement, the Board may impose such restrictions or conditions for such reinstatement as the Board considers necessary or desirable in accordance with the objects of the professional conduct process and in accordance with the objects of the College. 2005, c. 39, s. 37.

Restoration of licence

39 (1) Where a licence has not expired and where the period of suspension of a respondent has ended, or the conditions imposed on the respondent have been satisfied, the Registrar shall restore the licence to the respondent in the form in which it existed prior to the imposition of a Professional Conduct Committee's restrictions.

(2) Where a licence has expired, the respondent shall pay the prescribed fee for renewal and must meet the criteria for renewal prior to the licence being issued. 2005, c. 39, s. 38.

Procedures after decision

40 (1) Where the registration of a respondent is revoked or a licence is suspended, restricted or reinstated,

(a) the Registrar shall make the appropriate entries in the register, the specialty register, the student optician register or the specialty student optician register, as the case may be;

(b) the respondent's name, address, provision of this Act or the regulations under which the disciplinary finding has been made, the date of the decision and the decision or summary of the decision must be published in an official publication as determined by the Professional Conduct Committee;

(c) the Registrar shall notify registering bodies in other Canadian optical dispensing jurisdictions, as well as the original

jurisdiction and other known jurisdictions where the respondent has worked, if a suspension, revocation or reinstatement is ordered;

(d) the Registrar shall notify the current employer of the respondent if considered necessary by the Professional Conduct Committee; and

(e) the Professional Conduct Committee, in its discretion, may inform or direct the Registrar to inform other persons of its decision, or any part of its decision.

(2) Where a reprimand has been issued and the time for filing of an appeal has expired or the appeal has been disposed of, the Professional Conduct Committee, in its discretion, may inform, or direct the Registrar to inform, other persons of the respondent's name and the reasons for the reprimand. 2005, c. 39, s. 39.

Power to retain assistance

41 For the purpose of the execution of duties under this Act, the College and the Complaints Committee or the Professional Conduct Committee may retain such legal or other assistance as the College or the Committee may think necessary or proper, and the costs of such legal or other assistance may be included, in whole or in part, in an award of costs by the Professional Conduct Committee. 2005, c. 39, s. 40.

Appeal on point of law

42 (1) A party may appeal to the Nova Scotia Court of Appeal on any point of law from the findings of the Professional Conduct Committee.

(2) The notice of appeal must be filed with the Nova Scotia Court of Appeal and served on the respondent not later than 30 days after receipt of the decision of the Professional Conduct Committee.

(3) The record on appeal from the findings of the Professional Conduct Committee consist of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Committee certified by the Chair of the Committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal apply with necessary changes to appeals to the 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 decision of the Professional Conduct Committee takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act where, in its discretion, it considers fit. 2005, c. 39, s. 41.

GENERAL

Act does not prevent

43 Nothing in this Act prevents

(a) a physician from practising medicine under the *Medical Act*;

- (b) an optometrist from practising optometry under the *Optometry Act*; or
- (c) an employee of an optometrist engaging in acts of optometry, where such acts of optometry are authorized to be performed in regulations made pursuant to the *Optometry Act*. 2005, c. 39, s. 42.

No action lies

44 (1) No action for damages lies against the College, the Board, members of the Board, committees or subcommittees of the College or Board, members of the committees or subcommittees or officers, agents or employees of the College for

- (a) any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out the duties or obligations under this Act; or
- (b) 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 contained in a document pursuant to this Act unless the disclosure is made with malice.

(3) No member of the College or any officer, agent or employee of the College, is personally liable for any of the debts or liabilities of the College unless the person expressly agrees to be liable. 2005, c. 39, s. 43.

CHAPTER D-14

An Act Respecting Ditches and Water Courses

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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 *Ditches and Water Courses Act*. R.S., c. 132, s. 1.

Interpretation

2 In this Act,
“clerk” means municipal clerk in the case of a municipality and town clerk in the case of a town;
“council” means municipal council in the case of a municipality and town council in the case of a town;

“engineer” means a civil engineer, land surveyor or such person as any council considers competent to perform the duties required under this Act;

“municipality” includes a town. R.S., c. 132, s. 3.

Application

3 This Act applies to municipalities and incorporated towns, and to the deepening or widening of any ditch or drain already existing as to make a new ditch or drain. R.S., c. 132, s. 2.

Municipal engineer

4 Every council shall name and appoint an engineer to carry out this Act, and such engineer is an officer of the municipality until the engineer’s appointment is revoked by the council and another engineer is appointed in the first engineer’s stead, who has authority to continue any proceeding work already commenced under this Act. R.S., c. 132, s. 4.

Maintenance of ditches

5 (1) In case of owners of lands, whether immediately adjoining or not, that would be benefited by making a ditch or drain, or by deepening or widening a ditch or drain already made, in a natural water course, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water or in order to enable the owners or occupiers thereof the better to cultivate or use the same, such several owners shall open and make, deepen or widen a just and fair proportion of such ditch or drain, according to their several interests in the construction of the same.

(2) Ditches and drains referred to in subsection (1) must be kept and maintained so opened, deepened or widened by the said owners respectively, and their successors in such ownership and in such proportions as they have been so opened, deepened or widened, unless in consequence of altered circumstances the engineer otherwise directs, which the engineer is empowered to do, upon application of any person interested, in the same form and manner as is hereinafter prescribed in respect to the original opening, deepening or widening, and in case the engineer finds no good reason for such application, all costs caused thereby must be borne by the applicant and must be collected as provided for under this Act.

(3) Every such ditch or drain must be continued to a proper outlet so that no lands, unless with the consent of the owner thereof, will be overflowed or flooded by the construction of any such ditch or drain, and it is lawful to construct such ditch or drain through one or any number of lots until the proper outlet is reached.

(4) Such consent must be in writing and signed by the person consenting, and must be filed with the clerk with the award, and may be recited or referred to therein. R.S., c. 132, s. 5.

Repair and inspection of ditches

6 (1) Where a ditch or drain has been constructed under this Act, and any owner whose duty it is to maintain and keep in repair any portion of the ditch or drain neglects to keep such portion in a proper state of repair, any one of the

owners who is liable for maintaining and keeping in repair any portion of such ditch or drain may, in writing, notify the owner who neglects to keep that owner's portion of such ditch or drain in a proper state of repair, to have the same put in such repair, and to have the same completed within 30 days from the receipt of the notice.

(2) The owner who serves the notice may, where the work has not been performed at the expiry of 30 days, make an application to the council to have the repairs carried out and completed.

(3) The council shall, when such application is made, order an examination of such portion of the ditch or drain as is complained of to be made by the engineer, or by some other person to be appointed by the council, and who may be called the "inspector of drains and ditches".

(4) A member of the council may not be appointed inspector.

(5) The inspection must be made not later than 12 days from the time of the ordering of the same, and the engineer or inspector, as the case may be, shall within 12 days after making the inspection file with the clerk a certificate stating whether the complaint is well founded or not, and wherein the ditch or drain requires repairing.

(6) Where the engineer or inspector, as the case may be, certifies that the complaint is well founded, the council shall order the engineer to proceed and let the work in the manner hereinafter provided for under this Act for reletting work, unless the owner has in the meantime completed such repairs in accordance with the report or certificate of the engineer or inspector.

(7) The provisions of this Act as to the inspection and payment of engineer's or inspector's fees and cost of work apply, and the council may fix the remuneration of the inspector during the time the inspector is engaged in the performance of any duties under this Act.

(8) Where the engineer or inspector decides that the complaint is not well founded, the person making the complaint shall pay the fees of the engineer or inspector and, where not paid by the complainant, they shall be paid by the council and charged as hereinafter provided. R.S., c. 132, s. 5.

Right of appeal

7 Any owner or person interested under proceedings taken under or by virtue of Section 6 shall have the right of appeal as provided by this Act where the amount involved exceeds the sum of \$20. R.S., c. 132, s. 5.

Meeting

8 (1) In case of dispute between owners respecting such proportions, any owner shall, before filing with the clerk the requisition (in the form prescribed in the regulations or to the like effect), serve upon the other owners or occupants of the lands to be affected a notice in writing signed by the owner (in the form prescribed in the regulations or to the like effect), naming a day, hour and place convenient to the ditch or drain at which the parties are to meet and, where possible, agree upon the respective portions of the drain or ditch to be made, deepened or widened by each of them.

(2) The notice must be served not fewer than 12 clear days before the time of meeting and, in case at the meeting an agreement is come to between the parties, the agreement must be reduced to writing (in the form prescribed in the regulations or to the like effect), must be signed by all the parties and must, within four clear days from the signing thereof, be filed with the clerk of the municipality in which the land requiring the ditch or drain is situated.

(3) The agreement may be enforced in the manner as an award of the engineer as hereinafter provided. R.S., c. 132, s. 6.

Requisition for meeting

9 (1) Where the parties at the meeting do not agree, any owner

(a) may file with the clerk of the municipality in which the lands requiring such ditch or drain are situated, a requisition (in the form prescribed in the regulations or to the like effect) shortly describing the ditch or drain to be made, deepened or widened, and naming the lands that will be affected thereby and the owners respectively, and requesting that the engineer appointed by the municipality for the purpose be asked to appoint a day in which the engineer will attend at the time and place named in the requisition, which may not be fewer than six or more than 12 clear days from the time of filing the same; and

(b) shall also at least four clear days before the time appointed therein serve upon all the persons named in such requisition a notice (in the form prescribed in the regulations or to the like effect) requiring their attendance at the same time and place provided.

(2) When it is necessary in order to obtain an outlet, that the drain or ditch pass through or partly through the lands of more than five owners (the owner first mentioned in this Section being one), the requisition may not be filed unless

(a) such owner first obtains the assent in writing thereto of (including such owner) a majority of the owners affected or interested;

(b) a resolution of the council of the municipality in which the greater portion of the work is to be done, approving of the scheme or proposed work, is first passed, after those interested have been heard or have had an opportunity to be heard by the council upon notice to that effect; or

(c) the assent (by resolution) of the said council approving of the proposed extension to the lands of other interested persons is first passed after a hearing or notice as hereinbefore provided.

(3) When the engineer, as hereinafter provided, requires other persons whom the engineer considers interested to be notified, the engineer may not assess or bring in without their assent more than one additional interested person when the majority of those so notified and interested are opposed to being so brought in or assessed. R.S., c. 132, s. 7.

Liability of occupant

10 An occupant, not the owner of land, notified in the manner provided by this Act, shall immediately notify the owner thereof and is, where the occupant neglects to do so, liable for all damages suffered by such owner by reason of such neglect. R.S., c. 132, s. 8.

Hearing and award by engineer

11 (1) The clerk shall, after receiving the requisition, forthwith notify the engineer by registered letter, enclosing a copy of the requisition to the engineer, and the engineer shall attend at the time and place named therein, examine the premises and, where the engineer considers proper, or where requested by any of the parties, hear evidence, and is authorized to examine the parties and their witnesses on oath, and may administer an oath or affirmation.

(2) Where the engineer finds the making, deepening or widening of the ditch or drain necessary, the engineer shall, within 30 days after the day of meeting named in the requisition, make the engineer's award in writing (in the form prescribed in the regulations or to the like effect), specifying clearly the locality, description and course of the ditch or drain, the point of commencement and termination of same, the portion of the ditch or drain to be constructed by the respective parties, and the time within which the work is to be done, and the amount of the engineer's fees and other charges, and by whom to be paid, and the engineer shall have power to adjourn the examination, and may require the notification and attendance of other parties whom the engineer considers interested in the ditch or drain, such other parties to have at least four clear days notice of the time and place of attendance.

(3) In no case may the engineer include or assess lands lying more than 50 rods above the point of commencement of the ditch or drain upon the lands mentioned in the notice (in the form prescribed in the regulations or to the like effect) provided for by this Act, nor lands on either side of the ditch or drain that lie more than 50 rods from the drain, and only so much within such 50 rods as having due regard to the nature of the locality and of the soil and the lay of the land, and its distance back from the ditch or drain, as will be benefited by the ditch or drain, and then only according to and in proportion to the benefit that the land will receive by such construction. R.S., c. 132, s. 9.

Construction and blasting awarded

12 (1) Where it appears to the engineer that the owner or occupier of any tract of land is not sufficiently interested in the opening up of a ditch or drain to make the engineer liable to construct any part thereof, and at the same time that it is necessary for the other parties that the ditch or drain should be continued across the tract, the engineer may award the same to be constructed at the expense of the other parties, and after the award the other parties may open the ditch or drain across the tract at their own expense without being trespassers, but causing no unnecessary damage, and replacing any fences opened or removed by them.

(2) Where it appears to the engineer that rock cutting is required to be done, the engineer may have the rock cut or blasted, by letting the contract by tender or otherwise, instead of requiring each person benefited to do that person's share of the work and the engineer shall, by the engineer's award, determine the sum that must be paid by each of the persons benefited, which sums, unless forth-

with paid, must be added to the collector's roll, together with seven per cent added thereto, and the same thereupon becomes a charge against the lands of the persons so liable, and must be collected in the same manner as other municipal or town rates. R.S., c. 132, s. 10.

Filing award

13 (1) The engineer shall within 30 days from the day appointed by the engineer, as hereinbefore provided, make and file the engineer's award, and any plan or profile of said work, with the clerk, and the award, plan and profile must be official documents and may be given in evidence in any legal proceedings by copies certified by the clerk.

(2) The clerk shall forthwith, upon the filing of the award, notify each of the persons affected thereby by registered letter or personal service of the filing of the same, and the clerk shall keep a book in which the clerk shall record the names of the persons to whom the clerk has sent notices, the addresses to which the same were sent, and the dates upon which the same were deposited in the post office or personally served. R.S., c. 132, s. 11.

Appeal

14 Any person dissatisfied with the award and affected thereby may, within 15 clear days from the filing thereof, appeal therefrom to the judge of the Supreme Court of Nova Scotia, and the proceedings on the appeal are as follows:

(a) the appellant shall serve upon the clerk with whom the award is filed a notice in writing of the appellant's intention to appeal therefrom, shortly setting forth the grounds of appeal;

(b) the clerk shall, after the expiration of the time for appeal, forward by registered letter or deliver a copy of the notice or notices of appeal, if there is more than one appeal, and a certified copy of the award, to the Supreme Court of Nova Scotia, and the clerk of the court shall immediately notify the judge of the appeal, whereupon the judge shall appoint a time for the hearing thereof, and where the judge thinks fit, order such sums of money to be paid by the appellant or appellants to the clerk of the court as will be a sufficient indemnity against the costs of the appeal;

(c) the judge shall appoint the time and place for hearing the appeal and communicate the same to the clerk of the court, who shall notify the engineer and all persons interested, in the manner provided for the service of other notices under this Act;

(d) the place for hearing the appeal must be in the county in which the land of the appellant is situated;

(e) the judge shall hear and determine the appeal or appeals, and set aside, alter or affirm the award, correcting any error therein, and the judge may examine parties and witnesses on oath and, where the judge so pleases, inspect the premises, requiring the attendance with the judge of the engineer and may order payment of costs by the parties, or any of them, and fix the amount of such costs;

(f) it is the duty of the judge to hear and determine the appeal within one month after receiving notice thereof as provided by this Section, but the judge's neglect or omission to do so does not render invalid the hear-

ing or determining of the appeal after the lapse of that time, provided always that the judge may, where in the judge's opinion it will be more convenient for the parties concerned, fix as a time and place for hearing the appeal a sitting of the court, notwithstanding the time so fixed may be more than one month after the receiving of the notice, and the appeal may be heard either before or after the regular sitting of the Court;

(g) the award as so altered or confirmed must be certified by the clerk of the court to the clerk of the municipality, together with the costs, if any, allowed, and by whom to be paid and the award must be enforced as the award of the engineer, and the time for the completion of the work thereunder must be computed from the date of such judgment in appeal. R.S., c. 132, s. 12.

Subpoenas

15 The clerk of the court receiving the notice of appeal may issue under the seal of the Court subpoenas to witnesses, which subpoenas must be in the form, as nearly as may be, of those used in the Court, and non-attendance or disobedience to a subpoena may be punished in the same manner as in an action in the Court. R.S., c. 132, s. 13.

Payment of contractor

16 The treasurer of the municipality shall pay the contractor for the work as soon as done to the satisfaction of, and upon the certificate of, the engineer, pending the subsequent collection thereof as aforesaid. R.S., c. 132, s. 14.

Fees as taxes

17 The municipality shall, at the expiration of the time for appeal or after appeal, as the case may be, pay to the engineer the engineer's fees, and also pay to the person declared to be entitled to the same any fees or costs awarded or adjudged to the person and shall, unless the same are forthwith paid by the person awarded or adjudged to pay the same, place the amount on the collector's roll as a charge against the lands of the persons awarded or adjudged to pay the same, and the same thereupon becomes a charge upon such lands and must be collected as ordinary municipal or town rates. R.S., c. 132, s. 15.

Letting of work

18 (1) The engineer shall, at the expiration of the time limited by the award for the completion of the work, inspect the ditch or drain, if required in writing to do so by any of the persons interested and, where the engineer finds the work or any portion thereof not completed in accordance with the award, the engineer may let the same, in sections, as apportioned in the award to the lowest bidder therefor, taking such security for the performance thereof within the time to be limited as the engineer considers necessary.

(2) No such letting may take place until after four clear days notice in writing of the intended letting has been posted in at least three conspicuous places in the neighbourhood of the work, and notice thereof is sent by registered letter to such persons interested in the award as are non-resident in the municipality, but where the engineer is satisfied of the bona fides of the person doing the work and there is good reason for the non-completion thereof, the engineer may, in the engineer's discretion, extend such time. R.S., c. 132, s. 16.

Certificate of engineer

19 The engineer shall, upon the receipt of notice in writing of the final completion of the work mentioned in Section 16, inspect the same within one week thereafter, and, where approved of and accepted by the engineer, certify in writing the fact to the clerk, giving a separate certificate for each portion or section of work let and completed (in the form prescribed in the regulations or to the like effect), and stating the name in each certificate of the person who did the work as well as the amount the person is entitled to receive therefor, and also such extra fees as the engineer is entitled to by reason of such letting and subsequent inspection and by whom the same are to be paid. R.S., c. 132, s. 17.

Penalty

20 Any engineer who wilfully neglects to make the inspection required by either of Section 18 or 19 for 30 days after the engineer has received the written notice mentioned therein, is liable to a penalty of not less than five dollars or more than \$10, and every such penalty must be paid over to the treasurer of the municipality in which the offence was committed. R.S., c. 132, s. 18.

Certified amounts paid

21 (1) The council shall, at the meeting next after the filing of the certificate or certificates given by the engineer on completion of the work, pay to the engineer the engineer's additional fees therein mentioned, and forthwith thereafter may pay to any person the amount that, according to the certificate, the person is entitled to receive for any such work.

(2) The council shall, unless the amount or amounts named in the certificate or certificates, including such additional fees, are forthwith paid by the respective persons declared in the certificate or certificates to be liable to pay the same, cause the amount or amounts and fees to be added to the collector's roll, together with seven per cent added thereto, and the same thereupon becomes a charge against the lands of the person or persons so liable, and must be collected in the same manner as other municipal or town rates, and when collected must be paid over to any person entitled thereto. R.S., c. 132, s. 19.

Serving notices

22 (1) Notices under this Act must be served personally, or by leaving the same at the place of abode of the owner or occupant with an adult person residing thereat, and in the case of non-residents, upon the agent of the owner, or by registered letter addressed to the owner at the post office nearest to the owner's last known place of abode.

(2) A non-resident within the meaning of this Section includes a person who does not reside within the municipality in which the lands that the person owns are situated, and in respect to which proceedings are taken or to be taken under this Act and, where the place of abode of a non-resident is not known, notices under this Act requiring to be served on such non-resident may be served in such manner as a judge of the Court directs. R.S., c. 132, s. 20.

Rights and privileges of municipality

23 Every municipality has and shall exercise all the rights and privileges conferred by this Act, and may be made parties to the agreement or award, and is in all respects in the same position as an individual owner. R.S., c. 132, s. 21.

Conversion of ditch or drain

24 (1) In any case where an open ditch or drain is constructed under this Act, any person through whose lands such ditch or drain is constructed may, with the consent of the engineer, convert so much of the ditch or drain as runs through the lands of such person into a covered drain.

(2) The engineer, before giving the engineer's consent, shall examine the portion of the ditch or drain that is proposed to be covered, and shall determine the size and capacity of the proposed covered portion of the drain or ditch, and the nature and quality of material to be used therein, but no such consent may be given by the engineer if the covering of such portion of the ditch or drain would impede or delay the free flow of the water that the ditch or drain is intended to carry off. R.S., c. 132, s. 22.

Award

25 The engineer shall file with the clerk of the municipality, where such consent is given, an award setting forth the particulars in accordance with this Act, and the award is subject to appeal. R.S., c. 132, s. 23.

Application for inspection

26 (1) The person making the application for the covering of the ditch or drain may notify the engineer to inspect the ditch or drain in the first place, and shall also

(a) notify the owners interested whose lands are situated above such person's own, of the time when the engineer will examine the drain; and

(b) notify the engineer when the work is completed.

(2) It is not necessary for such person to take the proceedings provided in this Act, and such person is liable for the fees and expenses of the engineer, and where not paid by such person to the engineer, the fees and expenses must be collected as provided for in this Act. R.S., c. 132, s. 24.

Maintenance of covered drain

27 Such person, and the subsequent owners, shall maintain and keep the covered portion of the drain of such sufficient size and capacity as not to impede or delay the free flow of water above the covered portion or brought thereto by such drain and any damages occasioned by the neglect or failure to so maintain and keep such portion of the size and capacity aforesaid are payable by the owner of the land upon which the insufficient or imperfect portion of the drain is situated. R.S., c. 132, s. 25.

Use for other purpose

28 Where any person during or after the construction of the ditch or drain herein provided for desires to make use of such ditch or drain for the purpose

of draining other lands than those contemplated by the original proceedings, such person may make use of the provisions of this Act as if such person were or had been a party to such original proceedings, but no person may make use of the ditch or drain constructed under this Act unless under agreement or award pursuant to its provisions as to the use of lands of others, as to the enlargement, where such is necessary, of the original ditch or drain so as to contain additional water therein and as to the time for the completion of such enlargement. R.S., c. 132, s. 26.

Effect on another municipality

29 (1) Notwithstanding any of the lands through which the drain is required are situated in a municipality adjoining the one in which the original proceedings were commenced, the engineer has full power and authority to continue the ditch or drain in and through so much of the lands in the adjoining municipality as is found necessary and all proceedings authorized under this Act are to be had, taken and carried on in the municipality in which the same were commenced.

(2) In such case the clerk of such municipality shall forward to the clerk of the adjoining municipality a certified copy of the award, as made, confirmed or altered, and shall also forward to the clerk of the adjoining municipality a certified copy of every certificate of the engineer that affects or relates to the lands in the adjoining municipality and to the owners thereof.

(3) The council of the adjoining municipality shall, unless the amounts are forthwith paid by the persons declared by the certificates liable to pay the same, have and take all proceedings for the collection of the sums so certified to be paid as though all the proceedings had been taken and carried on in such adjoining municipality. R.S., c. 132, s. 27.

Fees

30 The fees to which the engineer is entitled under this Act are such as are fixed by bylaw or resolution of the council, and in case no such fees are fixed by the council, the same are the engineer's legally authorized fees for similar work, or such less amount as is agreed upon, and the fees to witnesses and for the service of papers authorized by the clerk of the court are the same as those allowed to witnesses and for similar services in the court. R.S., c. 132, s. 28.

Regulations

31 (1) The Governor in Council may make regulations prescribing forms for the purpose of this Act.

(2) The forms contained in the Schedule to Chapter 132 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Act.

(3) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*.

CHAPTER D-15

An Act Respecting Doctors Nova Scotia

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Short title

1 This Act may be cited as the *Doctors Nova Scotia Act*. 1995-96, c. 12, s. 1; 2012, c. 26, s. 2.

“Society” defined

2 In this Act, “Society” means Doctors Nova Scotia. 1995-96, c. 12, s. 2; 2012, c. 26, s. 3.

Continuation of existing body

3 The Medical Society of Nova Scotia constituted by Chapter 69 of the Acts of 1861, *An Act to incorporate the Medical Society of Nova Scotia*, is continued as a body corporate under the name Doctors Nova Scotia. 1995-96, c. 12, s. 3; 2012, c. 26, s. 4.

Perpetual succession and seal

4 The Society 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 or be sued. 1995-96, c. 12, s. 4.

Objects

- 5** The objects of the Society are
- (a) the promotion of health and the prevention of disease;
 - (b) the improvement of medical service, however rendered;
 - (c) the maintenance of the integrity and honour of the medical profession;

- (d) the performance of such other lawful things as are incidental or conducive to the welfare of the public and the medical and allied professions;
- (e) the promotion of harmony and unity of purpose between the medical profession and the various bodies assuming responsibility for the care of the sick or injured persons; and
- (f) to represent, act on behalf of and to enter into agreements for and on behalf of its members. 1995-96, c. 12, s. 5.

Powers

6 In addition to any other power conferred by this or any other Act, the Society may do such things as it considers appropriate to advance the objects of the Society 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 the Society considers expedient;
- (d) expend the monies of the Society in the advancement of its objects and the interests of the medical profession in such manner as the Society considers expedient;
- (e) establish and maintain such offices and agencies as the Society considers expedient;
- (f) invest and deal with any monies and funds of the Society that are not immediately required, in such a manner as the Society considers expedient;
- (g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the Society;
- (h) borrow money for the use of the Society on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the Society and pledge or sell such securities for such sums or at such prices as the Society considers expedient;
- (i) fix and collect fees payable to it by its members;
- (j) publish or promote the publications of journals, newsletters, reports, brochures or other papers relative to its interests;
- (k) act as agent within the Province for the Canadian Medical Association or other associations representing medical practitioners, and collect and remit fees levied by such an association;
- (l) receive gifts and bequests from any person and may make gifts to promote its interests;
- (m) act on behalf of any and all of its members;

(n) do such things as are incidental or necessary to exercise the foregoing powers. 1995-96, c. 12, s. 6.

Certain agreements binding on members

7 (1) The Society may enter into agreements with the Crown in right of the Province that bind its members and for that purpose is constituted the sole bargaining agent for any and all duly qualified medical practitioners and, without limiting the generality of the foregoing, the Society may enter agreements with respect to

- (a) the tariff of fees, other systems of payment and the management of the delivery of medical services;
- (b) the availability, supply and distribution of medical practitioners in the Province or any part thereof;
- (c) remuneration for non-clinical management services provided by physicians;
- (d) physician resource-management issues, including billing number issuance, restriction and revocation and other physician resource-management issues;
- (e) provincial standards for measuring and providing quality care including evaluation and performance measures;
- (f) management mechanisms, including the development of integrated information systems, peer review, clinical practice guidelines and evaluation;
- (g) any other matter that may be agreed between the Society and the Minister of Health and Wellness or the Minister's agents.

(2) For greater certainty,

- (a) nothing in this Section requires the Crown in right of the Province to enter into any agreement with the Society; and
- (b) this Section does not apply with respect to duly qualified medical practitioners who are employed by the Department of Health and Wellness, including medical officers of health, medical consultants and advisers to the Department. 1995-96, c. 12, s. 7.

Membership

8 (1) A person who is a medical practitioner as defined by the *Medical Act*, or such other person who may be admitted by the Society, is a member of the Society and has full voting rights and benefits therein upon payment of the prescribed fees.

(2) Subject to the bylaws, the Society may admit persons to different classes of membership in the Society.

(3) The Society may withdraw, suspend, withhold or terminate any right, privilege or benefit to which a member of the Society is entitled, including the right to receive any payment owed by the Society to the member, if the member fails to pay the prescribed fees, until all such fees are paid by the member to the Society. 1995-96, c. 12, s. 8; 2012, c. 26, s. 5.

Existing agreement

9 The Agreement of May 29, 1992, and the Agreement of March 13, 1995, between the Society and the Crown in right of the Province are ratified, confirmed and deemed to have been executed under the authority granted pursuant to this Act. 1995-96, c. 12, s. 9.

Board of Directors

10 The persons who at the coming into effect of this Act are the officers and directors of the Society continue to hold office until new officers and directors are elected under this Act. 1995-96, c. 12, s. 10.

Annual general meeting

11 There must be an annual general meeting of the Society at such time and place as the Board of Directors may determine. 1995-96, c. 12, s. 11.

Bylaws

12 (1) The Society 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 Society where

(a) notice of the bylaw, amendment or revocation is given in writing to every member eligible to vote at least one month prior to the vote; and

(b) the procedures prescribed in bylaws are complied with.
1995-96, c. 12, s. 12.

Immunity from liability

13 No action for damages lies against the Society, an officer or employee of the Society, or a member of the Board of Directors or a committee appointed by the Board for

(a) any act or proceedings taken or entered into in good faith under this Act; or

(b) any order made or enforced in good faith under this Act. 1995-96, c. 12, s. 13.

CHAPTER D-16

An Act to Prevent the Continuation of Domestic Violence

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Short Title

1 This Act may be cited as the *Domestic Violence Intervention Act*.
2001, c. 29, s. 1.

Interpretation

2 In this Act,
“court” means the Supreme Court of Nova Scotia;
“domestic violence” means any of the acts or omissions described in subsection 5(1);
“justice” means a justice of the peace who has been designated for the purpose of this Act, a judge of the Family Court or a judge of the Provincial Court;
“Minister” means the Minister of Justice;
“residence” includes a residence that a victim shares with a respondent or has vacated due to domestic violence;
“respondent” means any person against whom an emergency protection order is sought or made;

“victim” means a person who is at least 16 years of age and has been subjected to domestic violence by another person who

(a) has cohabited or is cohabiting with the victim in a conjugal relationship; or

(b) is, with the victim, the parent of one or more children, regardless of their marital status with respect to each other or whether they have lived together at any time;

“weapon” means a weapon as defined in the *Criminal Code* (Canada). 2001, c. 29, s. 2; 2015, c. 6, s. 6.

Supervision and management of Act

3 The Minister has the general supervision and management of this Act. 2001, c. 29, s. 3.

Designation of justices of the peace

4 The Chief Judge of the Provincial Court of Nova Scotia shall designate justices of the peace for the purpose of this Act. 2001, c. 29, s. 4.

Occurrence of domestic violence

5 (1) For the purpose of this Act, domestic violence has occurred when any of the following acts or omissions has been committed against a victim:

(a) an assault that consists of the intentional application of force that causes the victim to fear for the victim’s safety, but does not include any act committed in self-defence;

(b) an act or omission or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;

(c) forced physical confinement;

(d) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation;

(e) a series of acts that collectively causes the victim to fear for the victim’s safety, including following, contacting, communicating with, observing or recording any person.

(2) Domestic violence may be found to have occurred for the purpose of this Act whether or not, in respect of any act or omission described in subsection (1), a charge has been laid or dismissed or withdrawn or a conviction has been or could be obtained. 2001, c. 29, s. 5.

Emergency intervention order

6 (1) Upon application to a justice, the justice may make an emergency protection order to ensure the immediate protection of a victim of domestic violence if the justice determines that

(a) domestic violence has occurred; and

(b) the order should be made forthwith.

(2) In determining whether to make an order pursuant to this Section, the justice shall consider, but is not limited to considering,

- (a) the nature of the domestic violence;
- (b) the history of domestic violence by the respondent towards the victim;
- (c) the existence of immediate danger to persons or property; and
- (d) the best interests of the victim and any child of, or in the care and custody of, the victim.

(3) In determining whether to make an order pursuant to this Section, the standard of proof is to be on a balance of probabilities. 2001, c. 29, s. 6; 2015, c. 6, s. 7.

Applicants

⁷ (1) An application for an emergency protection order may be made by

- (a) a victim;
- (b) a member of a class of persons designated in the regulations on behalf of the victim and with the victim's consent; or
- (c) any other person on behalf of the victim and with leave of the justice.

(2) An application for an emergency protection order is to be in the form and to be made in the manner prescribed by the regulations. 2001, c. 29, s. 7; 2015, c. 6, s. 8.

Scope of emergency protection order

⁸ (1) An emergency protection order may do any or all of the following:

- (a) grant the victim or other family members exclusive occupation of the victim's residence for a defined period regardless of any legal rights of possession or ownership;
- (b) direct a peace officer to remove the respondent from the victim's residence immediately or within a specified time;
- (c) direct a peace officer to accompany a specified person, within a specified time, to the victim's residence to supervise the removal of personal belongings;
- (d) restrain the respondent from directly or indirectly communicating with the victim or any other specified person;
- (e) require the respondent to stay away from any place identified specifically or generally in the order;
- (f) grant temporary possession of or control over specified personal property, including an automobile, cheque book, bank card, health services card or supplementary medical insurance cards, identification documents, keys, utility or household accounts or other personal effects;

- (g) restrain the respondent from taking, converting, damaging or otherwise dealing with property;
- (h) restrain the respondent from committing any further acts of domestic violence against the victim;
- (i) prohibit the publication of the name and address of the victim or any other information that may identify the victim;
- (j) require a peace officer to seize
 - (i) any weapons, and
 - (ii) any documents that authorize the respondent to own, possess or control a weapon referred to in subclause (i);
- (k) award temporary care and custody of a child of the victim to the victim or to another person;
- (l) do any other thing that the justice considers necessary to ensure the immediate protection of the victim or any child.

(2) A justice may make an emergency protection order for a period not exceeding 30 days.

(3) A provision of an emergency protection order made pursuant to clause (1)(j) ceases to be in force upon an order or final determination with respect to the respondent's ownership, possession or control of weapons being made under the *Criminal Code* (Canada) or the *Firearms Act* (Canada).

(4) An emergency protection order prevails over any order respecting custody of or access to a child including an order made under the *Divorce Act* (Canada) or the *Parenting and Support Act* but does not prevail over any order made under the *Children and Family Services Act* respecting custody of or access to a child. 2001, c. 29, s. 8; 2015, c. 6, s. 9; 2015, c. 44, s. 45.

Notice to respondent needed for order to bind

9 An emergency protection order is effective upon being made but does not bind a respondent until the respondent has notice of the order. 2001, c. 29, s. 9.

Notice of emergency protection order

10 (1) Notice of an emergency protection order must be given in the prescribed form and manner.

- (2) Where, on application to a justice, it appears that
 - (a) attempts at service or substituted service of the notice on the respondent have failed; and
 - (b) the respondent is evading service,

the justice may, by order, dispense with service of the notice and the respondent is thereby deemed to have notice of the emergency protection order. 2001, c. 29, s. 10; 2015, c. 6, s. 10.

Copy to court for confirmation, variance or hearing

11 (1) As soon as practicable after making an emergency protection order and in any event within two working days, the justice shall forward a copy of the order and all supporting documentation, including a transcript or tape recording of the proceedings, to the court in the prescribed manner.

(2) Following receipt of the emergency protection order and all supporting documentation by the court and within such period of time as prescribed by the regulations, a judge shall review the order and, if satisfied that there was sufficient evidence before the justice to support the making of the order,

(a) confirm the order; or

(b) vary the order

and the order as confirmed or varied is deemed to be an order of the court.

(3) Where, on reviewing the emergency protection order, the judge is not satisfied that there was sufficient evidence before the justice to support the making of the order, the judge shall direct a hearing of the matter in whole or in part before a judge.

(4) Where a judge directs that a matter be heard,

(a) the clerk of the court shall issue a summons in the prescribed form requiring the respondent to appear before the court; and

(b) the clerk of the court shall give notice of the hearing to the victim and the victim is entitled to attend and may fully participate in the hearing personally or by counsel.

(5) The evidence that was before the justice is considered as evidence at the hearing.

(6) Where the respondent fails to attend the hearing, the emergency protection order may be confirmed in the respondent's absence.

(7) At the hearing, the judge may confirm, terminate or vary the emergency protection order. 2001, c. 29, s. 11; 2002, c. 30, s. 2; 2015, c. 6, s. 11.

Application to court

12 (1) Notwithstanding subsection 11(2) and at any time after a respondent has been served with an emergency protection order, the court, on application by a victim or respondent named in the order, may

(a) make changes to, or terminate, any provision of the order;

(b) decrease or extend the period for which any provision in the order is to remain in force; or

(c) revoke the order.

(2) On an application pursuant to subsection (1), the evidence before a justice on previous applications pursuant to this Act is considered evidence.

(3) Unless otherwise ordered by the court, an emergency protection order continues in effect and is not stayed by a direction for a hearing pursuant to subsection 11(3) or an application pursuant to subsection (1).

(4) On an application pursuant to clause (1)(b) the judge may extend the emergency protection order for a period not to exceed 30 days from the expiration date of the original order. 2001, c. 29, s. 12; 2015, c. 6, s. 12.

Confidentiality

13 (1) The clerk of the court and the justice shall keep the victim's address confidential.

(2) The court may order that the hearing or any part of the hearing be held in private.

(3) At the request of the victim, the court may order that the court file be accessible only to the victim and respondent, and their counsel, if the court believes that the public access to the file

(a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim; or

(b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim.

(4) At the request of the victim, the court may make an order prohibiting the publication of any report of a hearing or any part of a hearing if the court believes that the publication of the report

(a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim; or

(b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim. 2001, c. 29, s. 13; 2015, c. 6, s. 13.

Property ownership not affected by order

14 (1) An emergency protection order does not in any manner affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and a victim who is not a party to the lease is granted exclusive occupation of that residence, no landlord shall evict the victim solely on the basis that the victim is not a party to the lease.

(3) On the request of a victim referred to in subsection (2), the landlord shall advise the victim of the status of the lease and serve the victim with notice of a claim against the respondent arising from the lease and the victim, at the victim's option, may assume the responsibilities of the respondent pursuant to the lease. 2001, c. 29, s. 14.

Existing right of action not diminished

15 An application for an emergency protection order under this Act is in addition to and does not diminish any existing right of action for the applicant or for any other victim of domestic violence. 2001, c. 29, s. 15.

Duties under Children and Family Services Act not affected

16 Nothing in this Act affects a duty set out in Section 25 or 26 of the *Children and Family Services Act*. 2001, c. 29, s. 16.

Limitation of liability

17 No action or other proceeding may be instituted against a peace officer or clerk of the court or any other person for any act done in good faith or for any alleged neglect or default in good faith, in the execution or intended execution of

- (a) the person's duty under this Act; or
- (b) the person's duty to carry out the provisions of an order made under this Act. 2001, c. 29, s. 17.

Offences and penalties

18 Any person who

- (a) fails to comply with the provisions of an order made pursuant to this Act;
- (b) falsely and maliciously makes an application under this Act;
- (c) obstructs any person who is performing any function authorized by an order; or
- (d) publishes any information in contravention of an order,

is guilty of an offence and upon summary conviction is liable, in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both, and, in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both. 2001, c. 29, s. 18.

Arrest without warrant

19 A peace officer may arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an emergency protection order. 2001, c. 29, s. 19.

Contempt of or resistance to court

20 (1) In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine may not exceed \$5,000 nor may the term of imprisonment exceed 90 days.

(2) An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order. 2001, c. 29, s. 20.

Regulations

- 21** **(1)** The Governor in Council may make regulations
- (a) prescribing classes of persons who may apply for an emergency protection order on behalf of a victim with the victim's consent;
 - (b) prescribing the form and manner of an application for an emergency protection order;
 - (c) prescribing the form and manner of providing any notice or summons required to be provided pursuant to this Act, including prescribing substituted service and a rebuttable presumption of service;
 - (d) prescribing the manner in which a justice is to forward a copy of an emergency protection order and all supporting documentation to the court;
 - (e) prescribing the period of time within which a judge must review an emergency protection order and confirm or vary the order;
 - (f) prescribing forms for the purpose of this Act;
 - (g) prescribing the procedures to be followed for applications and hearings pursuant to this Act;
 - (h) defining any word or expression used in this Act but not defined in this Act;
 - (i) 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) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2001, c. 29, s. 21; 2015, c. 6, s. 14.

CHAPTER D-17

An Act Respecting Drug Dependency

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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 *Drug Dependency Act*. R.S., c. 195, s. 1.

Interpretation

- 2** In this Act,
- “Board” means the Minister’s Substance Abuse Advisory Board;
- “Department” means the Department of Health and Wellness;
- “dependant” or “drug dependant” means an individual who has a dependency;
- “dependency” or “drug dependency” means a state of psychological or physical reliance, or both, on one or more chemical substances that alter mood, perception, consciousness or behaviour to the apparent detriment of the person or society, or both, as a result of the periodic or continuous use or administration of one or more chemical substances and includes the use of nicotine or alcohol, or both;
- “former Commission” means the Nova Scotia Commission on Drug Dependency established pursuant to Chapter 133 of the Revised Statutes, 1989, the *Drug Dependency Act*.
- “Minister” means the Minister of Health and Wellness. 1992, c. 19, s. 6; 1994-95, c. 7, s. 24.

Advisory Board

- 3 (1)** There may be established within the Department an advisory board, to be known as the Minister’s Substance Abuse Advisory Board, composed of not fewer than six members appointed by the Governor in Council, one of whom shall be designated Chair and one of whom shall be designated Vice-chair.

(2) Each member of the Board holds office for three years or for such lesser term as is prescribed by the member's appointment and, in any case, is eligible for reappointment.

(3) A majority of the members of the Board constitute a quorum.

(4) Each member of the Board must be reimbursed for reasonable travelling and other expenses necessarily incurred by the member in connection with the work of the Board, and shall be paid such remuneration as the Governor in Council determines. 1992, c. 19, s. 6.

Powers of Minister

4 (1) The Minister may conduct, direct and promote programs dealing with or related to drug dependency.

(2) Programs conducted, directed or promoted by the Minister dealing with or related to drug dependency may include

- (a) the treatment of drug dependants;
- (b) the rehabilitation of drug dependants;
- (c) the experimentation in methods of education, prevention, treatment and rehabilitation regarding drug dependency;
- (d) carrying on relevant research in drug dependency;
- (e) the prevention of drug dependency;
- (f) education respecting the causes and effects of drug dependency;
- (g) the dissemination of information respecting the recognition, prevention and treatment of drug dependency; and
- (h) human growth, development and renewal as it relates to drug dependency.

(3) The Minister may

- (a) establish, conduct, manage and operate hospitals, clinics and centres for the observation and treatment of, and for consultation with, drug dependants; and
- (b) enter into agreements or other arrangements
 - (i) with hospitals and other institutions for the accommodation, care and treatment of drug dependants,
 - (ii) with universities, hospitals and other institutions for the experimentation in methods of treatment of drug dependants,
 - (iii) with citizens' groups, voluntary organizations, municipalities and other government departments with respect to the treatment and prevention of drug dependency, and
 - (iv) with organizations, institutions, the media and other interested groups for the dissemination of information

respecting the causes, recognition, prevention and treatment of drug dependency. 1992, c. 19, s. 6.

Duties of Board

5 The Board shall

(a) advise the Minister with respect to the conduct, direction, policy, legislation and promotion of programs dealing with or related to drug dependency;

(b) advise the Minister on the improvement of Government activities and services relating to drug dependency;

(c) advise the Minister in the coordination of activities and services relating to drug dependency to avoid duplication of such activities and services;

(d) advise the Minister on new kinds of activities and services relating to drug dependency to be operated by or under the departments or agencies of Government;

(e) perform the duties assigned to the Board by the Governor in Council or the Minister. 1992, c. 19, s. 6.

Regional advisory boards

6 (1) The Minister may appoint one or more regional advisory boards to assist the Board.

(2) A regional advisory board appointed pursuant to subsection (1) shall function in the area of the Province designated by the Minister for that regional board. 1992, c. 19, s. 6.

Confidentiality of records

7 (1) In this Section, “records” includes the records of the former Commission and the records of the Minister.

(2) The records concerning a person are confidential and may not be made available to any person or agency except with the consent or authorization of the person concerned.

(3) Where a person is not capable of giving consent in respect of the person’s records, consent may be given by the guardian of the person or, where there is no guardian, by the spouse or common-law partner of such person if the spouse or common-law partner is cohabiting with the person in a conjugal relationship or, where there is no spouse or common-law partner cohabiting with the person in a conjugal relationship, by the next of kin of that person or, where there is no next of kin, by the Public Trustee.

(4) The Minister may refuse to make available information from the records of a person if the Minister has reasonable grounds to believe it would not be in the best interest of the person to make available that information or if the information could otherwise be refused pursuant to the *Freedom of Information and Protection of Privacy Act*.

(5) Where the Minister refuses to make available the records of a person upon a request by that person or upon authorization of that person or agency or upon authorization pursuant to subsection (3), the person requesting the records or authorized to receive the same may make application to a judge of the Supreme Court of Nova Scotia and the judge shall, in the judge's discretion, determine whether the records should be made available and to what extent.

(6) Nothing in this Section prevents the records concerning a person from being made available, disclosed or provided

(a) to a person on the staff of the Department for the purpose of this Act;

(b) to the qualified medical practitioner of the person concerned designated by the person as the person's physician;

(c) to a person authorized by court order or subpoena;

(d) to a person or agency otherwise authorized by law;

(e) pursuant to the *Freedom of Information and Protection of Privacy Act*;

(f) to a hospital as defined by the *Hospitals Act*. 1992, c. 16, s. 5; 1992, c. 19, s. 6; 2000, c. 29, s. 14; 2001, c. 5, s. 3.

Substituted reference

8 A reference in any Act of the Legislature or in any rule, order, regulation, bylaw, ordinance or proceeding or in any document whatsoever to the Nova Scotia Commission on Drug Dependency, is to be, as regards any subsequent transaction, matter or thing, held and construed to be a reference to the Minister. 1992, c. 19, s. 6.

Powers of Minister respecting trusts

9 The Minister may administer grants, gifts or bequests accepted and administered by the former Commission and the Minister may execute any instrument required or necessary for carrying into effect the terms, conditions or trusts prescribed by the grantor, donor or testator and the Minister is bound by such terms, conditions or trusts. 1992, c. 19, s. 6.
