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2023**

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2023

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CHAPTER O-1

An Act to Regulate the Searching for Treasure on Oak Island in Lunenburg County

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Short title

- 1** This Act may be cited as the *Oak Island Treasure Act*. 2010, c. 39, s. 1.

Interpretation

- 2** In this Act,
- “licence” means a licence issued pursuant to this Act;
- “Minister” means the Minister of Natural Resources and Renewables;
- “Oak Island” means Oak Island in Mahone Bay near Western Shore, in the County of Lunenburg, above the ordinary high water mark but does not include the causeway leading to the island;
- “treasure” means precious stones or metals in a state other than their natural state. 2010, c. 39, s. 2.

Supervision and management of Act

- 3** **(1)** The Minister has the general supervision and management of this Act.
- (2)** The Minister may designate a person to act on behalf of the Minister. 2010, c. 39, s. 3.

Issuance of licence

- 4** **(1)** The Minister may issue a licence to any person granting to that person the right on all or any part of Oak Island, as specified in the licence, to

search for treasure and to recover and retain the same upon the payment to the Minister of a royalty at such rate as the Minister may prescribe.

(2) The Minister may not grant a new licence for any part of Oak Island while a licence is in effect for that part, except to the current holder of a licence for that part.

(3) The Minister may prescribe the terms and conditions of a licence. 2010, c. 39, s. 4.

Renewal of licence

5 The Minister may renew a licence before its expiry, subject to such terms and conditions as the Minister may determine. 2010, c. 39, s. 5.

Revocation of licence

6 Upon being satisfied that there has been breach of or failure to perform any terms or conditions of a licence by the holder of the licence, the Minister may revoke the licence. 2010, c. 39, s. 6.

Transfer or assignment of licence

7 No licence may be transferred or assigned without the written permission of the Minister. 2010, c. 39, s. 7.

Duty to report

8 Where any person, whether or not the holder of a licence issued under this Act, discovers or recovers any treasure on Oak Island, that person shall immediately make a report in writing, verified upon oath, to the Minister setting out full particulars of

- (a) the treasure discovered or recovered;
- (b) the location of the discovery; and
- (c) the place at which the treasure may be inspected by the Minister or by some person on the Minister's behalf. 2010, c. 39, s. 8.

Retention of treasure upon payment of royalty

9 Upon payment of a royalty at the rate prescribed by a licence, the Minister may confirm to the holder of the licence the right to retain for the licence holder's own use and benefit any treasure discovered and recovered by the holder of the licence within the area covered by the licence. 2010, c. 39, s. 9.

Entry and search upon Crown lands

10 The holder of a licence may, in accordance with the terms and conditions of the licence, enter and search upon Crown lands within the area covered by the licence. 2010, c. 39, s. 10.

Condition before entry and search upon private lands

11 The holder of a licence shall not enter or search upon private lands except with the consent of the owner, tenant or occupant of the lands. 2010, c. 39, s. 11.

Regulations

- 12** **(1)** The Governor in Council may make regulations
- (a) defining any word or expression used but not defined in this Act;
 - (b) further defining a word or expression defined in this Act;
 - (c) 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*. 2010, c. 39, s. 12.

CHAPTER O-2

An Act Respecting Occupational Health and Safety

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Short title

1 This Act may be cited as the *Occupational Health and Safety Act*.
1996, c. 7, s. 1.

Internal Responsibility System

2 The foundation of this Act is the Internal Responsibility System,
which

- (a) is based on the principle that
 - (i) employers, contractors, constructors, employees and self-employed persons at a workplace, and
 - (ii) the owner of a workplace, a supplier of goods or provider of an occupational health or safety service to a workplace or an architect or professional engineer, all of whom can affect the health and safety of persons at the workplace,

share the responsibility for the health and safety of persons at the workplace;

- (b) assumes that the primary responsibility for creating and maintaining a safe and healthy workplace should be that of each of these parties, to the extent of each party's authority and ability to do so;

(c) includes a framework for participation, transfer of information and refusal of unsafe work, all of which are necessary for the parties to carry out their responsibilities pursuant to this Act and the regulations; and

(d) is supplemented by the role of the Occupational Health and Safety Division of the Department of Labour, Skills and Immigration, which is not to assume responsibility for creating and maintaining safe and healthy workplaces, but is to establish and clarify the responsibilities of the parties under the law, to support them in carrying out their responsibilities and to intervene appropriately when those responsibilities are not carried out. 1996, c. 7, s. 2; 2010, c. 66, s. 1; 2011, c. 24, s. 1.

Interpretation

3 In this Act,

“aggrieved person” means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision;

“analyst” means a person appointed as an analyst by the Minister under this Act;

“Board” means the Labour Board established by the *Labour Board Act*;

“committee” means a joint occupational health and safety committee established under this Act;

“compliance notice” means a response, in writing, to an order of an officer, describing the extent to which the person against whom the order was made has complied with each item identified in the order;

“constructor” means a person who contracts for work on a project or who undertakes work on a project personally;

“contractor” means a person who contracts for work to be performed at the premises of the person contracting to have the work performed, but does not include a dependent contractor or a constructor;

“contracts for work” includes contracting to perform work and contracting to have work performed;

“Council” means the Occupational Health and Safety Advisory Council continued by this Act;

“dependent contractor” means a person, whether or not employed under a contract of employment and whether or not furnishing the person’s own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another on such terms and conditions that the person is

- (a) in a position of economic dependence upon the other;
- (b) under an obligation to perform duties mainly for the other; and
- (c) in a relationship with the other more closely resembling that of an employee than an independent contractor;

“Deputy Minister of Labour, Skills and Immigration” includes a person designated by the Deputy Minister of Labour, Skills and Immigration to act in the stead of the Deputy Minister;

“Director” means the Executive Director of Occupational Health and Safety or any person designated by the Executive Director under this Act to act on behalf of the Executive Director;

“Director of Labour Standards” means the Director of Labour Standards under the *Labour Standards Code*;

“Division” means the Occupational Health and Safety Division of the Department of Labour, Skills and Immigration;

“employee” means a person who is employed to do work, and includes a dependent contractor;

“employer” means a person who employs one or more employees, or contracts for the services of one or more employees, and includes a constructor, contractor or subcontractor;

“former Act” means Chapter 320 of the Revised Statutes, 1989, the *Occupational Health and Safety Act*;

“Minister” means the Minister of Labour, Skills and Immigration;

“occupation” means any employment, business, calling or pursuit;

“officer” means an occupational health and safety officer appointed under this Act, and includes the Director;

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessee or occupier of lands or premises used as a workplace and a person who acts for, or on behalf of, an owner as an agent or delegate;

“police officer” means

(a) a member of the Royal Canadian Mounted Police; or

(b) a member or chief officer of a police force appointed pursuant to the *Police Act*;

“policy” means an occupational health and safety policy made pursuant to this Act;

“practicable” means possible, given current knowledge, technology and invention;

“program” means an occupational health and safety program required under this Act, unless the context otherwise requires;

“project” means a construction project, and includes

(a) the construction, erection, excavation, renovation, repair, alteration or demolition of any structure, building, tunnel or work and the preparatory work of land clearing or earth moving; and

(b) work of any nature or kind designated by the Director as a project;

“reasonably practicable” means practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty;

“regularly employed” includes seasonal employment with a predictably recurring period of employment that exceeds four weeks, unless otherwise established by the regulations or ordered by an officer;

“repeatedly” means occurring more than once within the preceding three year period;

“representative” means a health and safety representative selected pursuant to this Act;

“self-employed person” means a person who is engaged in an occupation on that person’s own behalf, and includes a person or persons operating a sole proprietorship, but does not include a dependent contractor;

“serious injury” means an injury that endangers life or causes permanent injury;

“supplier” means a person who manufactures, supplies, sells, leases, distributes or installs any tool, equipment, machine or device or any biological, chemical or physical agent to be used at or near a workplace;

“union” includes a trade union as defined in the *Trade Union Act* that has the status of bargaining agent under that Act in respect of any bargaining unit at a workplace, and includes an organization representing employees if the organization has exclusive bargaining rights under any other Act in respect of the employees;

“workplace” means any place where an employee or a self-employed person is or is likely to be engaged in any occupation, and includes any vehicle or mobile equipment used or likely to be used by an employee or a self-employed person in an occupation. 1996, c. 7, s. 3; 2000, c. 28, s. 86; 2010, c. 37, s. 117; 2010, c. 66, s. 2; 2011, c. 24, s. 2; 2016, c. 14, s. 1.

APPLICATION AND ADMINISTRATION

Application of Act

- 4** (1) This Act binds the Crown in right of the Province.
- (2) This Act applies to
- (a) every agency of the Government; and
 - (b) all matters within the legislative jurisdiction of the Province.
- (3) To the extent that the Crown in right of Canada submits, this Act binds the Crown in right of Canada, every agency of the Government of Canada and every other person whose workplace health and safety standards are ordinarily within the legislative jurisdiction of the Parliament of Canada. 1996, c. 7, s. 4.

Conflict with other enactments

- 5** Notwithstanding any general or special Act, where there is a conflict between this Act and the regulations and any other enactment, this Act and the regulations prevail. 1996, c. 7, s. 5.

Supervision and management of Act

6 The Minister has the general supervision and management of this Act and the regulations. 1996, c. 7, s. 6.

Research, programs and activities

7 The Minister may undertake research, programs and activities to promote occupational health and safety and may undertake such programs in co-operation with the Government of Canada or of any other province of Canada or with any person or organization undertaking similar programs. 1996, c. 7, s. 7.

Continuation of Division

8 The Occupational Health and Safety Division of the Department of Labour, Skills and Immigration, established by the former Act, is continued. 1996, c. 7, s. 8; 2010, c. 66, s. 3; 2011, c. 24, s. 3.

Functions of Division

9 The Division shall

(a) be concerned with occupational health and safety and the maintenance of reasonable standards for the protection of the health and safety of employees and self-employed persons;

(b) either alone or in conjunction with the Workers' Compensation Board, the Department of Health and Wellness or other departments and agencies, prepare and maintain statistics and information relating to employees and self-employed persons;

(c) provide assistance to persons concerned with occupational health and safety and provide services to assist joint occupational health and safety committees, health and safety representatives, employers, employees and self-employed persons in maintaining reasonable standards for the protection of the health and safety of employees and self-employed persons;

(d) promote or conduct studies and research projects in the field of occupational health and safety;

(e) encourage and conduct educational programs to promote occupational health and safety;

(f) submit annually to the Advisory Council a report on a review of this Act; and

(g) perform such other functions as the Minister or the Governor in Council may direct. 1996, c. 7, s. 9.

Payment from Accident Fund

10 Part of the costs of the Division under this Act and the regulations and costs of education and research related to occupational health and safety must be paid out of the Accident Fund by the Workers' Compensation Board as determined by the Governor in Council. 1996, c. 7, s. 10.

Director and other personnel

11 (1) A Director of Occupational Health and Safety and such officers and employees as are necessary for the administration and enforcement of

this Act and the regulations must be appointed in accordance with the *Civil Service Act*.

(2) Notwithstanding subsection (1), the Minister may appoint officers to administer and enforce this Act and the regulations who are employees of

- (a) the Government of Canada or an agency thereof;
- (b) the government of another province of Canada or an agency thereof;
- (c) another department or an agency of the Government;
- (d) a municipality within the meaning of the *Municipal Government Act* or an agency thereof; or
- (e) an agency created by any combination of the governments of this Province or other provinces of Canada or the Government of Canada,

and who work in the field of occupational health and safety.

(3) The Director may, in writing, delegate to any person any of the Director's powers, duties or functions pursuant to this Act or the regulations and shall, when so delegating, specify the powers, duties or functions to be exercised by the person to whom the Director delegates.

(4) Notwithstanding anything contained in this Act, an officer appointed pursuant to subsection (2) may not exercise the powers, duties and functions the officer has under this Act in relation to the agency, department or municipality, as the case may be, that employs the officer. 1996, c. 7, s. 11; 2000, c. 28, s. 87; 2010, c. 66, s. 4; 2013, c. 41, s. 1.

Designation of inspectors

12 The Minister may designate certain officers as inspectors or chief inspectors for the purpose of this Act or any other Act or part thereof that is administered by the Division. 1996, c. 7, s. 12.

DUTIES AND PRECAUTIONS

Employers' precautions and duties

13 (1) Every employer shall take every precaution that is reasonable in the circumstances to

- (a) ensure the health and safety of persons at or near the workplace;
- (b) provide and maintain equipment, machines, materials or things that are properly equipped with safety devices;
- (c) provide such information, instruction, training, supervision and facilities as are necessary to the health or safety of the employees;
- (d) ensure that the employees, and particularly the supervisors, are made familiar with any health or safety hazards that may be met by them at the workplace;

(e) ensure that the employees are made familiar with the proper use of all devices, equipment and clothing required for their protection; and

(f) conduct the employer's undertaking so that employees are not exposed to health or safety hazards as a result of the undertaking.

(2) Every employer shall

(a) consult and co-operate with the joint occupational health and safety committee, if such a committee has been established at the workplace, or the representative, if one has been selected at the workplace;

(b) co-operate with any person performing a duty imposed or exercising a power conferred by this Act or the regulations;

(c) provide such additional training of committee members or the representative as may be prescribed by the regulations;

(d) comply with this Act and the regulations and ensure that employees at the workplace comply with this Act and the regulations; and

(e) where an occupational health and safety policy or occupational health and safety program is required under this Act or the regulations, establish the policy or program.

(3) The employer at a subsea coal mine shall provide such additional resources or information for the committee as may be prescribed by the regulations. 1996, c. 7, s. 13; 2007, c. 14, s. 7; 2010, c. 66, s. 5.

Precautions to be taken by contractors

14 Every contractor shall take every precaution that is reasonable in the circumstances to ensure

(a) the health and safety of persons at or near a workplace;

(b) that the activities of the employers and self-employed persons at the workplace are coordinated;

(c) communication between the employers and self-employed persons at the workplace of information necessary to the health and safety of persons at the workplace;

(d) that the measures and procedures prescribed under this Act and the regulations are carried out at the workplace; and

(e) that every employee, self-employed person and employer performing work at the workplace complies with this Act and the regulations. 1996, c. 7, s. 14.

Precautions to be taken by constructors

15 Every constructor shall take every precaution that is reasonable in the circumstances to ensure

(a) the health and safety of persons at or near a project;

- (b) that the activities of the employers and self-employed persons at the project are coordinated;
- (c) communication between the employers and self-employed persons at the project of information necessary to the health and safety of persons at the project;
- (d) communication with any committee or representative required for the project pursuant to this Act or the regulations;
- (e) that the measures and procedures prescribed under this Act and the regulations are carried out on the project; and
- (f) that every employee, self-employed person and employer performing work in respect of the project complies with this Act and the regulations. 1996, c. 7, s. 15.

Precautions to be taken by suppliers

16 Every supplier shall take every precaution that is reasonable in the circumstances to

- (a) ensure that any device, equipment, machine, material or thing supplied by the supplier is in safe condition, and in compliance with this Act and the regulations when it is supplied;
- (b) where it is the supplier's responsibility under a leasing agreement to maintain it, maintain any device, equipment, machine, material or thing in safe condition and in compliance with this Act and the regulations; and
- (c) ensure that any biological, chemical or physical agent supplied by the supplier is labelled in accordance with the applicable federal and Provincial regulations. 1996, c. 7, s. 16.

Employees' precautions and duties

17 (1) Every employee, while at work, shall

- (a) take every reasonable precaution in the circumstances to protect the employee's own health and safety and that of other persons at or near the workplace;
- (b) co-operate with the employer and with the employee's fellow employees to protect the employee's own health and safety and that of other persons at or near the workplace;
- (c) take every reasonable precaution in the circumstances to ensure that protective devices, equipment or clothing required by the employer, this Act or the regulations are used or worn;
- (d) consult and co-operate with the joint occupational health and safety committee, if such a committee has been established at the workplace, or the health and safety representative, if one has been selected at the workplace;
- (e) co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and
- (f) comply with this Act and the regulations.

(2) Where an employee believes that any condition, device, equipment, machine, material or thing or any aspect of the workplace is or may be dangerous to the employee's health or safety or that of any other person at the workplace, the employee shall

- (a) immediately report it to a supervisor;
- (b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and
- (c) where the matter is not remedied to the employee's satisfaction after the employee reports in accordance with clauses (a) and (b), report it to the Division. 1996, c. 7, s. 17.

Self-employed persons' precautions and duties

18 Every self-employed person shall

- (a) take every reasonable precaution in the circumstances to protect the self-employed person's own health and safety and that of other persons who may be affected by the self-employed person's undertaking;
- (b) co-operate with any employer, joint occupational health and safety committee or representative that may be found at a place at which the self-employed person conducts an undertaking, to protect the self-employed person's own health and safety and that of other persons who may be affected by the undertaking;
- (c) co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and
- (d) comply with this Act and the regulations. 1996, c. 7, s. 18.

Owners' precautions and duties

19 Every owner shall

- (a) take every precaution that is reasonable in the circumstances to provide and maintain the owner's land or premises being or to be used as a workplace
 - (i) in a manner that ensures the health and safety of persons at or near the workplace, and
 - (ii) in compliance with this Act and the regulations; and
- (b) give to the employer at the workplace the information that is
 - (i) known to the owner or that the owner could reasonably be expected to know, and
 - (ii) necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace. 1996, c. 7, s. 19.

Precautions to be taken by providers of service

20 Every person or body who, for gain, is a provider of an occupational health or safety service shall take every precaution that is reasonable in the circumstances to

- (a) ensure that no person at a workplace is endangered as a result of the provider's activity; and

- (b) ensure, where the service involves providing information, that the information provided, at the time that it is provided, is accurate and sufficiently complete to enable the recipient to make a competent judgement on the basis of the information. 1996, c. 7, s. 20.

Precautions to be taken by architects and engineers

21 (1) An architect, as defined in the *Architects Act*, who gives advice or affixes the architect's seal to documents or a professional engineer, as defined in the *Engineering Profession Act*, who gives advice or stamps documents shall take every precaution that is reasonable in the circumstances to ensure that a person who is likely to rely on the advice, seal or stamp will not be in contravention of this Act or the regulations as a result of such reliance.

(2) Where

(a) an architect, as defined in the *Architects Act*, gives advice or affixes the architect's seal to documents; or

(b) a professional engineer, as defined in the *Engineering Profession Act*, gives advice or stamps documents,

negligently or incompetently and a person at a workplace is endangered thereby, the architect or professional engineer contravenes this Act. 1996, c. 7, s. 21.

Required instruction in principles

22 The curricula of

(a) an occupational-training program within the meaning of the *Private Career Colleges Act*;

(b) a program of study within the meaning of the *Community Colleges Act*; and

(c) any other educational institution or class of educational institution designated pursuant to the regulations,

must include instruction in the principles of occupational health and safety contained in this Act. 1996, c. 7, s. 22; 2010, c. 66, s. 6.

Nature and extent of duties and requirements

23 (1) A specific duty or requirement imposed by this Act or the regulations does not limit the generality of any other duty or requirement imposed by this Act or the regulations.

(2) Where a provision of this Act or the regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement.

(3) Notwithstanding subsection (2), but subject to subsection (5), where the person with the greatest degree of control fails to comply with a duty or requirement referred to in subsection (2), the other person on whom the duty or requirement lies shall, if possible, comply with the provision.

(4) Where the person with the greatest degree of control complies with a provision described in subsection (2), the other persons are relieved of the obligation to comply with the provision only

(a) for the time during which the person with the greatest degree of control is in compliance with the provision;

(b) where simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and

(c) where the health and safety of persons at the workplace is not put at risk by compliance by only one person.

(5) Where the person with the greatest degree of control fails to comply with a provision described in subsection (2) but one of the other persons on whom the duty or requirement is imposed complies with the provision, the other persons, if any, to whom the provision applies are relieved of the obligation to comply with the provision in the circumstances set out in clauses (4)(a) to (c) with the necessary modifications. 1996, c. 7, s. 23.

OCCUPATIONAL HEALTH AND SAFETY ADVISORY COUNCIL

Continuation of Council

24 (1) The Occupational Health and Safety Advisory Council, established by the former Act, is continued.

(2) The Minister shall appoint to the Council persons who have a particular knowledge and experience relating to the protection and promotion of occupational health and safety generally. 1996, c. 7, s. 24.

Membership of Council and subcommittees

25 (1) The membership of the Council must include equal representation from employers and employees.

(2) The Director, the Chair of the Workers' Compensation Board, or a person designated to represent the Chair, and a representative of any group or groups selected by the Minister are members of the Council.

(3) A member of the Council holds office during the term prescribed in that person's appointment and may be reappointed.

(4) A member of the Council whose term of office expires may, with the approval of the Minister, remain on the Council until a successor is appointed.

(5) The Council may, with the approval of the Minister, appoint one or more subcommittees of the Council and a subcommittee shall perform any of the functions described in Section 26, as determined by the Council.

(6) A person who is not a member of the Council may be a member of a subcommittee of the Council.

(7) The Minister may designate one employer representative and one employee representative as co-chairs of the Council.

(8) Persons appointed to the Council or a subcommittee of the Council must be paid the reasonable expenses incurred by them in the course of carrying out their duties for the Council or subcommittee of the Council, plus such remuneration as is determined by the Minister. 1996, c. 7, s. 25; 2004, c. 6, s. 24; 2010, c. 66, s. 7.

Functions of Council

26 The Council may advise the Minister on

- (a) the administration of this Act and the regulations;
 - (b) occupational health and safety, including providing recommendations, giving advice and monitoring and reporting on occupational health and safety throughout the Province;
 - (c) the exclusion of any profession, employee, employer, workplace, project, owner, occupation, industry, self-employed person or dependent contractor from all or part of the application of this Act or the regulations;
 - (d) any other matter relating to occupational health and safety.
- 1996, c. 7, s. 26.

OCCUPATIONAL HEALTH AND SAFETY POLICY

Requirement for policy

27 (1) The employer shall prepare and review, at least annually, a written occupational health and safety policy, in consultation with the committee or representative, if any, where

- (a) five or more employees are regularly employed by an employer other than a constructor or contractor;
- (b) five or more employees are regularly employed directly by a constructor or contractor, not including employees for whose services the constructor or contractor has contracted;
- (c) the regulations so require; or
- (d) an officer so orders.

(2) Where this Act or the regulations do not require there to be a committee at a workplace, consultation on the development of the policy must be carried out by the employer and must include discussion of the proposed policy at one or more workplace health and safety meetings involving the employees.

(3) The policy must express the employer's commitment to occupational health and safety and must include

- (a) the reasons for the employer's commitment to health and safety;
- (b) the commitment of the employer to co-operate with the employees in pursuing occupational health and safety; and

(c) the responsibilities of the employer, supervisors and other employees in fulfilling the commitment required pursuant to clause (b). 1996, c. 7, s. 27.

OCCUPATIONAL HEALTH AND SAFETY PROGRAM

Requirement for program

28 (1) Where

(a) 20 or more employees are regularly employed by an employer other than a constructor or contractor;

(b) 20 or more employees are regularly employed directly by a constructor or contractor, not including employees for whose services the constructor or contractor has contracted; or

(c) the regulations require an occupational health and safety program,

the employer shall establish and maintain a written occupational health and safety program, in consultation with the committee or representative, if any, that is adapted to the circumstances of the organization for the purpose of implementing the employer's policy, this Act and the regulations.

(2) The program must include

(a) provision for the training and supervision of employees in matters necessary to their health and safety and the health and safety of other persons at the workplace;

(b) provision for the preparation of written work procedures required to implement safe and healthy work practices, including those required under this Act, the regulations or by order of an officer, and identification of the types of work for which the procedures are required at the employer's workplace;

(c) provision for the establishment and continued operation of a committee required under this Act, including maintenance of records of membership, rules of procedure, access to a level of management with authority to resolve health and safety matters and any information required under this Act or the regulations to be maintained in relation to a committee;

(d) provision for the selection and functions of a representative where required under this Act, including provision for access by the representative to a level of management with authority to resolve health and safety matters;

(e) a hazard identification system that includes

(i) evaluation of the workplace to identify potential hazards,

(ii) procedures and schedules for regular inspections,

(iii) procedures for ensuring the reporting of hazards and the accountability of persons responsible for the correction of hazards, and

- (iv) identification of the circumstances where hazards must be reported by the employer to the committee or representative, if any, and the procedures for doing so;
 - (f) a system for workplace occupational health and safety monitoring, prompt follow-up and control of identified hazards;
 - (g) a system for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences;
 - (h) maintenance of records and statistics, including reports of occupational health and safety inspections and occupational health and safety investigations, with provision for making them available to persons entitled to receive them under this Act; and
 - (i) provision for monitoring the implementation and effectiveness of the program.
- (3) The employer shall make available a copy of the program
- (a) to the committee or representative, if any; and
 - (b) on request, to an employee at the workplace. 1996, c. 7, s. 28.

JOINT OCCUPATIONAL HEALTH AND SAFETY COMMITTEES

Requirement for committees

29 (1) At every workplace where 20 or more persons are regularly employed, the employer shall establish and maintain one joint occupational health and safety committee or, at the discretion of the employer, more than one such committee and, where 20 or more persons are regularly employed by one or more constructors at a project, a constructor shall establish and maintain a joint occupational health and safety committee for the project.

(2) At a workplace where fewer than 20 persons are regularly employed, the Director may

- (a) consult with the employer and employees at the workplace on whether a committee should be formed at the workplace; and
- (b) order that a committee be established.

(3) Where an order respecting establishment of a committee is given pursuant to subsection (2), the employer shall ensure that the committee is chosen and functioning in accordance with this Act within 15 days of receipt of the order. 1996, c. 7, s. 29.

Committee where subsea coal mine

30 Notwithstanding Section 29, at a subsea coal mine where fewer than 20 persons are regularly employed, the employer shall establish and maintain a joint occupational health and safety committee if so prescribed by the regulations. 2007, c. 14, s. 7.

Composition and procedure of committee

31 (1) A committee consists of such number of persons as may be agreed to by the employer and the employees or their union.

(2) At least half of the members of a committee must be employees at the workplace who are not connected with the management of the workplace and the employer may choose up to one half of the members of the committee if the employer wishes to do so.

(3) The employees on the committee are to be determined by the employees they represent, or designated by the union that represents the employees.

(4) A committee shall meet at least once each month unless

(a) a different frequency is prescribed by the regulations;
or

(b) the committee alters the required frequency of meetings in its rules of procedure.

(5) Where a committee alters the required frequency of meetings by its rules of procedure and the Director is not satisfied that the frequency of meetings is sufficient to enable the committee to effectively perform its functions, the frequency of meetings is as determined by the Director.

(6) An employee who is a member of a committee is entitled to such time off from work as is necessary to attend meetings of the committee, to take any training prescribed by the regulations and to carry out the employee's functions as a member of the committee, and such time off is deemed to be work time for which the employee is paid by the employer at the applicable rate.

(7) A committee shall establish its own rules of procedure and shall adhere to the applicable regulations.

(8) Unless a committee determines another arrangement for chairing the committee in its rules of procedure, two of the members of the committee shall co-chair the committee, one of whom is selected by the members who represent employees and the other of whom is selected by the other members.

(9) The rules of procedure established pursuant to subsection (7) must include an annual determination of the method of selecting the person or persons who shall

(a) chair the committee; and

(b) hold the position of chair for the coming year.

(10) Where agreement is not reached on

(a) the size of the committee;

(b) the designation of employees to be members; or

(c) rules of procedure,

the Director shall determine the matter. 1996, c. 7, s. 30.

Functions of committees

32 It is the function of the committee to involve employers and employees together in occupational health and safety in the workplace, and, without restricting the generality of the foregoing, includes

- (a) the co-operative identification of hazards to health and safety and effective systems to respond to the hazards;
- (b) the co-operative auditing of compliance with health and safety requirements in the workplace;
- (c) receipt, investigation and prompt disposition of matters and complaints with respect to workplace health and safety;
- (d) participation in inspections, inquiries and investigations concerning the occupational health and safety of the employees and, in particular, participation in an inspection referred to in Section 51;
- (e) advising on individual protective devices, equipment and clothing that, complying with this Act and the regulations, are best adapted to the needs of the employees;
- (f) advising the employer regarding a policy or program required under this Act or the regulations and making recommendations to the employer, the employees and any person for the improvement of the health and safety of persons at the workplace;
- (g) maintaining records and minutes of committee meetings in a form and manner approved by the Director and providing an officer with a copy of these records or minutes on request; and
- (h) performing any other duties assigned to it
 - (i) by the Director,
 - (ii) by agreement between the employer and the employees or the union, or
 - (iii) as are established by the regulations. 1996, c. 7, s. 31; 2010, c. 66, s. 8.

Deemed establishment of committee

33 Where a committee was established before January 1, 1986, and has been maintained, under a collective agreement or other arrangement in a workplace, and the Director is satisfied that such committee or arrangement provides benefits for the health and safety of employees equal to or greater than the benefits to be derived under a committee established under this Act, the committee or arrangement is deemed to have been established in compliance with this Act. 1996, c. 7, s. 32.

HEALTH AND SAFETY REPRESENTATIVES**Requirement for and functions of representatives**

34 (1) At a workplace where no committee is required by Section 29 and where the number of persons employed is five or more, the employer shall cause the employees to select at least one health and safety representative from among the employees at the workplace who are not connected with the management of the workplace.

(2) At a project where no committee is required by Section 29 and where the number of persons employed is five or more, a constructor shall cause the employees to select at least one health and safety representative for the purpose of the project from among the employees at the project who are not connected with the management of the project.

(3) At a workplace where fewer than five persons are employed, the Director may

(a) consult with the employer and employees at the workplace regarding whether a representative should be selected at the workplace; and

(b) order that a representative be selected by the employees from among the employees at the workplace who are not connected with the management of the workplace.

(4) Where an order respecting the selection of a representative is given under subsection (3), the employer shall ensure that the representative is selected and functioning in accordance with this Act within 15 days of receipt of the order.

(5) An employee who is a representative is entitled to such reasonable time off from work as is necessary to carry out the employee's functions as a representative, and such time off is deemed to be work time for which the employee is paid by the employer at the applicable rate.

(6) It is the function of the representative to be involved, on behalf of the employees together with the employer, in occupational health and safety in the workplace, and, without restricting the generality of the foregoing, includes

(a) the co-operative identification of hazards to health and safety and effective systems to respond to the hazards;

(b) the co-operative auditing of compliance with health and safety requirements in the workplace;

(c) receipt of and co-operation with the employer in the investigation and prompt disposition of matters and complaints with respect to workplace health and safety;

(d) participation in inspections, inquiries and investigations concerning the occupational health and safety of the employees and, in particular, participation in an inspection referred to in Section 51;

(e) advising on individual protective devices, equipment and clothing that, complying with this Act and the regulations, are best adapted to the needs of the employees;

(f) advising the employer regarding a policy or program required by this Act or the regulations and making recommendations to the employer, the employees and any person for the improvement of the health and safety of persons at the workplace; and

(g) performing any other duties assigned to the representative

(i) by the Director,

(ii) by agreement between the employer and the employees or the union, or

(iii) as are established by the regulations. 1996, c. 7, s. 33.

COMMUNICATION OF INFORMATION

Response to written recommendations

35 (1) An employer who receives written recommendations from a committee or representative and a request in writing to respond to the recommendations shall respond in writing to the committee or representative within 21 days, and the response must

(a) indicate acceptance of the recommendations; or

(b) give reasons for the disagreement with any recommendations that the employer does not accept,

or, where it is not reasonably possible to provide a response before the expiry of the 21-day period, provide within that time a reasonable explanation for the delay, indicate to the committee or representative when the response will be forthcoming and provide the response as soon as it is available.

(2) Where the committee or representative makes a request pursuant to subsection (1) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, or the representative, as the case may be, shall promptly report this fact to an officer. 1996, c. 7, s. 34.

Duty of employer to provide certain information

36 (1) An employer shall notify the committee or representative, if any, of the existence of reports of

(a) workplace occupational health or safety inspections;
and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer or the employer and, on request, the employer shall make the reports available to the committee or the representative.

(2) An employer shall, on request, make available to an employee at a workplace reports of

(a) workplace occupational health or safety inspections;
and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer or the employer.

(3) Within 21 days of receiving from the committee, representative or, where there is no committee or representative, an employee at a workplace, a request in writing for any information of a health or safety nature other than that

specified in subsection (1), the employer shall respond in writing and the response shall

- (a) provide the requested information; or
- (b) give reasons for not providing, in whole or in part, the information,

and, where it is not reasonably possible to provide a response before the expiry of the 21-day period, provide within that time a reasonable explanation for the delay, indicate to the committee, representative or employee when the response will be forthcoming and provide the response as soon as it is available.

(4) Where the committee, representative or employee makes a request pursuant to subsection (3) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, the representative or the employee, as the case may be, shall promptly report this fact to an officer. 1996, c. 7, s. 35.

Duty of officer to provide certain information

37 An officer shall provide to the employer at a workplace reports of

- (a) workplace occupational health or safety inspections; and
- (b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer, and the employer shall comply with subsections 36(1) and (2). 1996, c. 7, s. 36.

Duty of employer to post certain information

38 The employer shall

- (a) post and maintain the current names of the committee members or the representative, if any, and the means of contacting them; and
- (b) where there is a committee, post promptly the minutes of the most recent committee meeting and ensure they remain posted until superseded by minutes of the next committee meeting. 1996, c. 7, s. 37.

Availability of information at workplace

39 (1) Every employer shall

- (a) make available for examination at the workplace
 - (i) a copy of the regulations that relate to the workplace, and
 - (ii) information and reports that an officer considers advisable to enable employees to become acquainted with their rights and responsibilities pursuant to this Act and the regulations; and
- (b) post in a prominent place or places in the workplace capable of being easily accessed by the employees
 - (i) a current copy of this Act,
 - (ii) a code of practice required under this Act or the regulations,

(iii) a current telephone number for reporting occupational health or safety concerns to the Division, and

(iv) where the employer is required under this Act or the regulations to have an occupational health and safety policy, the policy,

and ensure they remain posted.

(2) Where anything other than the information listed in subsection (1) is required under this Act or the regulations to be posted, the person who has the duty to post shall

(a) post a legible copy of it in a prominent place or places in the workplace capable of being easily accessed by the employees; and

(b) ensure that it remains posted for at least seven days, or longer if additional time is necessary to enable employees at the workplace to inform themselves of the content, unless this Act or the regulations otherwise specify,

or, in lieu of complying with clauses (a) and (b), shall provide the information to each employee, in writing. 1996, c. 7, s. 38.

Duty of employer to provide certain information

40 (1) Where

(a) an officer makes an order under this Act or the regulations against an employer;

(b) a compliance notice is required of an employer under subsection 58(1); or

(c) an appeal is initiated or disposed of under Section 71, the employer shall, subject to subsections (2) and (3), immediately

(d) post the order, compliance notice, notice of appeal or decision; and

(e) deliver a copy of the order, compliance notice, notice of appeal or decision to the committee or representative, if any.

(2) An officer may authorize in writing an officer's order to be edited to protect a trade secret, secret manufacturing process or confidential personal information, the disclosure of which is limited under this Act.

(3) Where an order is edited under subsection (2), the authorization of the officer must be affixed to the order and it must be posted in accordance with this Act in substitution for the unedited order. 1996, c. 7, s. 39; 2013, c. 41, s. 2.

Service of documents

41 (1) For the purpose of this Act and the regulations and any proceedings thereunder, an order, notice or other document sent by regular mail is deemed to have been received 10 days after the day on which it was mailed, unless the person to whom it was sent establishes that, acting in good faith, the person did

not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person's control.

(2) For the purpose of this Act and the regulations and any proceedings thereunder, an order, notice or other document that is to be served on a person must be served by

- (a) personal service;
- (b) a form of delivery that provides proof of delivery, sent to the last known address of the person being served; or
- (c) electronic transmission, including facsimile or electronic mail.

(3) An order, notice or other document that is served on a person under clause (2)(b) is deemed to have been received five days after the date of the first attempted delivery, unless the person being served establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person's control.

(4) An order, notice or other document that is served on a person under clause (2)(c) is deemed to have been received the day after it was sent or, where that day is a Saturday or a holiday, on the next day that is not a Saturday or a holiday, unless the person being served establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person's control. 2013, c. 41, s. 3.

Right to annual summary of data

42 Where the *Workers' Compensation Act* applies to a workplace,

- (a) a committee;
- (b) a representative;
- (c) an employee; or
- (d) an employer,

at the workplace on request in writing must receive an annual summary of data relating to the employer. 1996, c. 7, s. 41.

WORKPLACE MONITORING, MEASUREMENTS AND TESTS

Right of employee to observe and be paid

43 (1) Every employer shall permit an employee selected under subsection (2) to observe workplace occupational health or safety monitoring and the taking of samples, tests or measurements if a significant part of the rationale is based on either health or safety of employees at the workplace, unless the monitoring or taking of samples, tests or measurements takes place

- (a) continuously or on a regular and frequent basis, except to observe the initial setup of the workplace occupational health or safety monitoring process and to be informed and observe the monitoring where there has been a malfunction of the monitor or alteration in the process;

(b) in a situation that would violate an employee's personal privacy;

(c) in a location that is remote and is part of the regular task of a person employed at the location; or

(d) during an emergency situation,

and time spent by the employee in such activities is deemed to be work time for which the employee must be paid by the employer at the applicable rate.

(2) Where

(a) there is a committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements must be selected by the committee or representative, as the case may be; or

(b) there is no committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements must be selected by the employees.

(3) Every employer shall provide

(a) reasonable notice to an observer of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements undertaken pursuant to subsection (1); and

(b) access to a workplace for the purpose of the observation.

(4) Where an observer requests, the procedure for occupational health or safety monitoring and the taking of samples or measurements must be identified and explained to the observer.

(5) Where an owner, constructor or contractor performs occupational health or safety monitoring or takes samples or measurements that relate to the health or safety of employees at the workplace,

(a) the owner, constructor or contractor shall provide reasonable notice to all employers at the workplace of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements; and

(b) the requirements of subsections (1) to (4) apply.

(6) Where the monitoring, samples or measurements referred to in subsection (1) are conducted by, or at the request of, an officer, the officer may undertake the monitoring, samples or measurements whether or not notice has been given pursuant to subsection (3) or (5). 1996, c. 7, s. 42; 2010, c. 66, s. 10.

RIGHT TO REFUSE WORK

Right to refuse work and consequences of refusal

44 (1) Any employee may refuse to do any act at the employee's place of employment, if the employee has reasonable grounds for believing that the

act is likely to endanger the employee's health or safety or the health or safety of any other person, until

- (a) the employer has taken remedial action to the satisfaction of the employee;
- (b) the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or
- (c) an officer has investigated the matter and has advised the employee to return to work.

(2) Where an employee exercises the employee's right to refuse to work pursuant to subsection (1), the employee shall

- (a) immediately report it to a supervisor;
- (b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and
- (c) where the matter is not remedied to the employee's satisfaction after the employee has reported pursuant to clauses (a) and (b), report it to the Division.

(3) At the option of the employee, the employee who refuses to do any act pursuant to subsection (1) may accompany an officer or the committee or representative, if any, on a physical inspection of the workplace, or part thereof, being carried out for the purpose of ensuring others understand the reasons for the refusal.

(4) Notwithstanding subsection 51(8), an employee who accompanies an officer, the committee or a representative, as provided in subsection (3), must be compensated in accordance with subsection (7), but the compensation must not exceed that which would otherwise have been payable for the employee's regular or scheduled working hours.

(5) Subject to any applicable collective agreement and subsection (3), where an employee refuses to do work pursuant to subsection (1), the employer may reassign the employee to other work and the employee shall accept the reassignment until the employee is able to return to work under subsection (1).

(6) Where an employee is reassigned to other work pursuant to subsection (5), the employer shall pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued in the employee's normal work.

(7) Where an employee has, under subsection (1), refused to work and has not been reassigned to other work under subsection (5), the employer shall, until clause (1)(a), (b) or (c) is met, pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued to work.

(8) A reassignment of work under subsection (5) is not discriminatory action under Section 46.

(9) An employee may not, under this Section, refuse to use or operate a machine or thing or to work in a place if

- (a) the refusal puts the life, health or safety of another person directly in danger; or
- (b) the danger referred to in subsection (1) is inherent in the work of the employee. 1996, c. 7, s. 43.

Restriction on assignment of work where refusal

45 Where an employee exercises the employee's right under subsection 44(1) to refuse to work, no employee may be assigned to do that work until the matter has been dealt with under that subsection, unless the employee to be so assigned has been advised of

- (a) the refusal by another employee;
- (b) the reason for the refusal; and
- (c) the employee's rights under Section 44. 1996, c. 7, s. 44.

DISCRIMINATORY ACTION

Prohibition of "discriminatory action"

46 (1) In this Section and in Section 47, "discriminatory action" means an action that adversely affects an employee with respect to terms or conditions of employment or any opportunity for employment or promotion and includes dismissal, layoff, suspension, demotion, transfer of job or location, change in hours of work, coercion, intimidation, imposition of any discipline, reprimand or other penalty, including reduction in wages, salary or other benefits, or the discontinuation or elimination of the job of the employee.

(2) No employer or union shall take, or threaten to take, discriminatory action against an employee because the employee has acted in compliance with this Act or the regulations or an order or direction made thereunder or has sought the enforcement of this Act or the regulations or, without limiting the generality of the foregoing, because

- (a) of the participation of the employee in, or association with, a committee or the employee has sought the establishment of a committee or performed functions as a committee member;
- (b) of the association of the employee with a representative or the employee has sought the selection of a representative or performed functions as a representative;
- (c) the employee has under subsection 44(1) refused to work;
- (d) the employee has sought access to information to which the employee is entitled by this Act or the regulations, or has been assigned the role of observer under Section 43;
- (e) the employee has testified or is about to testify in any proceeding or inquiry under this Act or the regulations; or
- (f) the employee has given information to the committee, a representative, an officer or other person concerned with the admin-

istration of this Act or the regulations with respect to the health and safety of employees at the workplace,

unless the employer or union, as the case may be, establishes that such action is solely motivated by legitimate business reasons.

(3) On an inquiry into a complaint under Section 47 alleging that there has been a failure by an employer or a union to comply with subsection (2), the burden of proving that there has been no such failure is upon the employer or the union, as the case may be. 1996, c. 7, s. 45.

Right to make complaint or file grievance

47 (1) An employee who complains that

(a) an employer has failed to pay wages, salary, pay or a benefit entitlement as required under

(i) subsection 31(6), 34(5), 43(1), 44(4), 44(6), 44(7) or 51(8), or

(ii) the regulations; or

(b) an employer or a union has taken, or threatened to take, discriminatory action contrary to subsection 46(2),

may

(c) where the employee is not subject to a collective agreement under which the employee is entitled to file a grievance, within 30 days, make a complaint in writing to an officer; or

(d) where the employee is subject to a collective agreement under which the employee is entitled to file a grievance,

(i) have the complaint dealt with by final and binding arbitration under the collective agreement, or

(ii) within 30 days, make a complaint in writing to an officer, if an arbitrator has not seized jurisdiction over the matter under the collective agreement, in which case the matter must be dealt with by the arbitrator under the collective agreement.

(2) Where an officer receives a complaint under subsection (1), the officer shall investigate the complaint and

(a) issue an order specifying the provision of this Act or the regulations that has been contravened; or

(b) determine that there are no grounds upon which to issue an order, and so notify the complainant.

(3) Where the officer determines that an employer has failed to pay wages, salary, pay or a benefit entitlement required by a provision referred to in clause (1)(a), the officer's order issued under clause (2)(a) shall require, by a specified date,

(a) the employer to pay the wages, salary, pay or other benefits required by the provision referred to in clause (1)(a); or

(b) the employer or the union to do the things that, in the opinion of the officer, are necessary to secure compliance with this Act and the regulations.

(4) Where the officer determines that discriminatory action has been taken or threatened against an employee contrary to subsection 46(2), the officer's order issued pursuant to clause (2)(a) must require, by a specified date,

(a) the employer to reinstate the employee under the same terms and conditions under which the employee was formerly employed;

(b) the employer to pay any wages, salary, pay or other benefits that the employee would have earned but for the discriminatory action;

(c) that any reprimand or other references to the matter in the employer's records on the employee be removed;

(d) the reinstatement of the employee to the union and the payment by the union to the employee of any wages, salary, pay or other benefits that the employee would have earned but for the discriminatory action; or

(e) the employer or the union to do the things that, in the opinion of the officer, are necessary to secure compliance with this Act and the regulations.

(5) Where an order or decision of an officer made under clause (2)(a) is not appealed, the decision of the officer is final and binding. 1996, c. 7, s. 46; 2009, c. 24, s. 1.

OFFICERS, INSPECTIONS AND ORDERS

Powers of officers

48 For the purpose of ensuring compliance with this Act and the regulations and any order made thereunder, an officer may

(a) at a reasonable hour of the day or night enter and inspect a workplace, conduct tests and make such examinations as the officer considers necessary or advisable;

(b) require the production of records, drawings, specifications, books, plans or other documents in the possession of the employer that relate to the workplace or the health and safety of employees or other persons at the workplace and remove them temporarily for the purpose of making copies;

(c) require the production of documents or records that may be relevant to the investigation of a complaint under subsection 47(1), and remove them temporarily for the purpose of making copies;

(d) take photographs or recordings of the workplace and any activity taking place in the workplace;

(e) make any examination, investigation or inquiry as the officer considers necessary to ascertain whether there is compliance with this Act and the regulations and any order made under them;

- (f) inspect, take samples and conduct tests of samples, including tests in which a sample is destroyed, of any material, product, tool, equipment, machine or device being produced, used or found at the workplace for which the officer is responsible, except for a sample that has been destroyed, until the material, product, tool, equipment, machine or device is returned to the person being inspected;
 - (g) examine a person with respect to matters under this Act or the regulations;
 - (h) for the purpose of an investigation, inquiry or examination made by the officer under this Act or the regulations, summons to give evidence and administer an oath or affirmation to a person;
 - (i) in an inspection, examination, inquiry or test be accompanied and assisted by or take with the officer a person having special, expert or professional knowledge of any matter;
 - (j) exercise such other powers as may be necessary or incidental to the carrying out of the officer's functions under this Act or the regulations.
- 1996, c. 7, s. 47.

Powers of peace officer under Summary Proceedings Act

49 While acting under the authority of this Act, an officer has and may exercise, in any part of the Province, all the powers, authorities and immunities of a peace officer under the *Summary Proceedings Act*. 2010, c. 66, s. 11.

Powers of peace officer under Criminal Code

50 While acting under the authority of this Act, an officer has and may exercise, in any part of the Province, all the powers, authorities and immunities of a peace officer under the *Criminal Code* (Canada). 1996, c. 7, s. 49.

Accompaniment during inspections

51 (1) In this Section, "inspection" means a physical inspection of a workplace, or any part or parts of a workplace, under the powers conferred upon an officer pursuant to Section 48.

- (2) Where an officer conducts an inspection,
 - (a) the employer shall give the representative or an employee member of the committee, if any; and
 - (b) a representative of the employer must have,

the opportunity to accompany the officer during the officer's inspection.

(3) Where there is no committee member representing employees or representative available, the officer may select one or more employees who must accompany the officer during the officer's inspection.

(4) Where a representative or employee member of the committee is unavailable to accompany the officer during the officer's inspection, the officer shall endeavour to consult with a reasonable number of employees during the inspection.

(5) For greater certainty, where

(a) a person referred to in clause (2)(a) or (b) is unavailable to accompany an officer during the officer's inspection; and

(b) in the officer's opinion it is necessary to proceed with the inspection without accompaniment,

the officer may conduct the inspection without accompaniment.

(6) Notwithstanding subsections (2) and (3) and subject to subsection (7), an officer may question any person who is or was in a workplace either separate and apart from another person or in the presence of any other person regarding anything that is or may be relevant to the officer's inspection, examination, investigation, inquiry or test.

(7) The individual who is questioned under subsection (6) may request to be accompanied and may be accompanied by another person during the questioning.

(8) Subject to subsection 44(4), time spent by a committee member, representative or employee in accompanying or consulting with an officer during an inspection is deemed to be work time for which the committee member, representative or employee must be paid by the employer at the applicable rate. 1996, c. 7, s. 50.

Power to issue stop orders

52 Where an officer determines that any device, equipment, machine, material or thing to be used by an employee or self-employed person

(a) is unsafe; or

(b) does not comply with the standards prescribed by this Act or the regulations,

the officer may order the supplier or any other person to stop selling, renting, leasing or otherwise supplying the device, equipment, machine, material or thing to any employer, employee or self-employed person. 1996, c. 7, s. 51.

Power to require reports, assessments and tests

53 Where

(a) an officer determines that there may be a risk to health or safety; and

(b) an employer, owner, contractor or constructor fails to establish that it would not be reasonably practicable to carry out the order,

the officer may order, at the expense of the employer, owner, contractor or constructor that the employer, owner, contractor or constructor, as the case may be,

(c) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as are specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and

- (d) cause any tests necessary to the production of the report or assessment to be conducted or taken. 1996, c. 7, s. 52.

Power to require workplace details

- 54** (1) Notwithstanding any other provision of this Act, where
- (a) a person has repeatedly contravened this Act or the regulations or failed to comply with an order made under this Act or the regulations;
 - (b) the contravention or failure posed a risk of serious injury or death to a person; and
 - (c) the Director has reasonable grounds for believing that the person may in the future further contravene this Act or the regulations or fail to comply with an order made under this Act or the regulations, in the same or in a similar manner, at the same or at another workplace,

the Director may make an order, in writing, directing the person to provide

- (d) details regarding the nature of the work to be conducted or expected to be conducted by that person or an employee of that person; and
 - (e) the address or location of the workplace at which the work is to be conducted.
- (2) An order made under subsection (1) expires three months from the date it is made unless, before its expiry, it is renewed for a further three-month period by the Director.
- (3) There is no limit on the number of times an order made pursuant to subsection (1) may be renewed, provided it is renewed each time before its expiry.
- (4) During the time an order issued pursuant to subsection (1) is in effect, the Director may request further updated information from the person against whom the order was made. 2016, c. 14, s. 2.

Prohibition against disclosure of certain information

55 Except in accordance with this Act and the regulations, a person who, at the request of an officer, makes an examination, inquiry or a test under clause 48(i) shall not publish, disclose or communicate to a person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations, and, for greater certainty, subsection 63(3) applies. 1996, c. 7, s. 53.

Service of notice of decision and right to appeal

- 56** Where
- (a) an officer conducts an investigation of a work refusal by an employee under subsection 44(1) and the employee or employer is not satisfied with the advice provided by the officer or the failure to provide advice; or

(b) a complaint of an alleged contravention of this Act or the regulations is investigated by an officer and the officer does not issue an order that, in the opinion of the complainant, is necessary for the health or safety of persons at the workplace,

and the employee, employer or complainant so requests, the officer shall serve the employee, employer or complainant, as the case may be, in writing, with notice of the officer's decision and, where the employee, employer or complainant is an aggrieved person, the employee, employer or complainant may appeal the decision under Section 71. 1996, c. 7, s. 54; 2013, c. 41, s. 4.

Orders and consequences of orders

57 (1) An officer may give an order orally or in writing to a person for the carrying out of any matter or thing regulated, controlled or required by this Act or the regulations, and may require that the order be carried out within such time as the officer specifies.

(2) Where an officer makes an oral order under this Section, the officer shall confirm the oral order in writing.

(3) For greater certainty, an oral order is effective under this Act before it is confirmed in writing.

(4) Where an officer makes an order under subsection (1) and finds that the matter or thing referred to therein is a source of danger or a hazard to the health or safety of a person at the workplace, the officer may order that

(a) any place, device, equipment, machine, material or thing not be used until the order is complied with;

(b) work at the workplace or any part of the workplace stop until the order to stop work is withdrawn or cancelled by an officer;

(c) the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access thereto until the danger or hazard is removed.

(5) Subject to the approval of the Director, where an order is made against an employer under clause (4)(b) or (c), and where

(a) that employer has repeatedly contravened this Act or the regulations or failed to comply with an order made under this Act or the regulations; and

(b) the contravention or failure posed a risk of serious injury or death to a person,

an officer may, where the officer has reasonable grounds for believing that the same or similar source of danger or hazard to the health or safety of a person exists or will exist at another of the employer's workplaces or at any part of that workplace, make an order

(c) requiring that work at another of the employer's workplaces or at any part of that workplace stop until the order to stop work is withdrawn or cancelled by an officer;

(d) requiring that another of the employer's workplaces or any part of that workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access thereto until the danger or hazard is removed; or

(e) prohibiting the employer from starting work at another workplace or any part of that workplace.

(6) When making an order under subsection (5), the officer is not required to specify the address of the workplace or any part of the workplace that is the subject of the order.

(7) Where an order is made pursuant to clause (4)(c) or (5)(d), no employer or supervisor may require or permit an employee to enter the workplace or part of the workplace that is the subject of the order except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only where the employee is protected from the danger or the hazard.

(8) Where an officer issues an order under this Section, the officer may affix to the workplace or to any device, equipment, machine, material or thing a copy or notice of the order and no person except an officer shall remove the copy or notice unless authorized to do so by an officer. 1996, c. 7, s. 55; 2016, c. 14, s. 3.

Compliance notices and determination of compliance

58 (1) Where an officer makes an order under this Act or the regulations, the person against whom an order is made shall submit to the officer a compliance notice within the time specified in the order unless the officer records in the order that compliance with the order was achieved before the officer left the workplace.

(2) Where a compliance notice is required under subsection (1), the officer shall specify in the order the time within which the person against whom the order is made shall submit the compliance notice to the officer.

(3) Notwithstanding the submission of a compliance notice, a person against whom an order is made achieves compliance with an order made under this Act or the regulations when an officer determines that compliance is achieved. 1996, c. 7, s. 56.

Prohibition against interference with officer

59 (1) No person shall hinder, obstruct, molest or interfere with an officer in the exercise of a power or the performance of a duty under this Act or the regulations.

(2) No person shall knowingly furnish an officer with false information or neglect or refuse to furnish information required by an officer in the exercise of the officer's powers or performance of the officer's duties under this Act or the regulations.

(3) A person who

(a) wilfully delays an officer in the exercise of the officer's powers or the performance of the officer's duties under this Act or the regulations; or

(b) fails to comply with a direction or summons of an officer given under this Act or the regulations or to produce any certificate or document that the person is required by this Act or the regulations to produce,

is guilty of obstructing the officer in the exercise of the officer's powers or the performance of the officer's duties under this Act.

(4) A person shall furnish all necessary means in that person's power to facilitate any entry, inspection, examination, testing or inquiry by an officer in the exercise of the officer's powers or performance of the officer's duties under this Act or the regulations. 1996, c. 7, s. 57.

CHEMICAL SAFETY

Restriction on use of chemicals

60 Where a biological, chemical or physical agent or a combination of such agents is used or intended to be used in the workplace and its presence in the workplace or the manner of its use is, in the opinion of the Director, likely to endanger the health or safety of an employee, the Director may, by notice in writing to the employer, constructor, contractor or self-employed person, order that

(a) labelling be utilized to identify at least the presence and composition, including common or generic names, of the biological, chemical or physical agent, the risks associated with its use and the measures to be taken in case of emergency;

(b) the use, intended use, presence or manner of use be

(i) prohibited,

(ii) limited or restricted in such manner as the Director specifies, or

(iii) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies; or

(c) labelling be in accordance with applicable federal and Provincial regulations. 1996, c. 7, s. 58.

Duty of employer to prepare list of chemicals

61 (1) Subject to Section 63, unless the employer has received from the Director specific written direction to the contrary and the direction has not been revoked by the Director, the employer shall prepare a list of all chemical substances regularly used, handled, produced or otherwise present at the workplace that may be a hazard to the health or safety of the employees or that are suspected by the employees of being such a hazard, and the list must identify all chemical substances by their common or generic names if they are known to the employer.

(2) The list referred to in subsection (1) must include the trade name and the address of the supplier and manufacturer of any chemical substance, the chemical composition or common or generic name of which is unknown to the employer.

(3) The employer shall advise the committee at the workplace or the representative, if any, of the list referred to in this Section and any amendments to the list and, where there is no committee or representative, the employer shall advise the employees, the union, if any, a self-employed person and an officer upon request by any of them. 1996, c. 7, s. 59.

Duties of suppliers and manufacturers

62 (1) A supplier or manufacturer of a chemical substance shall, at the request of the Director, provide the following information with respect to a chemical substance referred to in subsection 61(1):

- (a) the ingredients and their common or generic name or names;
- (b) the composition and properties;
- (c) the toxicological effect of the chemical substance;
- (d) the effect of exposure to the chemical substance, whether by contact, inhalation or ingestion;
- (e) the protective measures used or to be used regarding the chemical substance; and
- (f) the emergency measures used or to be used to deal with exposure to the chemical substance.

(2) Where a supplier or manufacturer fails to provide the information referred to in subsection (1) within such time as is specified by the Director, the chemical substance for which the information has been requested is deemed to be an unsafe material and an order may be made pursuant to Section 52. 1996, c. 7, s. 60.

TRADE SECRETS

Extent of right to withhold trade secrets

63 (1) Notwithstanding anything contained in this Act or the regulations, an employer, a supplier or a chemical manufacturer may withhold trade secrets or information that might disclose a trade secret and the identity of a specific chemical, including the chemical name and other specific identification of a hazardous chemical, provided that the specific chemical identity is made available to health professionals in accordance with the procedures established by the regulations.

- (2) Where a treating physician or nurse determines that
- (a) a medical emergency exists; and
 - (b) the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment,

an employer, a supplier or a chemical manufacturer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse regardless of the existence of a written statement of need or a confidentiality agreement, but the employer, supplier or chemical manufacturer may require a written statement of need and confidentiality agreement in accordance with the regulations as soon as circumstances permit.

(3) Notwithstanding Section 36, no person shall publish, disclose or communicate to a person a secret manufacturing process or trade secret acquired, furnished, obtained or received pursuant to this Act or the regulations. 1996, c. 7, s. 61.

MEDICAL INFORMATION

Disclosure of medical information

64 (1) Notwithstanding Section 36, no person shall disclose information obtained in a medical examination, test, X-ray or hospital record of an employee made, taken or provided pursuant to this Act except in a form calculated to prevent the information from being identified with a particular person or case or with the permission of the employee.

(2) No person to whom information is communicated in confidence pursuant to this Act or the regulations

(a) shall divulge the information, except in accordance with this Act and the regulations; or

(b) is competent or compellable to divulge the information before a court or other tribunal or in any other proceeding. 1996, c. 7, s. 62.

ACCIDENTS

Notice of accident at the workplace

65 (1) The employer shall notify the Director

(a) as soon as possible, but in no case later than 24 hours, after a fire, flood or accident at the workplace that causes

(i) unconsciousness,

(ii) a fracture of the skull, spine, pelvis, arm, leg, ankle or wrist or a major part of the hand or foot,

(iii) the loss or amputation of a leg, arm, hand, foot, finger or toe,

(iv) a third degree burn to any part of the body,

(v) the loss of sight in one or both eyes,

(vi) asphyxiation or poisoning,

(vii) any injury that requires the admission to hospital, or

(viii) any injury that endangers the life,

of an employee, unless the injury can be treated by immediate first aid or medical treatment and the person can return to work the following day;

(b) as soon as possible, but in no case later than 24 hours, after

(i) an accidental explosion,

- (ii) a major structural failure or collapse of a building or other structure,
 - (iii) a major release of a hazardous substance, or
 - (iv) a fall from a work area in circumstances where fall protection is required by the regulations,
- at the workplace, whether any person is injured or not; and
- (c) immediately when a person is killed from any cause, or is injured from any cause in a manner likely to prove fatal, at the workplace.

(2) A true copy of the notice of accident required to be given by an employer to the Workers' Compensation Board, pursuant to the *Workers' Compensation Act*, may be delivered to the Director as sufficient notice pursuant to this Section if it is delivered within the time required in subsection (1).

(3) Where notice is required to be sent to the Director pursuant to this Section, the employer shall notify the committee or representative at the workplace, if any. 1996, c. 7, s. 63; 2010, c. 66, s. 12; 2016, c. 14, s. 4.

Disturbance of accident scene

66 Except as otherwise directed by an officer, no person shall disturb the scene of an accident to which subsection 65(1) applies except as is necessary to

- (a) attend to persons injured or killed;
 - (b) prevent further injuries; or
 - (c) protect property that is endangered as a result of the accident.
- 1996, c. 7, s. 64; 2016, c. 14, s. 5.

Duty to disclose accident information

67 Every person present at an accident when it occurred or who has any information relating to the accident shall, upon the request of an officer, provide to the officer such information respecting the accident as the officer requests. 1996, c. 7, s. 65.

CODE OF PRACTICE

Power to require code of practice

68 (1) The Director may, in writing, require an employer to establish a code of practice or adopt a code of practice specified by the Director.

(2) A code of practice established or adopted pursuant to subsection (1) may be revised or required to be revised from time to time by the Director. 1996, c. 7, s. 66.

APPEALS

Review of order or decision

69 (1) In this Section and subsection 71(2), "alter" means vary, revoke or suspend the order or decision of an officer or make any order or decision that an officer may make under this Act or the regulations.

- (2) Subject to the regulations, the Director may
- (a) on the Director's own motion, review an order or decision of an officer; and
 - (b) by order, alter an order or decision of an officer after first consulting with the officer.

(3) When reviewing an order or decision of an officer, the Director may consider new information that was not available to the officer when the officer made the order or decision.

(4) The Director is not disqualified from reviewing an order or decision by reason only that the Director, in the course of performing the Director's powers, duties or functions pursuant to this Act, receives information regarding or communicates with a person concerning the matter to which the order or decision relates.

(5) An order of the Director made pursuant to clause (2)(b) that is not appealed pursuant to subsection 71(1) is final and binding.

(6) Subject to the regulations, where the Director alters an order or decision of an officer after reviewing it, the Director shall provide a copy of the Director's order to

- (a) the employer;
- (b) the person to whom the officer's order or decision was issued;
- (c) the Board, if the Director's order is issued after the filing of a notice of appeal under subsection 71(2); and
- (d) an aggrieved person, other than a person referred to in clauses (a) and (b), who has filed a notice of appeal, if the Director's order is issued after the filing of a notice of appeal under subsection 71(2),

and the employer shall communicate the order in accordance with subsection 40(1). 2013, c. 41, s. 5.

Labour Board

70 (1) The Board shall hear all appeals filed under this Act and the regulations.

(2) Persons appointed to a panel of the Board constituted in accordance with subsection (1) must have knowledge and experience in matters of occupational health and safety.

(3) The Director has standing as a party in any case that is appealed to the Board pursuant to this Act or the regulations. 1996, c. 7, s. 68; 2009, c. 24, s. 4; 2010, c. 37, s. 120; 2010, c. 66, s. 14; 2013, c. 41, s. 6.

Right to appeal and consequences of appeal

71 (1) Subject to the regulations and subsection (2), an aggrieved person may appeal

- (a) an order made by an officer pursuant to this Act or the regulations;
- (b) the decision of an officer not to issue an order;
- (c) the decision of an officer to advise an employee to return to work or the decision to provide no advice, pursuant to clause 44(1)(c);
- (d) an order made by the Director pursuant to this Act or the regulations;
- (e) any decision for which a right of appeal is provided in the regulations.

(2) Where an order or decision of an officer is appealed to the Board and the Director subsequently alters the decision in accordance with subsection 69(2), the appeal of the order or decision of the officer is terminated.

(3) Subject to the regulations, an appeal pursuant to subsection (1) is initiated by filing a notice of appeal with the Board within 30 days after the order or decision is served on the recipient.

(4) Subject to the regulations, a notice of appeal filed pursuant to subsection (2) must

- (a) identify and state the order or decision appealed from;
- (b) set out the grounds of the appeal and the relief requested, including any request for the suspension of all or a portion of the order or decision appealed from; and
- (c) include any other information required by the regulations.

(5) Subject to the regulations, where the aggrieved person who appeals pursuant to subsection (1) has sufficient authority in the workplace to ensure that the notice of appeal is posted, the aggrieved person shall post a copy of the notice and, where the aggrieved person does not have such authority, the aggrieved person shall serve a copy of the notice on the employer and the employer shall communicate it in accordance with subsection 40(1).

(6) Subject to the regulations, on receipt of a notice of appeal,

- (a) the Board shall forthwith provide a copy of the notice of appeal to the Director; and
- (b) the Board shall hold a hearing, either orally or by way of written submissions, that provides any aggrieved persons who have so requested the opportunity to present evidence and make representations, in accordance with the regulations.

(7) Subject to the regulations, the Board may, by order, confirm, vary, revoke or suspend the order or decision appealed from or make any order that an officer is empowered to make pursuant to this Act.

(8) Subject to subsection (9) and the regulations, an appeal of an order or decision pursuant to subsection (1) does not suspend the operation of the order or decision.

(9) Subsection (8) does not apply to an appeal of an order of an officer or the Director regarding a provision referred to in subsection 47(1).

(10) Notwithstanding subsection (8) but subject to the regulations, the Board may order the suspension of the operation of an order or decision until the appeal is disposed of.

(11) Subject to the regulations, the Board shall provide a copy of its decision to

- (a) the employer;
- (b) the aggrieved person who appealed;
- (c) any other aggrieved person who has made representations in relation to the matter appealed; and
- (d) the Director,

and the employer shall communicate the decision in accordance with subsection 40(1). 1996, c. 7, s. 69; 2007, c. 14, s. 7; 2009, c. 24, s. 5; 2010, c. 37, s. 121; 2010, c. 66, s. 15; 2011, c. 24, s. 5; 2013, c. 41, s. 7.

Appeals may be heard together

72 Subject to the regulations, where an aggrieved person has more than one appeal pending before the Board pursuant to this Act or the regulations, the Board may hear the appeals together but shall render a separate decision for each appeal. 2013, c. 41, s. 8.

Jurisdiction of Board and court review

73 (1) Subject to subsection (2), the Board has exclusive jurisdiction to determine all questions of

- (a) law respecting this Act;
- (b) fact; and
- (c) mixed law and fact,

that arise in any matter before it, and a decision of the Board is final and binding and not open to review except for error of law or jurisdiction.

(2) The review of a decision of the Board must be conducted

- (a) by the Nova Scotia Court of Appeal, and only with leave of that Court; and
- (b) with recognition that a panel of the Board is constituted for the purpose of this Act, as an expert body.

(3) The Director has standing as a party in a review conducted pursuant to subsection (2). 1996, c. 7, s. 70; 2010, c. 37, s. 122.

ENFORCEMENT

Registration of decision or order with Supreme Court

74 (1) A final decision or order of an arbitrator, an officer, the Director or the Board regarding a claim arising from subsection 31(6), 34(5), 43(1), 44(4), 44(6), 44(7), 46(2) or 51(8) or subclause 47(1)(a)(ii) may, for the purpose of enforcement thereof, be registered with the Supreme Court of Nova Scotia and must be enforced in the same manner as a judgment of that Court.

(2) To register a final decision or final order referred to in subsection (1) with the Supreme Court of Nova Scotia, the Director may make a certified copy of the decision or order, upon which must be made the following endorsement, signed by the Director:

Register the within with the Supreme Court of Nova Scotia.

Dated this day of , 20

.
Director

(3) The Director may forward the certified copy referred to in subsection (2), so endorsed, to a prothonotary of the Supreme Court of Nova Scotia who shall, on receipt of the certified copy, enter it as a record and it must thereupon be registered with the Supreme Court and is enforceable as a judgment of that Court.

(4) Where a decision or order referred to in subsection (1) is registered with the Supreme Court of Nova Scotia, a subsequent decision or order rescinding or varying the first-mentioned decision or order may, in the same manner, be registered with the Supreme Court and enforced in the same manner as a judgment of the Supreme Court. 1996, c. 7, s. 71; 2010, c. 37, s. 123.

Enforcement of final decision or order

75 (1) The Director may request the Director of Labour Standards to enforce a final decision or order of an officer, the Director or the Board regarding a complaint that an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to subsection 31(6), 34(5), 43(1), 44(4), 44(6), 44(7), 46(2) or 51(8) or subclause 47(1)(a)(ii).

(2) A decision or order referred to in subsection (1) must, for the purpose of enforcement pursuant to subsection (1), be made an order of the Board pursuant to the *Labour Standards Code* and may be enforced in the same manner as an order of the Labour Standards Tribunal may be enforced.

(3) To make a final decision or order an order of the Board pursuant to the *Labour Standards Code*, the Director shall make a certified copy of the decision or order, upon which must be made the following endorsement, signed by the Director:

Make the within an order of the Labour Board.

Dated this day of , 20

.
Director

and the Director shall forward the certified copy, so endorsed, to the Director of Labour Standards and the Board.

(4) The Director of Labour Standards may enforce a final decision or order referred to in subsection (1) as if the decision or order were an order made by the Board under Section 25 of the *Labour Standards Code* and, for greater certainty, Sections 138, 139, 141, 167 and 168 of the *Labour Standards Code* apply with necessary changes.

(5) Where the Director

(a) provides the Director of Labour Standards with a certified copy of an order of an officer, the Director or the Board regarding a complaint that an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to subsection 31(6), 34(5), 43(1), 44(4), 44(6), 44(7), 46(2) or 51(8) or subclause 47(1)(a)(ii), whether the order is final or not; and

(b) requests the Director of Labour Standards to treat the order as a complaint pursuant to Section 130 of the *Labour Standards Code*,

the Director of Labour Standards may exercise the power set out in Section 136(1) of the *Labour Standards Code* and subsections 136(2), 136(3), 136(4) and 136(5) of the *Labour Standards Code* apply.

(6) Any money received by the Board pursuant to the *Labour Standards Code* as a result of a request made by the Director pursuant to clause 5(b) must be held in trust by the Board for the employer concerned.

(7) Where

(a) the appeal period has expired; or

(b) any appeal has been disposed of,

whichever is later, regarding an order or decision of an officer, the Director or the Board respecting payment, by the employer to the employee, of money held in trust pursuant to subsection (6), the Board shall pay the employee from the trust money up to the amount specified in the order and the surplus, if any, must be paid to the employer.

(8) Where a decision is made an order of the Board pursuant to the *Labour Standards Code*, a decision or order rescinding or varying the first-mentioned decision is deemed to rescind or vary the order of the Board and may be made an order of the Board in accordance with this Section. 1996, c. 7, s. 72; 2010, c. 37, s. 124.

Power to arrest

76 (1) A police officer who has reasonable and probable grounds to believe that a person is failing to comply with an order issued pursuant to subsection 57(4) may arrest the person without warrant and shall take the person before a justice as soon as practicable.

(2) A person taken before a justice pursuant to subsection (1) is entitled to an immediate hearing but, where a hearing cannot then be had, the person

must be released from custody on giving a personal undertaking to appear to answer to the charge at such time and place as is then fixed by the justice.

(3) A police officer who arrests a person pursuant to subsection (1) shall promptly inform the person of the reason for the arrest and of the right to retain and instruct counsel without delay. 1996, c. 7, s. 73.

Offences and penalties

- 77 (1) A person who
- (a) contravenes this Act or the regulations; or
 - (b) fails to comply with
 - (i) an order or direction made pursuant to this Act or the regulations, or
 - (ii) a provision of a code of practice adopted pursuant to Section 68,

is guilty of an offence and liable on summary conviction to a fine as set out in subsections (2) and (3), or to a term of imprisonment not exceeding two years, or to both a fine and imprisonment.

- (2) A person is liable
- (a) to a fine of not more than \$250,000; or
 - (b) for a second or subsequent offence, within five years from the date of conviction for a previous offence, to a fine of not more than \$500,000.

(3) Notwithstanding subsection (2), where the offence resulted in a fatality, the person is liable to a fine of not more than \$500,000.

(4) In addition to a fine imposed pursuant to subsection (2), (3) or (5), the court may impose a fine not exceeding \$25,000 for each additional day during which the offence continues.

(5) Where a person is convicted of an offence pursuant to this Act and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine imposed pursuant to subsection (2), (3) or (4), a fine in an amount equal to the estimation by the court of the amount of the monetary benefits. 1996, c. 7, s. 74; 2011, c. 24, s. 6.

Powers of court on conviction

78 (1) Where a person is convicted of an offence pursuant to this Act, in addition to a fine imposed pursuant to Section 77 and in addition to any other punishment that may be imposed pursuant to this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order

- (a) directing the offender to publish, in the manner prescribed, the facts relating to the offence;

(b) directing the offender to pay to the Minister an amount for the purpose of occupational health and safety initiatives, including public education;

(c) on application by the Director made within three years after the date of conviction, directing the offender to submit to the Director such information with respect to the activities of the offender as the court considers appropriate and just in the circumstances;

(d) directing the offender to perform community service, subject to such reasonable conditions as may be imposed in the order;

(e) directing the offender to provide such bond or pay such amount of money into court as will ensure compliance with an order made pursuant to this Section;

(f) requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(2) Where an offender fails to comply with an order made under clause (1)(a) directing the publication of the facts relating to the offence, the Director may publish the facts in compliance with the order and recover the costs of publication from the offender.

(3) Where the court makes an order pursuant to clause (1)(b) directing the offender to pay an amount for the purpose of occupational health and safety initiatives or the Director incurs publication costs pursuant to subsection (2), the amount or costs constitutes a debt due to the Crown in right of the Province and may be recovered as such in a court of competent jurisdiction.

(4) An order made pursuant to subsection (1) comes into force on the day on which it is made or on such other day as the court may order and does not continue in force for more than three years after that day. 1996, c. 7, s. 75; 2010, c. 66, s. 16; 2011, c. 24, s. 7.

Injunction

- 79 (1) Where the Director has reasonable grounds for believing that
- (a) a person has repeatedly contravened this Act or the regulations or failed to comply with an order made pursuant to this Act or the regulations;
 - (b) the contravention or failure posed a risk of serious injury or death to a person; and
 - (c) the person is contravening or is likely to contravene this Act or the regulations or fail to comply with an order made pursuant to this Act or the regulations,

the Director may apply to a judge of the Supreme Court of Nova Scotia for an injunction to do one or more of the following:

- (d) restrain the person from committing or continuing the contravention;

- (e) require the person to comply with the order;
- (f) restrain the person from carrying on an industry or an activity in an industry for a specific period or until such time as a specific event occurs,

and, where the judge considers it just, the judge may grant the injunction.

(2) The application referred to in subsection (1) must be made in accordance with the *Civil Procedure Rules*.

(3) For the purpose of subsection (1), a person includes an officer, director, shareholder or another person who participates in the management and who influences the decisions of a corporation that is the subject of an application made pursuant to subsection (1), but does not include

- (a) a lawyer, an accountant or other professional whose primary participation in the management of the corporation is the provision of professional services to the corporation; or
- (b) a receiver or trustee appointed by a court to manage the corporation.

(4) A judge may, on motion, grant an interim injunction pending the hearing of an application for an injunction made pursuant to subsection (1).

(5) Where satisfied that it is fit and just to protect the health and safety of any person, a judge may grant an interim injunction pursuant to subsection (4) on an *ex parte* motion.

(6) An application may be made pursuant to subsection (1) notwithstanding any penalty that may be imposed pursuant to this Act. 2016, c. 14, s. 6.

Deemed act or omission of employer

80 (1) In a proceeding or prosecution against an employer pursuant to this Act or the regulations, the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is deemed to be the act or omission of the employer.

(2) Notwithstanding subsection (1), the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is not the act or omission of the employer if it is proven that the employer took every precaution reasonable in the circumstances to ensure that the act or omission would not occur and the employer

- (a) did not have actual knowledge of, or could not reasonably have known of, the act or omission; and
- (b) did not expressly or impliedly consent to the act or omission. 1996, c. 7, s. 76.

Participation in offence

81 An officer, director, manager or agent of a corporation who directs, authorizes, assents to, acquiesces or participates in the commission of an offence pursuant to this Act is guilty of that offence. 1996, c. 7, s. 77.

Immunity from civil action

82 No action lies or may be instituted against an officer, a committee, a member of a committee, a representative, the Director, the Board, a member of the Board or the Director of Labour Standards if that person or body is acting pursuant to the authority of this Act or the regulations for any loss or damage suffered by a person because of an act or omission done in good faith by the person or body

(a) pursuant to, or in the exercise or supposed exercise of, a power conferred by this Act or the regulations; or

(b) in the carrying out, or supposed carrying out, of a function or duty imposed by this Act or the regulations. 1996, c. 7, s. 78; 2007, c. 14, s. 7; 2010, c. 37, s. 125.

Limitation period for prosecution

83 A prosecution for an offence under this Act shall not be commenced more than two years after the later of

(a) the date on which the offence was committed; or

(b) the date on which evidence of the offence first came to the attention of an officer. 1996, c. 7, s. 79.

Analysts

84 (1) The Minister may appoint as an analyst any person who, in the opinion of the Minister, has the qualifications and experience to be so appointed and an analyst shall perform such functions and carry out such duties as may be determined by regulation.

(2) No document of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the document.

(3) The party against whom a document of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination. 1996, c. 7, s. 80.

Proof of orders and other documents

85 In any proceeding or prosecution pursuant to this Act or the regulations,

(a) a copy of an order, decision, notice, report or certificate purporting to have been made or issued pursuant to this Act or the regulations and purporting to have been signed by a person authorized to make or issue the order, decision, notice, report or certificate;

(b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom, given or made pursuant to this Act or the regulations and purporting to be certified by an officer or an analyst;

(c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a bio-

logical, chemical or physical agent in a workplace, or part of a workplace, and purporting to be certified by an officer or an analyst;

(d) a document purporting to certify the result of a test or an analysis of any equipment, machine, device, article, thing or substance and purporting to be certified by an officer or an analyst;

(e) a document purporting to be signed by the Director stating that a report, request, notice or order was or was not given or received;

(f) a document purporting to be signed by a person authorized pursuant to this Act or the regulations to issue a certificate of examination or authorize a deviation, stating that on a specified day or during a specified period a person named in the document was or was not the holder of a certificate of examination or authorized for a deviation of regulations pursuant to this Act;

(g) a document setting out with reasonable particularity the conviction and sentence of a person for an offence pursuant to this Act or the regulations purporting to be signed by

(i) the person who made the conviction, or

(ii) the prothonotary or clerk of the court in which the conviction was made,

must be admitted in evidence as prima facie proof of the order, decision, notice, report, certificate or document and the contents of the order, decision, notice, report, certificate or document, without proof of the signature or official character of the person appearing to have signed the order, decision, notice, report, certificate or document, as the case may be. 1996, c. 7, s. 81; 2013, c. 41, s. 9.

REGULATIONS

Regulations

86 (1) The Governor in Council may make such regulations as the Governor in Council considers necessary or advisable for the purpose of this Act or to ensure the health or safety of all persons at a workplace and, without limiting the generality of the foregoing, the Governor in Council may make regulations

(a) requiring an employer or class of employers to prepare a written policy or a written program;

(b) setting out the health or safety standards to be established and complied with at workplaces or classes of workplaces;

(c) establishing conditions regarding the design, construction and use of plants or undertakings in order to protect the health and safety of employees;

(d) prescribing standards or codes for devices, equipment, machines, material and things or adopting by reference all or part of a standard or code, as the edition adopted is amended from time to time, or any change thereto, in whole or in part, with such modifications and additions as may be specified in the regulations, and providing for the prohibition of the use, sale, rental, lease or supply of any devices, equipment, machines, materials or things that do not comply with the prescribed or adopted standards or codes;

- (e) prohibiting or controlling the manufacture, supply, storage, handling or use of any device, equipment, machine, chemical, biological or physical agent or material in order to protect the health or safety of employees;
- (f) respecting the safe use of any device, equipment, machine, material or thing;
- (g) imposing requirements regarding the testing, labelling or examination of any material that may affect the health and safety of employees;
- (h) requiring the making of arrangements by employers for measuring and monitoring the atmospheric or other conditions of workplaces;
- (i) requiring the use of certain protective devices, equipment or clothing by persons at a workplace or class of workplaces;
- (j) requiring the making of arrangements by employers for the prevention of occupational disease and for securing the health of employees, including arrangements for medical examinations and health surveys;
- (k) requiring and governing medical facilities or first-aid facilities to be located at workplaces;
- (l) prescribing
 - (i) the making of reports by committees,
 - (ii) procedures for the operation of committees, including, minimum requirements for the contents of, and a retention period for, minutes and records of committees,
 - (iii) the activities that may be carried on by committees or representatives within the functions described in Section 32 or subsection 34(6);
- (m) altering the frequency of committee meetings required pursuant to this Act;
- (n) prescribing additional requirements for the training of committee members or representatives, including requiring employers or classes of employers to provide for and pay for the training;
- (o) increasing or decreasing the period of employment to be considered in a determination of the number of persons regularly employed at a workplace;
- (p) excluding any profession, employee, employer, workplace, project, owner, occupation, industry, self-employed person or dependent contractor from all or part of the application of this Act or the regulations;
- (q) designating occupations as hazardous occupations;
- (r) determining the amount, manner and method of payments out of the Accident Fund;
- (s) defining education and research to be paid for out of the Accident Fund;

- (t) determining the manner in which payment is to be made to the Minister pursuant to clause 78(1)(b);
- (u) prescribing educational institutions or classes of educational institutions for which the curricula must include instruction in the principles of occupational health and safety contained in this Act;
- (v) designating agencies, divisions or parts of other departments of the Government, or any other body constituted by an enactment, and their employees, to become part of the Division;
- (w) prescribing the type of information to be transferred, the form in which information must be transferred and the frequency of transfer of the information to be exchanged between the Division and the Workers' Compensation Board;
- (x) prescribing records to be kept by employers and submitted to the Division;
- (y) requiring the making of reports by employers to the Division;
- (z) requiring the filing of drawings, layouts and specifications;
- (aa) prescribing information required to be provided by owners and the manner and form of its communication;
- (ab) imposing requirements on health insurers and health-care agencies to provide to the Division statistical reports regarding occurrences of injury and disease arising from employment;
- (ac) prescribing procedures with respect to disclosure of information that is considered a trade secret;
- (ad) prescribing confidentiality protection for a trade secret;
- (ae) respecting the publication and distribution in the workplace of this Act and the regulations made pursuant to this Act;
- (af) respecting the Director's ability to review and alter an order or decision of an officer under subsection 69(2);
- (ag) restricting the performance of certain tasks to persons having certain qualifications;
- (ah) prescribing the duties and functions of analysts;
- (ai) establishing boards of examiners for the certification of occupational qualifications and providing processes for the issuance and revocation of certificates of examination;
- (aj) altering the standard or processes according to which an application for a deviation from regulations must be considered pursuant to this Act;
- (ak) prescribing regulations for which a deviation is not permitted pursuant to this Act;
- (al) modifying the application of provisions of the *Labour Standards Code* for the purpose of enforcement pursuant to this Act;

(am) interpreting Sections 23 and 29 and subsections 34(1), (2) and (3) and 39(1) in the context of an industry, occupation, project or workplace;

(an) establishing a means of identifying the persons referred to in Section 23 and the manner of communicating the identity of the persons;

(ao) enabling the adoption of a code of practice at a workplace containing one or more provisions from a regulation that would not otherwise apply to the workplace;

(ap) respecting the establishment and administration of a system of administrative penalties, including, without limiting the generality of the foregoing, regulations

(i) prescribing who may impose administrative penalties,

(ii) prescribing time frames for imposing an administrative penalty,

(iii) respecting the payment of administrative penalties,

(iv) prescribing the content of a notice of administrative penalty,

(v) prescribing the dollar amount of administrative penalties,

(vi) prescribing how an administrative penalty may be revoked,

(vii) respecting the extension of the time frame for filing a notice of appeal of an order or decision made under this Act or the regulations in relation to a notice of administrative penalty,

(viii) respecting the remedies available on an appeal of an administrative penalty, and

(ix) respecting the use to be made of any funds collected through the imposition of administrative penalties, including where such funds are to be deposited or held;

(aq) respecting appeals pursuant to this Act and the regulations, including, without limiting the generality of the foregoing,

(i) who may be a party to an appeal,

(ii) limiting the amount of time available to parties to make representations at appeal hearings,

(iii) the contents of a notice of appeal,

(iv) the appeal of matters other than those permitted pursuant to this Act,

(v) the conduct and procedure of appeals generally,

(vi) respecting the effect of any defect in form or any technical irregularity in an appeal proceeding, and

(vii) the hearing of appeals together if an aggrieved person has more than one appeal made pursuant to this Act or the regulations pending before the Board;

(ar) prescribing forms for use pursuant to this Act;

(as) respecting the effect of any defect in form or any technical irregularity that occurs in any order, decision, notice, report, certificate or other document issued pursuant to this Act and the regulations;

(at) prescribing charges to recover the cost of services pursuant to this Act and fees in relation to appeals and deviations, certificates, licences, permits, review of documents and filing of documents;

(au) defining words or expressions used but not defined in this Act.

(2) Without limiting the generality of this Section, the Governor in Council may, in respect of a subsea coal mine, make regulations that the Governor in Council considers necessary or advisable to ensure the health and safety of all persons at a subsea coal mine

(a) requiring the establishment of a committee;

(b) prescribing additional functions of a committee;

(c) prescribing additional requirements for the provision of resources or information to a committee;

(d) requiring the filing or approval of drawings, layouts, specifications, plans, procedures, methods, machinery and equipment; and

(e) prescribing charges to recover the cost of services pursuant to this Act and fees in relation to matters referred to in clause (d).

(3) The exercise by the Governor in Council of the authority contained in subsections (1) and (2) is a regulation within the meaning of the *Regulations Act*. 1996, c. 7, s. 82; 2007, c. 14, s. 7; 2010, c. 37, s. 126; 2010, c. 66, s. 17; 2013, c. 41, s. 10.

Authorized deviation from regulations

87 (1) Where an application is made in writing to the Director for authorization to deviate at a workplace or workplaces from a provision of the regulations, unless the standard to be used by the Director in considering an application is altered by the regulations, the Director may authorize the deviation if the Director is satisfied that the deviation affords protection for the health and safety of employees equal to or greater than the protection prescribed by the regulations from which the deviation is requested.

(2) The Director may attach such terms and conditions to an authorization of a deviation pursuant to subsection (1) as the Director considers advisable.

(3) Sections 88 to 90 apply to an application for a deviation made pursuant to subsection (1) unless

(a) the processes required pursuant to those subsections are altered by the regulations; or

(b) a notice period is reduced or eliminated pursuant to subsection 91(2). 1996, c. 7, s. 83.

Notice of application for deviation

88 (1) Where the workplace location or locations exist for which a deviation pursuant to subsection 87(1) is requested, unless

(a) the committee or representative at a workplace, if any; or

(b) where there is no committee or representative, all the employees at the workplace,

agree otherwise, upon applying for a deviation, the applicant for the deviation shall post a copy of the application, ensure it remains posted for at least 28 days and furnish a copy to the committee or representative, if any, at the workplace.

(2) Where the workplace location or locations for which a deviation pursuant to subsection 87(1) is requested are not yet in existence, the applicant shall, upon applying for a deviation, publish, at the applicant's cost, a notice of the application for a deviation

(a) that contains information regarding the deviation being requested; and

(b) where it would reasonably be expected to come to the attention of persons interested in health and safety who might be affected by the decision regarding the deviation. 1996, c. 7, s. 83.

Deviation application procedure

89 (1) After receiving an application for a deviation pursuant to subsection 87(1), the Director may conduct such consultation or give such notice of the application as the Director considers advisable.

(2) The applicant for a deviation pursuant to subsection 87(1) shall submit with the application, at the applicant's cost,

(a) the technical information required to enable the Director to determine the application;

(b) information with respect to the benefits and drawbacks to health and safety that might reasonably be anticipated if the deviation is authorized; and

(c) any fee prescribed by the regulations.

(3) The applicant for a deviation pursuant to subsection 87(1) for an existing workplace location or locations shall ensure that the information required pursuant to clauses (2)(a) and (b) is made available for examination at the applicant's workplace by the committee or representative, if any, and by the employees.

(4) The Director may make available the information required pursuant to clauses (2)(a) and (b) to any person for examination on request. 1996, c. 7, s. 83.

Deviation decision by Director

90 (1) A decision by the Director pursuant to subsection 87(1) must

(a) not be made less than 28 days following the date of the application; and

(b) be accompanied by written reasons for the decision that shall include

(i) the information considered in arriving at the decision and the rationale for the decision,

(ii) the specifics of a deviation that is authorized, including the location of the workplace or workplaces where the deviation applies, and

(iii) the details of any terms or conditions attached to the authorization of a deviation.

(2) The applicant for a deviation pursuant to subsection 87(1) shall ensure that

(a) a copy of the Director's decision is

(i) posted for at least seven days, or longer if additional time is necessary to enable employees at the workplace to inform themselves of the content, and

(ii) furnished to the committee or representative, if any, at the workplace; and

(b) where a deviation is authorized, a copy of the Director's decision is posted and maintained throughout the time the deviation is in effect.

(3) The Director shall provide a copy of the decision referred to in subsection (1) to anyone from whom the Director has received a written response to the application for a deviation pursuant to subsection 87(1).

(4) In applying a regulation for which a deviation pursuant to subsection 87(1) is authorized, a deviation and any terms and conditions authorized pursuant to this Section are, while the deviation is in effect, substituted for the prescription or requirement in the regulations. 1996, c. 7, s. 83.

Director may vary deviation decision

91 (1) The Director may, at the initiative of the Director or upon application, reconsider, confirm, vary, revoke or suspend the Director's decision regarding a deviation at any time when information is produced that, had it been known when the request for the deviation was determined previously, would reasonably be expected to have resulted in a different decision from the one made at that time, and Sections 87 to 90 apply with the necessary modifications.

(2) Notwithstanding the periods of notice required pursuant to this Section, where information that was not available at the time a decision was made by the Director regarding a deviation pursuant to this Section is produced that indicates that imminent danger might result as a result of the deviation, the Director may reduce or eliminate a period of notice required pursuant to this Section. 1996, c. 7, s. 83.

TRANSITIONAL PROVISIONS

Enforcement under Act and substituted references

92 (1) Any regulation, order or direction made under the former *Metalliferous Mines and Quarries Regulation Act*, the former *Coal Mines Regulation Act* or the former Act or under any Act relating to occupational health and safety may be enforced as if the regulation, order or direction were made pursuant to this Act.

(2) Any reference in any Act of the Legislature or in any rule, order, regulation, bylaw, ordinance or in any document whatsoever to the Occupational Safety Division of the Department of Labour, Skills and Immigration, the Occupational Health Division of the Department of Health and Wellness, the Mine Safety Division of the Department of Natural Resources and Renewables or the Accident Prevention Division of the Workers' Compensation Board, whether such reference is by official name or otherwise, is, as regards any subsequent transaction, matter or thing relating to the affairs or matters or any of them assigned to those divisions, to be held and construed to be a reference to the Division, as defined in this Act. 1996, c. 7, s. 85.

CHAPTER O-3

An Act Respecting the Practice of Occupational Therapy

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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 *Occupational Therapists Act*. 1998, c. 21, s. 1.

Interpretation

2 In this Act,

“Board” means the Board of the College;

“College” means the College of Occupational Therapists of Nova Scotia;

“committee” includes a committee of the Board, an investigation committee or a hearing committee as the context requires;

“complaint” means any complaint, report or allegation in writing and signed by a person regarding the conduct, actions, competence, character, fitness, health or ability of a member, former member, professional corporation or the employees thereof, or any similar complaint, report or allegation initiated by the Registrar or referred pursuant to subsection 55(2);

“court” means the Supreme Court of Nova Scotia;

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

“disciplinary committee” means an investigation committee or a hearing committee;

“disciplinary matter” means any matter involving an allegation of professional misconduct, conduct unbecoming an occupational therapist or professional incompetence, including incompetence arising out of physical or mental incapacity;

“former Act” means Chapter 321 of the Revised Statutes, 1989;

“hearing committee” means a hearing committee appointed pursuant to this Act;

“investigation committee” means an investigation committee appointed pursuant to this Act;

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

“mediation” means any form of alternative dispute resolution;

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

“occupational therapist” means a person who is licensed to practise occupational therapy under this Act;

“occupational therapy” means the performance of professional services requiring substantial specialized knowledge of occupational therapy theory in order to promote, develop, restore, improve or maintain optimal occupational functioning in the area of self-care, productivity and leisure, and includes

(a) the application and interpretation of procedures designed to evaluate occupational functioning;

(b) the planning, administration and evaluation of developmental, restorative, maintenance, preventative and educational programs;

(c) providing education, health promotion, consultation, management, research or other such services that implement and advance the practice of occupational therapy;

“Peer Assessment Committee” means a committee appointed by the Board that deals with peer assessment;

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

“prescribed” means prescribed by the regulations;

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

“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;

“Society” means the Nova Scotia Society of Occupational Therapists or any corporation or body that may be designated by the regulations as a successor to the Nova Scotia Society of Occupational Therapists;

“spouse” means

(a) a person married to another person;

(b) a man and a woman who, not being married to each other, live together as husband and wife and have so lived for at least one year; or

(c) as otherwise defined by the regulations. 1998, c. 21, s. 2.

Effect of use of words “occupational therapist”

3 The words “occupational therapist” or any like words or expressions implying a person recognized by law as an occupational therapist 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 April 8, 1999, or when used in any

public document, includes a person registered in the Register who holds a licence.
1998, c. 21, s. 3.

COLLEGE OF OCCUPATIONAL THERAPISTS OF NOVA SCOTIA

Objects and powers

4 (1) The Nova Scotia Association of Occupational Therapists constituted by the former Act is continued as a body corporate, to be called the College of Occupational Therapists of Nova Scotia, and is composed of its members.

(2) The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued.

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

- (a) regulate the practice of occupational therapy and govern its members in accordance with this Act and the regulations;
- (b) establish, maintain and develop standards of knowledge and skill among its members;
- (c) establish, maintain and develop standards of qualification and practice for the practice of occupational therapy;
- (d) establish, maintain and develop standards of professional ethics among its members; and
- (e) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act.

(4) In addition to any other power conferred by this or any other Act, the College may do such things as it considers appropriate to advance the objects of the College and, without limiting the generality of the foregoing, may

- (a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;
- (b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;
- (c) engage such agents and employees as it considers expedient;
- (d) expend the money of the College in the advancement of its objects and the interests of the profession of occupational therapy in such manner as it considers expedient;
- (e) establish and maintain such offices and agencies as it considers expedient;
- (f) invest and deal with any money and funds of the College that are not immediately required, in such manner as it considers expedient;

(g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the College;

(h) borrow money for the use of the College on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the College and pledge or sell such securities for such sums or at such prices as may be considered expedient;

(i) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (h). 1998, c. 21, s. 4.

Annual meetings

5 (1) There shall be an annual meeting of the College at such time and place as prescribed.

(2) An annual report must be distributed at or before the annual meeting for review by the membership, and must include a report by an auditor.

(3) Auditors shall be recommended by the Board but are subject to the approval of the College at the annual meeting. 1998, c. 21, s. 5.

BOARD

Powers

6 (1) There is a Board of the College constituted as provided in Section 10.

(2) The Board shall, subject to this Act, govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make regulations

(a) providing for the management of the College, including the keeping of the registers to be kept pursuant to this Act;

(b) providing for the holding of meetings of the College or the Board, quorum requirements and the conduct of such meetings;

(c) fixing the time and place for regular meetings of the Board, determining by whom meetings may be called, regulating the conduct of meetings, providing for emergency meetings and regulating the notice required in respect of meetings;

(d) providing for the appointment of such committees as the Board considers expedient;

(e) respecting the composition, powers and duties of such committees as may be appointed by the Board, and providing for the holding and conduct of meetings of such committees;

(f) respecting the powers, duties and qualifications of the Registrar and the officers, agents and employees of the College;

(g) prescribing fees payable pursuant to this Act by applicants and members and, where the Board considers it advisable, des-

ignating different classes of applicants and members and prescribing different fees for different classes;

(h) prescribing the fees and allowances of members of the Board and committees and providing for the payment of necessary expenses of the Board and committees;

(i) respecting the recognition of schools and examinations as prerequisites to registration and licensing;

(j) respecting the educational qualifications of applicants for registration as members;

(k) prescribing the seal of the College;

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

(m) prescribing examinations to be written by applicants for registration;

(n) respecting residential qualifications of applicants for registration as members and associate members;

(o) prescribing forms and providing for their use;

(p) providing procedures not inconsistent with this Act for the making, amending and revoking of regulations;

(q) respecting the information to be included in the Register;

(r) prescribing a code of ethics, subject to approval by the College at an annual or special meeting;

(s) governing elections of members of the Board.

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

(a) respecting the registration and licensing of members;

(b) respecting continuing-competency requirements, including continuing-education requirements or practice-hour requirements of members for registration;

(c) respecting the limiting or qualifying of a member's licence, including procedures and interventions;

(d) respecting the evaluation of, and licensing requirements of, members and applicants for registration who have not practised occupational therapy for at least one year;

(e) respecting a peer-assessment program in accordance with this Act and programs of continuing education, including requiring members to participate in any such programs and providing for any other matter that will facilitate or give effect to such programs;

(f) respecting supervised practice, monitoring supervised practice and the delegation of acts of occupational therapy and any other ancillary matters, and providing for the establishment of a committee or committees to deal with such matters;

- (g) respecting the disciplining of members and the revocation or suspension of licences issued pursuant to this Act;
- (h) respecting the reporting and publication of decisions in disciplinary matters;
- (i) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practice;
- (j) prescribing the records and accounts to be kept by members and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;
- (k) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a licence so suspended;
- (l) notwithstanding subsection 10(1), changing the number and characteristics of appointments to the Board;
- (m) determining the procedure to be followed at hearings by a disciplinary committee;
- (n) prescribing the type of professional liability insurance or other form of malpractice coverage a member must hold;
- (o) respecting supervised practice and the delegation of acts of occupational therapy and any other ancillary matters;
- (p) prescribing the manner of proof as to matters required to be proven by applicants for permits;
- (q) fixing reasonable fees payable for the issuance and renewal of permits;
- (r) providing that the permit of a professional corporation is suspended without notice or investigation upon contravention of any regulation that requires the corporation to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a permit so suspended;
- (s) prescribing the grounds upon which the Board may review a decision of the Registrar pursuant to subsection 101(7) and the procedures to be followed in reviewing any such decision;
- (t) providing for the reinstatement or reissuance of any permit suspended or revoked pursuant to this Act and prescribing the terms and conditions upon which reinstatement or reissuance of a permit may be granted;
- (u) providing for the creation and maintenance of a register of professional corporations;
- (v) providing for the filing of periodic returns by professional corporations;

- (w) providing for the annual renewal of permits and prescribing the terms and conditions upon which renewals may be granted;
- (x) prescribing the types of names and business names by which
 - (i) a member as a sole proprietor,
 - (ii) a professional corporation,
 - (iii) a partnership with one or more occupational therapists,
 - (iv) a partnership of two or more professional corporations, or
 - (v) a partnership of one or more professional corporations and one or more individual occupational therapists,
 may be known;
- (y) prescribing the nature of communications with the public, including advertising, that may be undertaken by a member as a sole proprietor, a partnership or a professional corporation;
- (z) prescribing access to the minute book records of a professional corporation by the Registrar;
- (aa) defining any word or expression used but not defined in this Act;
- (ab) further defining any word or expression defined in this Act;
- (ac) respecting and governing such other subjects, matters and things as may be required to give effect to the objects of the College and this Act. 1998, c. 21, s. 6.

Documents

7 (1) All the regulations of the College must be available for inspection by any person, free of charge, at the head office of the College at all reasonable times during business hours.

(2) 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.

(3) A resolution in writing, or counterparts of a resolution, signed by two thirds of all members entitled to vote thereon at a meeting of the College is as valid and effective as if duly passed at a meeting of the members of the College. 1998, c. 21, s. 6.

Participation in meetings

8 (1) A member of the Board, or of a committee of the Board or of the College, may participate in any meeting of the Board or committee of the Board or of the College, with the exception of the hearing committee when it is conducting

a hearing, as the case may be, by telephone or other communications facilities that permit all persons participating in a meeting to communicate with each other, and a member participating in a meeting by such means is deemed to be present at the meeting.

(2) A meeting of the Board, or of a committee of the Board, with the exception of the hearing committee when it is conducting a hearing, or of the College, may be held by conference telephone call or other communications facilities that permit all persons participating in the meeting to communicate with each other, and all members participating in the meeting by such means are deemed to have been present at the meeting. 1998, c. 21, s. 6.

Special general meeting

9 Where 10% of the membership of the College request in writing, whether by petition or otherwise, that a special general meeting be held, the Board shall hold such meeting within 15 working days of determining that 10% of the members have requested such a meeting. 1998, c. 21, s. 6.

Constitution of Board and terms of office

10 (1) The Board consists of

(a) four members of the College elected in the manner provided by this Act; and

(b) three persons appointed by the Governor in Council, all of whom are persons who

(i) are not members of the College, and

(ii) have shown an interest in serving on the Board.

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

(3) Notwithstanding subsection (2), the terms of office of members of the Board upon the first election or appointment of members of the Board must be

(a) two members of the College elected for a term of one year;

(b) two members of the College elected for a term of two years; and

(c) three persons appointed by the Governor in Council, one for a term of one year and two for a term of two years.

(4) Notwithstanding subsections (2) and (3), persons appointed by the Governor in Council hold office until such time as they are reappointed, or until their successors are appointed, even if such appointment or reappointment does not occur until after their specified term of office has expired.

(5) Only members of the College who practise occupational therapy in the Province are eligible to vote in an election of the Board. 1998, c. 21, s. 7.

Selection of Board members

11 (1) Every member in good standing is eligible to be nominated as and vote for a candidate for membership on the Board.

(2) Elected or appointed members of the Board may not be members of the Board for more than three consecutive terms.

(3) In this Section, “consecutive” means that 12 months or less occurred between the end of one term and the commencement of the next. 1998, c. 21, s. 8.

Regulations of Board

12 The Board may make regulations governing elections of members of the Board and in those regulations may

- (a) provide for the procedure for the nomination of candidates;
- (b) provide for the appointment or designation of presiding officers for the election;
- (c) prescribe the forms to be used;
- (d) prescribe the procedure to be used for the holding of the elections and for determining the persons elected as members of the Board. 1998, c. 21, s. 9.

Secret ballot

13 Members of the Board are elected by secret ballot. 1998, c. 21, s. 10.

Destruction of ballots

14 The ballots used at an election may not be destroyed until all petitions pursuant to Section 15 in respect of the election have been decided and, until that time, the ballots must be retained by the Registrar together with all other papers in connection with the election. 1998, c. 21, s. 11.

Petition against election

15 (1) A person may petition the Board against the election of a person to the Board by filing a petition with the Registrar within 15 days after the election.

(2) The petitioner shall state in the petition the grounds on which the election is disputed.

(3) The petitioner shall serve a copy of the petition upon the person whose election is disputed.

(4) Where a petition is filed with the Registrar pursuant to subsection (1), the Board shall hold an inquiry and, where

- (a) the election is found to be illegal; or
- (b) the person is found not to be eligible to be nominated as a candidate for membership on the Board,

shall order that a new election be held. 1998, c. 21, s. 12.

Elections**16 (1)** The Registrar

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

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

shall cause an election to be held within 60 days for the purpose of filling the vacancy.

(2) Notwithstanding subsection (1), where a vacancy occurs for any reason within six months before the date of an election of members of the Board, the vacancy must be filled at such election.

(3) Where an election is held pursuant to subsection (1) to fill a vacant Board position, the term of office for the vacant Board position is the remainder of the unexpired term of such position. 1998, c. 21, s. 13.

End of term of office**17** An elected member of the Board ceases to hold office where

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

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

(c) the member is absent from three consecutive meetings of the Board, unless excused by the Board. 1998, c. 21, s. 14.

Executive Committee and officers

18 (1) The Board shall elect annually from its members a Chair, a Vice-chair, a Secretary and a Treasurer 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 Board with respect to any matters that the Board may delegate to it or that, in the opinion of the Executive Committee, require immediate attention.

(3) The Board shall appoint a Registrar, who must be an occupational therapist as defined by the regulations for the purpose of this subsection and who holds office during the pleasure of the Board, at such salary or other remuneration as the Board determines.

(4) The Board may appoint an Acting Registrar who shall exercise the powers and duties of the Registrar in the event of the death or incapacity of the Registrar or the Registrar's absence from the Province.

(5) The Board may appoint such other officers, agents or employees at such salary or other remuneration, and for such term of office, as the Board considers necessary to assist it in carrying out its duties pursuant to this Act.

(6) The Board shall meet at least three times in each calendar year. 1998, c. 21, s. 15.

Committees

19 The Board may appoint annually such committees from among members of the Board or the College as the Board considers necessary to assist it in carrying out its duties pursuant to this Act. 1998, c. 21, s. 16.

Chair of meetings

20 (1) Subject to subsection (2), the Chair presides at all meetings of the Board and of the College.

(2) Where the Chair is absent from a meeting, the Vice-chair or, in the Vice-chair's absence, some other member chosen by the members present presides at the meeting.

(3) Except in the event of an equal number of votes being given for and against a resolution at any meeting, the Chair or other presiding officer may not vote. 1998, c. 21, s. 17.

REGISTER OF THE COLLEGE OF OCCUPATIONAL THERAPISTS OF NOVA SCOTIA

Registration

21 The Board shall keep a Register in which shall be entered the name, address and qualifications of all persons who are entitled pursuant to this Act to be registered in the Register. 1998, c. 21, s. 18.

Entries to be made in register

22 (1) The Board shall direct the Registrar to enter in the Register the name, address and qualifications of any person who

(a) has successfully completed the certification exam if prescribed by the regulations;

(b) has successfully completed an occupational-therapy program prescribed by the regulations;

(c) satisfies the Board that the person possesses the qualifications required in the regulations for registration in the Register;

(d) complies with this Act and the regulations and any conditions imposed by the Registrar and the Board; and

(e) complies with Section 28.

(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. 1998, c. 21, s. 19.

PROVISIONAL REGISTRATION

Effect of provisional registration

23 (1) Notwithstanding anything contained in this Act, where a person applies to be registered pursuant to this Act and the Registrar is satisfied that the person

- (a) meets
 - (i) in a manner that would be satisfactory to the Board, the requirements for registration in the relevant register with such exceptions as may be required by the regulations, and
 - (ii) the requirements of Section 28; and
- (b) has paid the prescribed fees,

the Registrar may, before the matter is brought to the Credentials Committee for its direction,

- (c) enter the name, address and qualifications of the person in the relevant register; and
- (d) issue a licence to the person, subject to such terms and conditions as may be prescribed by the regulations, including the maximum period of validity of the registration and the licence.

(2) Every registration made and every licence issued pursuant to this Section is valid and remains in full force and effect until ratified, varied or vacated by the Credentials Committee at a meeting requested by such person or the Registrar, or held at the instigation of the Credentials Committee itself.

(3) Subject to subsection (7), where the registration or licence of a person is varied or vacated pursuant to subsection (2), the Registrar shall give notice to such person forthwith in accordance with Section 92, and the registration or licence of that person is deemed to be varied or vacated as of the date on which service was made or deemed to have been made on the person.

(4) Where the registration or licence of a person is varied or vacated pursuant to subsection (2), the person may request the opportunity to appear before the next scheduled meeting of the Board, with or without legal counsel, where the Board shall consider the application in accordance with this Act.

(5) No member of the Board who considered the application pursuant to subsection (2) shall participate in the Board's consideration of the application.

- (6)** After hearing the applicant and the Registrar, the Board may
 - (a) direct the Registrar to issue to the applicant a licence or specialist's licence;
 - (b) direct the Registrar to issue to the applicant a licence or specialist's licence subject to such conditions, limitations or restrictions as the Board considers appropriate;

(c) adjourn further consideration of the application, pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Board may designate; or

(d) direct the Registrar to refuse the application where the Board is not satisfied that the applicant meets the criteria set out in subsection (1).

(7) Where a hearing is requested pursuant to subsection (4), the registration or licence of the person requesting the hearing shall not be varied or vacated until the Board has completed its consideration of the application. 1998, c. 21, s. 20.

Referral to Credentials Committee

24 (1) Where the Registrar is not satisfied with the evidence presented by a person applying for registration, the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall,

refer the matter to the Credentials Committee.

(2) Upon a referral pursuant to subsection (1), the Credentials Committee, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

(3) Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted and the person may appear with legal counsel. 1998, c. 21, s. 21.

DEFINED REGISTER

Method of maintaining Defined Register

25 (1) The Board may keep a register, called the Defined Register, in which must be entered the name, address, qualifications and terms and conditions of registration of all persons who may be entitled pursuant to this Act and the regulations to be registered therein.

(2) The Board may make regulations, which take effect upon approval by a general meeting of the College and by the Governor in Council,

(a) governing the persons or classes of persons who may be registered in the Defined Register;

(b) dividing the Defined Register into parts representing the classes of persons who may be registered;

(c) prescribing the qualifications required for registration in the Defined Register;

(d) prescribing the extent to which and terms and conditions under which persons registered in the Defined Register may engage in the practice of occupational therapy; and

(e) prescribing by whom applications may be made pursuant to this Section, and the procedure on such applications.

(3) The Board may direct the Registrar to register in the Defined Register the name, address and qualifications and terms and conditions of registration of any person who

(a) satisfies the Board that that person possesses the qualifications required for registration in the Defined Register; and

(b) complies with Section 28.

(4) Upon receiving a direction from the Board pursuant to subsection (3), the Registrar shall enter in the Defined Register the name, address and qualifications and any terms and conditions of registration of the person named therein, and issue a licence to the person. 1998, c. 21, s. 22.

SPECIALISTS REGISTER

Method of maintaining Specialists Register

26 (1) The Board may keep a register, called the Specialists Register, in which must be entered the name, address, qualifications and specialty of all members who are entitled pursuant to this Act and the regulations to be registered in the register.

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

(a) defining classes of specialists in the various branches of occupational therapy;

(b) dividing the Specialists Register into parts representing the classes of specialists as defined by the Board;

(c) prescribing the qualifications required for registration in the Specialists Register;

(d) providing for the regulation and prohibition of the use, terms, titles or designations by members indicating specialization in any branch of occupational therapy.

(3) The Board may direct the Registrar to enter in the Specialists Register the name, address, qualifications and specialty of any occupational therapist who

(a) holds a licence;

(b) satisfies the Board that the practitioner possesses the qualifications required for registration in the Specialists Register; and

(c) complies with Section 28.

(4) Upon receiving a direction from the Board pursuant to subsection (3), the Registrar shall enter in the Specialists Register the name, address, qualifications, specialty and any terms and conditions of registration of the person named therein, and issue a specialist's licence to the person. 1998, c. 21, s. 23.

Consequences of conviction

27 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 an occupational therapist, 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. 1998, c. 21, s. 24.

Prerequisites to registration

- 28 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. 1998, c. 21, s. 25.

Change of address

29 A member of the College who changes address shall promptly inform the Registrar who shall enter the change in the Register. 1998, c. 21, s. 26.

ANNUAL FEES**Manner of payment and consequences of non-payment**

30 (1) Every member shall pay to the Registrar, or such person as the Registrar may designate,

- (a) at the time that the member is registered; and
- (b) on or before a date or dates prescribed by the Board in each year thereafter,

the prescribed annual registration or licence fee.

(2) Every member who is registered in the Register, Specialists Register or Defined Register shall pay to the Society, or such person as the Society may designate,

- (a) within one month of the time that the member is registered; and
- (b) on or before a date prescribed by the Society in its bylaws, in each year thereafter,

the prescribed annual membership dues of the Society for that member's class or type of membership.

(3) Prior to the due date of the annual membership dues, the Society shall give notice to every member in such form and in such manner as the Society may prescribe by bylaw.

(4) The Society shall notify the Registrar if a member fails to make a payment pursuant to subsection (2).

(5) A member is deemed to have paid the membership dues to the Society pursuant to subsection (2) until such time as the Society notifies the Registrar that the member has failed to do so.

(6) The licence and specialist's licence of any member who fails to pay prescribed annual fees as required by subsection (1) or (2) or who fails to comply within the prescribed period with any continuing competence requirements established in regulations shall be suspended in accordance with the procedure prescribed by the regulations.

(7) The Registrar shall forthwith notify in writing any person whose licence has been suspended pursuant to this Section.

(8) The prescribed annual licence fees payable by members of the College pursuant to subsection (1) are determined by the Board. 1998, c. 21, s. 27.

Relicensing

31 (1) Where the licence or specialist's licence of a member has been suspended pursuant to subsection 30(6), or where there has been non-compliance with continuing competency requirements, or in any other case where the licence or specialist's 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 occupational therapy 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 occupational therapy;

(d) as to the person's good standing in all jurisdictions in which the person has practised occupational therapy since the date of the suspension or expiry or lapsing of the person's licence;

(e) that the person has paid all fees or any other amount owing to the College and the Society 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 and issue a specialist's licence to such person in the specialties in which the person formerly held a specialist's licence.

(3) Where the Registrar is not satisfied with the evidence presented pursuant to subsection (2), the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall, refer the matter to the Credentials Committee.

(4) Upon a referral pursuant to subsection (3), the Credentials Committee, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

(5) Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted and the person may appear with legal counsel.

(6) Where the registration or licensing of a person is refused pursuant to subsection (4), the person may request the opportunity to appear before the next scheduled meeting of the Board, with or without legal counsel, where the Board shall consider the application in accordance with this Act.

(7) No member of the Board who considered the application pursuant to subsection (4) shall participate in the Board's consideration of the application.

- (8) After hearing the applicant and the Registrar, the Board may
- (a) direct the Registrar to issue to the applicant a licence;
 - (b) direct the Registrar to issue to the applicant a licence subject to such conditions, limitations or restrictions as the Board considers appropriate;
 - (c) adjourn further consideration of the application, pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Board may designate; or
 - (d) direct the Registrar to refuse the application, where the Board is not satisfied that the applicant meets the criteria set out in subsection (2). 1998, c. 21, s. 28.

Restrictions on licences

32 Every licence or specialist's licence issued pursuant to Section 31 is subject to any conditions, limitations or restrictions contained in the licence or specialist's licence that had expired, lapsed or been suspended pursuant to subsection 30(6), unless the Board orders otherwise. 1998, c. 21, s. 29.

ANNUAL LIST

Publication of list

33 The Registrar shall, in each year, cause to be published in the manner prescribed an annual list that includes the names of those persons

- (a) who hold a licence;
- (b) who hold a specialist's licence; and
- (c) listed in the Defined Register. 1998, c. 21, s. 30.

PRIVILEGES

Surrender and preserving jurisdiction

34 (1) The licence or specialist's licence of a member may only be surrendered by the member after notice in writing to the Board and with the consent of the Board.

(2) Where a member ceases to be a member for any reason, or where a person ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any disciplinary matter arising out of the person's conduct while a member or while registered. 1998, c. 21, s. 31.

PROHIBITIONS

Offence

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

- (2)** A person who practises occupational therapy
- (a) while the person's licence is suspended or revoked; or
 - (b) without a licence,

is guilty of an offence. 1998, c. 21, s. 32.

Offence

36 (1) A member of the College who leaves the Province and practises occupational therapy on the member's return to the Province prior to providing the Registrar with a certificate of good standing from all jurisdictions in which the member had practised during such absence is guilty of an offence.

(2) The Board may waive the requirements of subsection (1) and may make regulations exempting members from those requirements where members have been absent from the Province for a period shorter than the maximum period prescribed in the regulations. 1998, c. 21, s. 33.

Prohibition

37 (1) Except as provided in this Act or the regulations, no person, other than an occupational therapist who holds a licence, shall

- (a) publicly or privately, for hire, gain or hope of reward, practise or offer to practise occupational therapy;
- (b) purport to be in any way entitled to practise occupational therapy; or
- (c) assume any title or description implying or designed to lead the public to believe that that person is entitled to practise occupational therapy.

(2) No person is entitled to receive a fee, reward or remuneration for

(a) professional services rendered to any person in the practice of occupational therapy; or

(b) occupational therapy appliances supplied to any person in the practice of occupational therapy,

unless registered and licensed at the time the services were provided or the appliances were rendered. 1998, c. 21, s. 34.

Offence

38 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. 1998, c. 21, s. 35.

Method of payment

39 (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 occupational therapy, 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 occupational therapy 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 occupational therapy on one occasion is sufficient to establish that a person has engaged in the practice of occupational therapy. 1998, c. 21, s. 36.

Offence

- 40 (1)** A person who violates
- (a) this Act, except for Sections 97 to 109;
 - (b) a regulation made pursuant to clause 6(3)(i) or (j); or
 - (c) a regulation made pursuant to clause 26(2)(d),

is guilty of an offence, and the *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(2) All fines and penalties payable under this Act as a result of a prosecution by or on behalf of the College belong to the College.

(3) Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the College authorized by the Board, with the consent of the Minister of Health and Wellness. 1998, c. 21, s. 37.

EXEMPTIONS

Exemption from application of Act

- 41** Nothing in this Act applies to or prevents
- (a) the domestic administration of family remedies;

- (b) the practice of the religious tenets or general beliefs of any religious organization;
- (c) 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;
- (d) the manufacture, fitting or selling of artificial limbs or similar appliances;
- (e) the practice of chiropractic by a person who is registered pursuant to the *Chiropractic Act*;
- (f) the practice of dentistry or dental surgery by a person who is registered pursuant to the *Dental Act*;
- (g) the practice of dental technology by a person registered pursuant to *Dental Technicians Act*;
- (h) the practice of denturology by a person who is licensed pursuant to the *Denturists Act*;
- (i) the practice of dietetics by a person who is registered pursuant to the *Dietitians Act*; or
- (j) the practice of dispensing optician by a person who is registered pursuant to the *Dispensing Opticians Act*;
- (k) the practice of medicine by a person who is registered pursuant to the *Medical Act*;
- (l) the practice of radiological technology by a person registered pursuant to the *Medical Imaging and Radiation Therapy Professionals Act*;
- (m) the practice of nursing by a person registered pursuant to the *Nursing Act*;
- (n) the practice of optometry by a person who is licensed pursuant to the *Optometry Act*;
- (o) the practice of pharmacy by a person who is registered pursuant to the *Pharmacy Act*;
- (p) the practice of physiotherapy by a person registered pursuant to the *Physiotherapy Act*; or
- (q) the practice of psychology by a person who is licensed pursuant to the *Psychologists Act*. 1998, c. 21, s. 38.

CLIENT RECORDS

Custodian

42 (1) In this Section, “client records” includes all documents, charts, X-rays, photographic film or any other form of record relating to the clients of a member.

- (2) Where
 - (a) a member

- (i) dies, disappears, is imprisoned, leaves the Province or surrenders the member's or specialist's licence,
 - (ii) is struck off a register or is the subject of suspension of licence or specialist's licence,
 - (iii) has been found to be an incapacitated or unfit member, or
 - (iv) neglects the practice of occupational therapy;
- and
- (b) adequate provision has not been made for the protection of the member's clients' interests,

the College may, with or without notice as the court directs, request the court to appoint a custodian who is an occupational therapist to take possession of the client records of 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 occupational therapists of the clients concerned, including the member referred to in subsection (2), and to the duly appointed representatives of the clients, or the clients themselves unless there are reasonable grounds to believe it would not be in the best interest of the client to make that information available, subject to such fees as the court may direct or the regulations may prescribe.
- (4)** In an order made pursuant to subsection (2), or in a subsequent order made on the application of the College or the custodian, with or without notice as the court directs, the court may
 - (a) authorize the custodian to employ professional assistance to carry out the custodian's duties;
 - (b) direct any sheriff to seize, remove and place in the possession of the custodian 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.

(5) Unless the court otherwise directs, it is sufficient for the custodian to give notice by newspaper advertisement, to clients, occupational therapists or the general public, that the custodian has possession of the client records of a member.

(6) 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 Board, 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 Board discharges the custodian in respect of those client records affected.

(7) 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. 1998, c. 21, s. 39.

Client records

43 (1) Unless otherwise ordered pursuant to subsection 42(6), upon discharge of a custodian pursuant to subsections 42(6) and (7), the College shall take into permanent custody client records and assume the responsibilities of a custodian as provided in subsection 42(3).

(2) 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. 1998, c. 21, s. 39.

Application to set aside custodianship

44 A member in respect of whom an order has been made pursuant to this Section may, after giving notice to the College and to the custodian, apply to the court to vary or set aside an order made pursuant to this Section and to direct the custodian to place all or part of the client records back into the possession of the member upon such terms as may be just. 1998, c. 21, s. 39.

Service of notice

45 The court may give directions as to service of any notice required or order made pursuant to Sections 42 to 44. 1998, c. 21, s. 39.

No action lies

46 No action for damages lies against the College, the Board or any committee, member, officer or employee of the College for anything done or omitted to be done in good faith pursuant to this Section, or against a custodian or any other person acting in good faith pursuant to this Section or an order issued pursuant to this Section. 1998, c. 21, s. 39.

Application to former members

47 Sections 42 to 46 apply with necessary changes to former members of the College. 1998, c. 21, s. 39.

INJUNCTION**Circumstances for order**

48 (1) Where a member, whose licence to practise has been suspended pursuant to this Act or the regulations, does or attempts to do anything contrary to this Act or the regulations, the doing of such thing may be restrained by an injunction of the court at the instance of the Board.

(2) Where a person other than a member does or attempts to do anything contrary to this Act, the doing of such thing may be restrained by an injunction of the court at the instance of the Board. 1998, c. 21, s. 40.

DISCIPLINE**Method of initiating complaint**

- 49** Complaints may be initiated by
- (a) any official body corporate or association;
 - (b) the Registrar; or
 - (c) any other person. 1998, c. 21, s. 41.

Power to employ assistance

50 The College or a disciplinary committee may employ, at the expense of the College, such legal or other assistance as it considers necessary for the purpose of the investigation of any disciplinary matter. 1998, c. 21, s. 42.

Duty to maintain confidentiality

51 Every person involved in the administration of this Act and any member of the Board, or a committee of the Board or the College, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding clients, and with respect to all matters that come to that person's knowledge relating to a peer assessment, except

- (a) in connection with the administration of Sections 49 to 80 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. 1998, c. 21, s. 43.

Power to investigate other matters

52 A person or disciplinary committee investigating a disciplinary matter concerning a member may investigate any other disciplinary matter concerning the member that arises in the course of the investigation. 1998, c. 21, s. 44.

Prerequisite for action

53 (1) Where a disciplinary committee

(a) learns that the registration or licence of a member has been suspended or revoked for reasons of professional misconduct, conduct unbecoming or incompetence by another licensing or regulatory authority;

(b) has provided the member with such notice as it may prescribe of a hearing together with a copy of the relevant decision of the other licensing or regulatory authority; and

(c) has heard such evidence as is offered by the member, if any, at the hearing as to why the member should not be subject to disciplinary action,

the disciplinary committee may take any of the actions contemplated by clause 76(2)(e).

(2) Where a member has been convicted of an offence pursuant to the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or has been convicted of an offence as referred to in Section 27, the disciplinary committee may, by such notice as it prescribes, require the member to attend a hearing to establish why the member should not be subject to disciplinary action.

(3) For the purpose of subsection (2), a certificate of conviction of a member is conclusive evidence that a person has committed the offence stated therein unless it is shown by the member that the conviction has been quashed or set aside.

(4) When a disciplinary committee is conducting a hearing pursuant to this Section, it may, if it considers proper, take any of the actions contemplated by clause 76(2)(e). 1998, c. 21, s. 45.

INVESTIGATION COMMITTEE**Composition of committee**

54 (1) The Board shall appoint a committee or committees to be known as an investigation committee.

(2) An investigation committee is composed of at least three persons.

(3) A committee shall

(a) have a chair appointed by the Board who is a member or former member of the Board;

(b) have as a member at least one person who is a member or former member of the Board and a member of the College; and

(c) have as a member at least one person who does not hold a degree of occupational therapy or equivalent, who may be a member or former member of the Board.

(4) Notwithstanding subsection (3), any two members of the committee constitute a quorum.

(5) The Board may appoint additional members to the committee who are members of the College but who need not be members or former members of the Board. 1998, c. 21, s. 46.

Duties and powers of committee

55 (1) The committee shall

- (a) investigate complaints regarding a disciplinary matter concerning any member of the College;
- (b) investigate any matter referred to the committee by the Registrar; and
- (c) perform such other duties as may be assigned to it by the Board.

(2) The Registrar may refer a matter to the committee notwithstanding that a written complaint has not been filed with the Registrar.

(3) The investigation committee and each member of the investigation committee 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) Without receipt of a written complaint, the committee may
- (a) do all things necessary to provide a full and proper investigation;
 - (b) appoint a person or persons to conduct an investigation or practice audit, or both. 1998, c. 21, s. 46; 2012, c. 48, s. 36.

Duties of member

56 (1) Upon receipt of a written complaint and upon giving to the member a copy of the complaint, the committee may require the member to

- (a) submit to physical or mental examinations by such qualified persons as the committee designates;
- (b) submit to an inspection or audit of the practice of the member by such qualified persons as the committee designates;
- (c) submit to such examinations as the committee directs to determine whether the member is competent to practise occupational therapy;
- (d) produce records and accounts kept with respect to the member's practice.

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

(3) Where the committee has, pursuant to clause (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. 1998, c. 21, s. 46.

Experts and other relevant information

57 The committee or person appointed to conduct an investigation pursuant to clause 55(4)(b) may

- (a) employ such other experts as the committee or person considers necessary;
- (b) require the member or any other member of the College, who may have information relevant to the investigation, to attend before the committee or the person conducting the investigation to be interviewed;
- (c) investigate any other matter relevant to the conduct, capacity or fitness of a member to practise occupational therapy that arises in the course of the investigation. 1998, c. 21, s. 46.

Disposition by committee

58 (1) The committee may

- (a) dismiss the complaint;
- (b) attempt to resolve the matter informally;
- (c) with the consent of both parties, refer the matter, in whole or in part, for mediation;
- (d) refer the matter, in whole or in part, to a hearing committee;
- (e) counsel the member;
- (f) caution the member;
- (g) counsel and caution the member;
- (h) reprimand the member with the member's consent; or
- (i) with the consent of the member, require the member to undergo such treatment or re-education as the committee considers necessary.

(2) Where the committee is considering a decision to counsel, caution or counsel and caution a member pursuant to clause (1)(e), (f) or (g), the committee shall give notice to the member and the member shall be given the opportunity to appear, with or without legal counsel, before the committee prior to the committee making a decision. 1998, c. 21, s. 46.

Appeal

59 (1) A member who has consented to a requirement for treatment or re-education pursuant to clause (58)(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 committee 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 committee shall review an agreed statement of facts supplied by the legal counsel for the College and signed by the member. 1998, c. 21, s. 46.

Referral back to committee and disposition

60 (1) Where an agreed statement of facts is not filed within 30 days of filing the notice of appeal, the consent of the member is deemed to have been withdrawn and the matter referred back to the investigation committee, which may consider other actions or dispositions as authorized by this Act.

(2) When making findings pursuant to clause 58(1)(e), (f), (g), (h) or (i), a committee may make any combination of the dispositions that are set out in those clauses, or the committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(3) The member and the complainant must be advised in writing of the disposition of the committee. 1998, c. 21, s. 46.

Further duties and powers

61 (1) Notwithstanding anything contained in this Act, where

(a) an investigation committee receives information that indicates that a member may be incompetent or guilty of professional misconduct or conduct unbecoming; and

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

the investigation committee may, without a hearing,

(c) immediately suspend the registration or licence or specialist's licence, or both, of the member on a temporary basis; or

(d) immediately impose restrictions on the registration or licence or specialist's licence, or both, of the member on a temporary basis.

(2) The member must receive forthwith notice in writing, with reasons, of a decision made pursuant to subsection (1).

(3) Subject to a determination pursuant to subsection (5), a decision pursuant to subsection (1) continues in force until final resolution by a hearing committee, which must occur without undue delay.

(4) The member who receives written notice pursuant to subsection (2) may request, in writing, an opportunity to meet with the investigation committee.

(5) Where a request is received pursuant to subsection (4), the investigation committee shall

- (a) provide an opportunity for the member to meet with the committee within 10 days of the written request; and
- (b) after meeting with the member, may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1). 1998, c. 21, s. 47.

Hearing committee

62 Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 61(1), subject to any disposition made pursuant to subsection 61(5), a hearing committee must be appointed pursuant to subsection 66(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter. 1998, c. 21, s. 48.

Continuance of power of former members

63 Notwithstanding that a member or members of an investigation committee or a hearing committee have ceased to hold office by reason of the lapse of their appointments, such member or members are seized with the jurisdiction to complete any matter the committees have commenced if necessary to retain a quorum and, for this purpose, such member or members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the regulations. 1998, c. 21, s. 49.

SETTLEMENT AGREEMENT

Method of dealing with proposed agreement

64 (1) After an investigation committee refers a matter to a hearing committee pursuant to clause 58(1)(d), 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 violation or violations and the member's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing committee.

(2) The investigation committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by the hearing committee.

(3) Where the investigation committee recommends the acceptance of the proposed settlement agreement, it shall instruct legal counsel for the College to advise the hearing committee hearing the complaint of its recommendation.

(4) Where the investigation committee refuses to recommend the proposed settlement agreement, the hearing must proceed without reference to the proposed settlement agreement.

(5) Where the hearing committee appointed to hear the complaint accepts the recommendation of the investigation committee, it shall confirm such acceptance by written decision that incorporates the settlement agreement.

(6) Where the hearing committee appointed to hear the complaint rejects the recommendation of the investigation committee,

- (a) it shall advise the Registrar of its decision;
- (b) it shall proceed no further with the hearing of the complaint;
- (c) a new hearing committee shall be appointed to hear the complaint and no member of the committee that considered the proposed settlement agreement may be a member of the new committee; and
- (d) the investigation committee retains jurisdiction over a complaint until the commencement of the hearing by a hearing committee. 1998, c. 21, s. 50.

INVESTIGATION COMMITTEE AND NON-MEMBERS

Investigation of non-member

65 The Registrar may request the committee to investigate the activities of a non-member but the committee has no compulsory powers in relation to the investigation of the non-member, except that the committee may require a member who may have information relevant to the investigation to attend before the committee or the person conducting the investigation to be interviewed. 1998, c. 21, s. 51.

HEARING COMMITTEE

Composition of committee

66 (1) A hearing committee must be appointed for the purpose of hearing any charges relating to a disciplinary matter against a member when a disciplinary matter is referred, in whole or in part, to a hearing committee.

(2) A hearing committee is composed of at least three persons of whom one member must be appointed by the Board as the chair.

(3) The committee must have as members

- (a) at least one person who does not hold a degree in occupational therapy or equivalent, who is a member of the Board; and
- (b) at least two members of the Board.

(4) Notwithstanding subsection (3), any two members of the committee constitute a quorum. 1998, c. 21, s. 52.

Powers and functions

67 (1) Subject to the regulations, the hearing committee may do all things necessary to provide a full and proper inquiry.

(2) In a matter over which a hearing committee has jurisdiction, the hearing committee and each member of the committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 1998, c. 21, s. 52.

Procedure

- 68** (1) Upon the application of
- (a) any party to the hearing;
 - (b) the chair of the hearing committee; or
 - (c) legal counsel for the College or hearing committee,

the Registrar of the College shall sign and issue a summons to witness for the purpose of procuring the attendance and evidence of witnesses before the hearing committee.

(2) It is the duty of the member who is charged in a disciplinary matter to appear at the hearing, but in the event of non-attendance by such member, the hearing committee, upon proof by affidavit, statutory declaration or other evidence acceptable to the hearing committee of service of the notice, pursuant to subsection (3), 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.

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

(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 College shall place the notice as provided for in subsection (4) in such publications as it considers necessary in order to inform the public. 1998, c. 21, s. 52.

Inadmissible evidence

69 (1) The following evidence is not admissible before a hearing committee unless the opposing party has been given, at least 10 days before the hearing,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; or
- (c) in the case of evidence of a witness, the identity of the witness.

(2) Notwithstanding subsection (1), a hearing committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (1) and may make directions it considers necessary to ensure that a party is not prejudiced. 1998, c. 21, s. 53.

Prohibition of communication

70 No member of a hearing committee holding a hearing may communicate outside the hearing, in relation to the subject-matter of the hearing, with a party

or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication, with the exclusion of communications where the sole purpose is to make administrative arrangements. 1998, c. 21, s. 54.

Expert opinions

71 Where a hearing committee obtains expert opinion regarding occupational therapy 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. 1998, c. 21, s. 55.

Access of public to hearing

72 (1) Subject to subsection (2), a hearing must be open to the public.

(2) The hearing committee may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the hearing committee is satisfied that

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
- (c) the safety of a person may be jeopardized.

(3) Where it thinks fit, the hearing committee may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

(4) No order may be made under subsection (3) that prevents the publication of anything that is contained in the Register and available to the public.

(5) The hearing committee may make an order that the public be excluded from the part of a hearing dealing with a motion of an order pursuant to subsection (2).

(6) The hearing committee may make any order necessary to prevent the public disclosure of matters disclosed in the submission relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

(7) Subject to any orders pursuant to this Section, the hearing committee shall state, at the hearing, its reasons for any order made pursuant to this Section. 1998, c. 21, s. 56.

Right to attend

73 Where a 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, the complainant and their legal and personal representatives; and

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

to attend the hearing. 1998, c. 21, s. 57.

Publication ban

74 A hearing committee shall, on the request of a witness, other than the member, whose testimony is in relation to allegations of misconduct of a sexual nature by a member involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness. 1998, c. 21, s. 58.

Treatment of evidentiary material

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, the complainant at the complainant's request and expense and other persons the hearing committee or the Registrar considers appropriate at those persons' request and expense; and

(c) copies of the transcript of any part of the hearing that is not closed nor the subject of an order prohibiting publication are available to any person at that person's expense.

(2) Where a transcript of a part of a hearing that is the subject of an order for a closed hearing or an order prohibiting publication is filed with a court in respect of proceedings, only the court, the parties to the proceedings and the complainant may examine it unless the court or the hearing committee orders otherwise. 1998, c. 21, 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, including the right to be represented by legal counsel, to know all the evidence considered by the hearing committee, to present evidence and to cross-examine witnesses.

(2) A hearing committee

(a) shall hear each case in such manner as it considers fit;

(b) may require the member to

(i) submit to physical or mental examinations by such qualified persons as the committee designates,

(ii) submit to an inspection or audit of the member's practice by such qualified persons as the committee designates,

- (iii) undergo such examinations as the hearing committee directs to determine whether the member is competent to practise occupational therapy, and
- (iv) produce records and accounts kept with respect to the member's practice;
- (c) where the member fails to comply with clause (b), may resolve that the registration or licence or specialist's licence, or both, of the member be suspended until the member does;
- (d) where the committee has, pursuant to subclause (b)(i), (ii) or (iii), required a member to submit to physical or mental examinations, or submit to inspection or audit of the practice by a qualified person designated by the committee, shall deliver to the member any report it receives from the designated qualified person;
- (e) shall determine whether the member is guilty of charges relating to a disciplinary matter, and
 - (i) where there is a guilty finding, may determine that
 - (A) the registration or licence or specialist's licence, or both, of the member be revoked and that member's name be stricken from the registers in which it is entered,
 - (B) the licence or specialist's licence, or both, of the member be suspended
 - (I) for a fixed period, or
 - (II) for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the committee,
 - (C) conditions, limitations or restrictions be imposed on the licence or specialist's licence, or both, of the member,
 - (D) the member undergo such treatment or re-education as the committee considers necessary,
 - (E) such fine as the committee considers appropriate to a maximum of \$15,000 be paid by the member to the College for the purpose of funding occupational therapy education and research and peer assessment as determined by the Board,
 - (F) the member be reprimanded,
 - (G) such other disposition as it considers appropriate be imposed, or
 - (ii) where there is a not guilty finding, the committee may dismiss the charges; and
- (f) shall file its decision, including reasons, at the offices of the College.

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

(4) The Registrar shall provide the member, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the hearing committee except that, where there are references identifying clients or other persons other than the complainant, those references as well as other personal information about those persons must be deleted where, in the Registrar's opinion, it is appropriate.

(5) The decision of a hearing committee has effect immediately upon service on the member or from such time as the decision may direct.

(6) The hearing committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. 1998, c. 21, s. 60.

Inadmissibility of evidence in legal proceeding

77 (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 an investigation committee or a hearing committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hearing processes of the College, including any information gathered in the course of an investigation or produced for an investigation committee, a hearing committee or staff members of the College.

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

(4) Unless otherwise determined by a court of competent jurisdiction, a decision of an investigation committee or a hearing committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 9.

COSTS

Contents of order for costs

78 (1) Where a hearing committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the Board, in whole or in part.

(2) Where a member is ordered to pay costs pursuant to subsection (1), the Board may make it a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Board may fix.

- (3)** For the purpose of this Section, “costs of the Board” include
- (a) expenses incurred by the College, the Board, the investigation committee and the hearing committee;
 - (b) honoraria paid to members of the investigation committee and the hearing committee; and
 - (c) solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint. 1998, c. 21, s. 61.

APPEAL

Procedure on appeal

79 (1) The member complained against may appeal on any point of law from the findings of the hearing committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of a hearing committee must consist of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the hearing committee certified by the chair of the hearing committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply with necessary changes to appeals to the 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 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 where, in its discretion, it considers it fit. 1998, c. 21, s. 62.

REINSTATEMENT

Procedure for making application

80 (1) A person whose licence or specialist’s licence has been revoked by a resolution of a hearing committee pursuant to subclause 76(2)(e)(i), may apply to the Board for

- (a) the entering of the person's name, address and qualifications on the Register or Defined Register and, if applicable, the Specialists Register;
 - (b) the issuance of a licence; and
 - (c) the issuance of a specialist's licence in any specialty in which the person held a specialist's licence at the time of such resolution of the hearing committee.
- (2) An application pursuant to subsection (1) must 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 occupational therapy 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 occupational therapy since the date of such resolution of the hearing committee; and
 - (e) such person undergoing such clinical or other examinations as the Board may designate,
- may direct the Registrar to
- (f) enter the name, address and qualifications of such person in the Register or Defined Register and, where applicable, the Specialists Register;
 - (g) issue a licence to such person; and
 - (h) enter the name, address, qualifications and specialties of such person in the Specialists Register, and issue a specialist's licence to the person in any specialty in which the person held a specialist's licence at the time of the resolution of the hearing committee pursuant to subclause 76(2)(e)(i),
- upon such terms and conditions as the Board may direct. 1998, c. 21, s. 63.

PEER ASSESSMENT

Peer Assessment Committee

- 81 (1)** In this Section and in Sections 82 to 88 and 96,
- “assessment” means an assessment pursuant to a peer-assessment program established pursuant to this Section;
- “assessors” means the assessors appointed by the Peer Assessment Committee pursuant to subsection 82(2).

(2) The Board shall establish a Peer Assessment Committee in accordance with the regulations. 1998, c. 21, s. 64.

Powers and duties of committee

82 (1) The Board may, by regulation or otherwise,

(a) authorize the Peer Assessment Committee to do or cause to be done, on behalf of the parties, any or all such things as the parties thereto are otherwise empowered to do and consider necessary for the development and administration of a peer-assessment program, subject to the approval of the Board;

(b) provide for the financing of the operations of the Peer Assessment Committee and for cost-sharing arrangements;

(c) provide for the preparation of an annual budget and its approval by the Board;

(d) provide for the incorporation of the Peer Assessment Committee if considered advisable to achieve the objectives of the Committee; and

(e) do such other things as may be necessary or desirable to provide for the administration of the Peer Assessment Committee and for its operations.

(2) The Peer Assessment Committee may appoint members of the College or persons licensed as occupational therapists in other provinces as assessors for the purpose of the application of the peer-assessment program to members of the College.

(3) Subject to the approval of the Board, the Peer Assessment Committee shall develop and administer a peer-assessment program that includes

(a) the assessment of the standards of practice of members, including

(i) standards for the clinical assessment and care of clients, and

(ii) standards for the maintenance of records of care administered to clients;

(b) the selection and education of assessors;

(c) communication with occupational therapists;

(d) budgetary and expense arrangements;

(e) the preparation of assessment reports;

(f) the development of policy and procedures of the Peer Assessment Committee and their delegation to subcommittees, assessors or employees as the Committee considers appropriate; and

(g) such further activities, including the establishment of other committees or subcommittees, for the better administration of the peer-assessment program. 1998, c. 21, s. 64.

Duties of member

83 (1) Every member whose standards of practice are the subject of an assessment shall co-operate fully with the Peer Assessment Committee and assessors.

(2) Without limiting the generality of the co-operation required by subsection (1), a member shall

(a) permit assessors to enter and inspect the premises where the member engages in the practice of occupational therapy;

(b) permit the assessors to inspect the member's records of care administered to clients;

(c) provide to the Peer Assessment Committee and assessors, in the form required, information requested by the Committee or assessors, as the case may be, in respect of the clinical assessment and care of clients by the member or the member's records of care administered to clients;

(d) confer with the Peer Assessment Committee or assessors when required to do so by the Committee or assessors;

(e) permit the reassessments the Peer Assessment Committee or assessors consider necessary for the proper administration of a peer-assessment program; and

(f) comply with the remedial recommendations of the Peer Assessment Committee. 1998, c. 21, s. 64.

Report of assessor

84 Upon completion of an assessment, an assessor shall report to the Peer Assessment Committee, which may

(a) receive the report of the assessor and make no recommendations to the member assessed; or

(b) confer with the member assessed and make any remedial recommendations to the member as the Committee considers appropriate, and direct the member to comply with the recommendations. 1998, c. 21, s. 64.

Costs of remedial recommendations

85 Costs incurred by the member in implementing the remedial recommendations made by the Peer Assessment Committee are payable by the member and are not the responsibility of the Committee, the Board or the College. 1998, c. 21, s. 64.

Disciplinary matter

86 (1) Where an assessor or a member of the Peer Assessment Committee learns, in the course of an assessment, that a member of the College may be guilty of a disciplinary matter, the assessment must be terminated, the member advised and the matter referred to the College to be dealt with as a complaint.

(2) The assessor or a member of the Peer Assessment Committee shall not provide any information to the College, except the information necessary

to identify the nature of the complaint with sufficient particularity to enable an investigation committee to identify the matter it is required to investigate.

(3) Nothing in this Section prevents any other person from providing evidence of a disciplinary matter relating to a member. 1998, c. 21, s. 64.

Annual report

87 Each year the Peer Assessment Committee shall prepare and publish a report on its activities for the preceding year. 1998, c. 21, s. 64.

Witnesses

88 (1) In this Section,
“legal proceeding” means

(a) a proceeding in any court, including a proceeding for the imposition of punishment by fine, penalty or imprisonment to enforce an Act of the Legislature or a regulation made under that Act, or any civil proceeding; and

(b) a disciplinary proceeding pursuant to this Act;

“witness” means any member or officer or employee of the College, any assessor or former assessor and any other person who, in connection with, or in the course of, a legal proceeding is called upon to provide information, to answer, orally or in writing, a question or to produce a document, whether under oath or not.

(2) A witness in a legal proceeding, whether a party or not, is excused from

(a) providing any information obtained by the witness in the course of or in relation to an assessment; and

(b) producing any document made by the Peer Assessment Committee, an assessor appointed under this Act or any other document that was prepared pursuant to or in relation to an assessment.

(3) Subsection (2) does not apply to

(a) records maintained by hospitals as required by the *Hospitals Act* or regulations made pursuant to that Act; or

(b) medical records maintained by attending physicians pertaining to a client.

(4) Notwithstanding that a witness

(a) is or has been an assessor or a member of a subcommittee of;

(b) has participated in the activities of; or

(c) has prepared a document for or has provided information to,

the Peer Assessment Committee, the witness is not, subject to subsection (2), excused from answering any question or producing any document that the witness is otherwise bound to answer or produce.

(5) An assessor or a member of the Peer Assessment Committee may not provide evidence against a member in a disciplinary matter with respect to information given by the member to the assessor or a member of the Peer Assessment Committee in the course of an assessment of the member unless the member has knowingly given false information during the assessment or the disciplinary matter.

(6) Nothing in subsection (5) prevents any other person from providing evidence against a member in a disciplinary matter with respect to the information given by the member in the course of the member's assessment. 1998, c. 21, s. 65.

Application of certain Sections and regulations

89 Sections 49 to 80 and 90 to 112 and all regulations pursuant to this Act that are applicable to members of the College apply with all necessary modifications to former members, unless otherwise expressly provided by this Act or the regulations. 1998, c. 21, s. 66.

EVIDENCE

Certificate as evidence

90 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. 1998, c. 21, s. 67.

Effect of presence of name in document

91 The presence of the name of any person in a document purporting for any year to be an annual list published by the Registrar pursuant to Section 33 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. 1998, c. 21, s. 68.

NOTICES

Service

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

- (a) upon a member by registered letter addressed to such person at the member's address as set forth in the Register; and
- (b) upon any other person by registered letter. 1998, c. 21, s. 69.

Deemed day of service

93 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 92 is proof of service. 1998, c. 21, s. 70.

Service on College

94 Service of any document on the College may be made by service on the Registrar. 1998, c. 21, s. 71.

LIMITATIONS OF ACTIONS**Exemption from liability**

95 Where an occupational therapist entitled to practise occupational therapy in the Province, or any other province or country, voluntarily renders first aid or emergency treatment without the expectation of monetary compensation to a person outside of a hospital or occupational therapist's office, or in any other place not having proper and necessary medical facilities, that occupational therapist is not liable for the death of such person, or damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such first aid or emergency treatment, unless it is established that such injuries were, or such death was caused by, conduct on the part of such occupational therapists that, if committed by a person of ordinary experience, learning and skill, would constitute negligence. 1998, c. 21, s. 72.

Further exemption from liability

96 (1) No action for damages lies against the Peer Assessment Committee, the College, the Board, the Registrar, an officer or employee of the Peer Assessment Committee or College or Board, an assessor, a member of a committee or subcommittee of the Peer Assessment Committee or the College or the Board, or a member of the Board or committee of the Board, or a member of the College

(a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out their duties or obligations as an officer, employee or member under this Act; or

(b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

(3) Without limiting the generality of subsection (2), no action for damages lies against a member or other person for disclosing any books, records, papers and other documents in their possession or control when done pursuant to this Act, including clause 56(1)(d). 1998, c. 21, s. 73.

INCORPORATION**Professional corporations**

97 Subject to this Act and the regulations, a professional corporation may engage in the practice of occupational therapy and occupational therapists may be employed by a professional corporation for the purpose of engaging in the practice of occupational therapy. 1998, c. 21, s. 74.

Shareholding in professional corporations

98 (1) A majority of the issued shares of a professional corporation must be legally and beneficially owned by one or more occupational therapists.

(2) A majority of the issued voting shares of a professional corporation must be legally and beneficially owned by one or more occupational therapists.

(3) Subject to subsections (1) and (2), the spouse or child of an occupational therapist 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 an occupational therapist, or the spouse or child of an occupational therapist, or a group of such individuals so long as no one other than an occupational therapist, or the spouse or child of an occupational therapist, acts as such a trustee without the written consent of the Registrar. 1998, c. 21, s. 75.

Qualification for directors and president

99 (1) A majority of the directors of a professional corporation must be occupational therapists.

(2) The president of a professional corporation must be an occupational therapist. 1998, c. 21, s. 76.

Permit for professional corporation

100 A professional corporation shall not engage in the practice of occupational therapy unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations. 1998, c. 21, s. 77.

Restriction on professional corporations

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

(2) Notwithstanding subsection (1), no professional corporation shall be registered as an occupational therapist under this Act.

(3) The Registrar shall issue a permit to any professional corporation that fulfills the following conditions:

(a) files all required applications in the form prescribed by the regulations;

(b) pays all fees prescribed by the 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 98 and 99 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 occupational therapy for or on behalf of the professional corporation are occupational therapists; and

(h) satisfies the Registrar that the professional corporation is in compliance with this Act and the regulations.

(4) A permit issued pursuant to subsection (3), or any renewal of a permit pursuant to subsection (5), expires on December 31st of the year for which it was issued or renewed.

(5) The Registrar may renew a permit upon such application and payment of such fee as may be required by the regulations where the Registrar determines that the requirements of subsection (3) are satisfied by the professional corporation.

(6) A permit issued pursuant to subsection (3), or renewed pursuant to subsection (5), may be suspended or revoked at any time by the Registrar if a professional corporation fails to satisfy any of the requirements prescribed in subsection (3).

(7) The Board may, in its discretion, review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (6).

(8) For the purpose of this Act, the practice of occupational therapy 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 an occupational therapist. 1998, c. 21, s. 78.

Deemed revocation of permit

102 (1) Where a professional corporation practises occupational therapy only through the services of one occupational therapist and that occupational therapist 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 occupational therapy.

(2) Where a professional corporation practises occupational therapy through the services of more than one occupational therapist and such professional corporation ceases to fulfill any requirement prescribed in subsection 101(3) by reason of

(a) the death of an occupational therapist;

- (b) the incompetency of an occupational therapist;
- (c) the revocation of the licence of an occupational therapist pursuant to this Act;
- (d) the suspension of the licence of an occupational therapist pursuant to this Act; or
- (e) the retirement from practice by an occupational therapist,

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 occupational therapist, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise occupational therapy 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 101(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. 1998, c. 21, s. 79.

Notification of change in professional corporation

103 Where the shares of a professional corporation engaged in the practice of occupational therapy 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. 1998, c. 21, s. 80.

Effect of relationship to corporation

104 The relationship of an occupational therapist 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 occupational therapist. 1998, c. 21, s. 81.

Liability and restrictions on transfer

105 (1) All persons who carry on the practice of occupational therapy 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 occupational therapy 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 occupational therapy.

(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 an occupational therapist the authority to exercise the voting rights attached to any or all of the owner's shares. 1998, c. 21, s. 82.

Status of relationships

106 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between an occupational therapist 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 an occupational therapist and a client.

(3) All rights and obligations pertaining to communications made to or information received by an occupational therapist apply to the shareholders, directors, officers and employees of a professional corporation. 1998, c. 21, s. 83.

Compellable witnesses

107 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 1998, c. 21, s. 84.

Certificate as evidence

108 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 occupational therapy 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. 1998, c. 21, s. 85.

Liability of directors and officers

109 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. 1998, c. 21, s. 86.

Offences and penalties

110 (1) Every person who contravenes Sections 97 to 109 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 97 to 109 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. 1998, c. 21, s. 87.

GENERAL

Publication of decisions

111 (1) Subject to any publication bans, the College shall publish a hearing committee's decision or summary of the decision in its annual report and may publish the decision or summary in any other publication.

(2) Where the registration or licence, or specialist's licence, or both, of a member has been revoked or suspended or where conditions, limitations or restrictions are imposed on the licence or specialist's licence of a member, the College shall place a notice in such publications as it considers necessary in order to inform the public. 1998, c. 21, s. 88.

Regulations Act

112 All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*. 1998, c. 21, s. 89.

CHAPTER O-4

An Act Respecting the Liability of Owners and Other Occupiers of Land and Other Premises

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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 *Occupiers Liability Act*. 1996, c. 27, s. 1.

Interpretation

- 2** In this Act,
“occupier” means an occupier at common law, and includes
(a) a person who is in physical possession of premises; or
(b) a person who has responsibility for, and control over,
the condition of premises, the activities conducted on the premises or
the persons allowed to enter the premises,

and, for the purpose of this Act, there may be more than one occupier of the
same premises;

“premises” includes

- (a) land and structures, or either of them, except portable
structures and equipment;
(b) water;
(c) ships and vessels;
(d) notwithstanding clause (a), trailers and portable struc-
tures designed or used for a residence, business or shelter;

(e) railway cars, vehicles and aircraft, except while in operation. 1996, c. 27, s. 2.

Replacement of common law rules

3 This Act applies in place of the rules of common law for the purpose of determining the duty of care that an occupier of premises owes persons entering on the premises in respect of damages to them or their property. 1996, c. 27, s. 3.

Duties of occupier

4 (1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises and the property brought on the premises by that person are reasonably safe while on the premises.

- (2)** The duty created by subsection (1) applies in respect of
- (a) the condition of the premises;
 - (b) activities on the premises; and
 - (c) the conduct of third parties on the premises.

(3) Without restricting the generality of subsection (1), in determining whether the duty of care created by subsection (1) has been discharged, consideration must be given to

- (a) the knowledge that the occupier has or ought to have of the likelihood of persons or property being on the premises;
- (b) the circumstances of the entry into the premises;
- (c) the age of the person entering the premises;
- (d) the ability of the person entering the premises to appreciate the danger;
- (e) the effort made by the occupier to give warning of the danger concerned or to discourage persons from incurring the risk; and
- (f) whether the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection.

(4) Nothing in this Section relieves an occupier of premises of any duty to exercise, in a particular case, a higher standard of care that, in such case, is required of the occupier by virtue of any law imposing special standards of care on particular classes of premises. 1996, c. 27, s. 4.

Willing assumption of risk

5 (1) The duty of care created by subsection 4(1) does not apply in respect of risks willingly assumed by the person who enters on the premises but, in that case, the occupier owes a duty to the person not to create a danger with the deliberate intent of doing harm or damage to the person or property of that person and not to act with reckless disregard of the presence of the person or property of that person.

(2) A person who is on premises without the permission of the occupier for the purpose of committing an offence against the person or the right of property contrary to the *Criminal Code* (Canada) is deemed to have willingly assumed all risks and the duty of care created by subsection (1) applies.

(3) The question of whether a person is on premises for the purpose set out in subsection (2) is determined on a balance of probabilities. 1996, c. 27, s. 5.

Deemed willing assumption of risk

6 (1) This Section applies to

- (a) land used primarily for agricultural or forestry purposes;
- (b) vacant or undeveloped rural land;
- (c) forested or wilderness land;
- (d) recreation facilities when closed for the season;
- (e) utility rights-of-way and corridors, excluding structures located thereon;
- (f) highway reservations under the *Public Highways Act*;
- (g) mines as defined in the *Mineral Resources Act* where the harm or damage suffered is not, in whole or in part, the result of non-compliance with a law relating to the security of such mine and the safety of persons and property;
- (h) private roads situated on lands referred to in this subsection;
- (i) private roads to which this Section does not otherwise apply, reasonably marked by notice as private, where persons are physically restricted from access by a gate or other structure; and
- (j) recreational trails reasonably marked by notice as such.

(2) Subject to subsection (3), a person who enters premises described in subsection (1) is deemed to have willingly assumed all the risks and the duty created by subsection 5(1) applies.

(3) This Section does not apply to a person who

- (a) enters premises for a purpose connected with the occupier or any person usually entitled to be on the premises;
- (b) has paid a fee for the entry or activity of the person on premises, other than a benefit or payment received by the occupier of the premises from a government or government agency or a non-profit recreation club or association;
- (c) is being provided, in exchange for consideration, with living accommodation by the occupier; or
- (d) is authorized or permitted by any law to enter or use the premises, for other than recreational purposes, without the consent or permission of the occupiers. 1996, c. 27, s. 6.

Agreements modifying duties

7 (1) An occupier may, by express agreement, express stipulation or notice,

- (a) extend or increase the duty created by subsection 4(1);
- or
- (b) restrict, modify or deny the duty created by subsection 4(1),

subject to any prohibition or limitation imposed by this or any other Act of the Legislature, against or on, the restriction, modification or denial of the duty.

(2) No restriction, modification or denial of the duty pursuant to clause (1)(b), whether by express agreement, express stipulation or notice, is valid or binding against any person unless in all the circumstances of the case it is reasonable and, without limiting the circumstances to be considered in any case, in determining the reasonableness of any restriction, modification or denial of the duty, the circumstances to be considered include

- (a) the relationship between the occupier and the person affected by the restriction, modification or denial;
- (b) the injury or damage suffered and the hazard causing it;
- (c) the scope of the restriction, modification or denial; and
- (d) the steps taken to bring the restriction, modification or denial to the attention of the persons affected thereby.

(3) Subject to subsections (4) and (5), where an occupier restricts, modifies or denies the duty created by subsection 4(1), the occupier shall take reasonable steps to bring the restriction, modification or denial to the attention of the person to whom the duty is owed.

(4) An occupier of premises may not restrict, modify or deny the duty imposed by subsection 4(1) with respect to a person who is empowered or permitted by any law to enter or use the premises without the consent or permission of the occupier.

(5) This Section applies to express agreements, stipulations and notices that are made prior to, on or after December 20, 1996. 1996, c. 27, s. 7.

Independent contractors

8 (1) Notwithstanding subsection 4(1), where damage is caused to persons or property on premises solely by the negligence of an independent contractor engaged by the occupier of the premises, the occupier is not on that account liable pursuant to this Act if, in all the circumstances,

- (a) the occupier exercised reasonable care in the selection of the independent contractor; and
- (b) it was reasonable that the work that the independent contractor was engaged to do should have been done.

(2) Subsection (1) does not restrict, modify or deny the liability imposed by any other Act of the Legislature on an occupier of premises for the negligence of independent contractors engaged by the occupier.

(3) Where damage is caused to persons or property on premises by the negligence of an independent contractor engaged by an occupier of the premises and there are two or more occupiers of the premises, subsection (1) applies to each of those occupiers. 1996, c. 27, s. 8.

Duties of landlord

9 (1) Where under a lease of premises a landlord is responsible for the maintenance or repair of the premises, the landlord owes the same duty to each person entering on the premises as is owed by the occupier of the premises.

(2) Where premises are sublet, subsection (1) applies to any landlord who is responsible for the maintenance and repair of the premises.

(3) Nothing in this Act relieves a landlord of any duty imposed on landlords by any law.

(4) For the purpose of this Section, obligations imposed on a landlord by any law are deemed to be imposed under the lease and “lease” includes any statutory lease or any contract or statutory provision conferring the right of occupation of premises on a person who is not the owner thereof and “landlord” is to be construed accordingly.

(5) This Section applies to leases that are made prior to, on or after December 20, 1996. 1996, c. 27, s. 9.

Application of certain Acts

10 The *Contributory Negligence Act* and the *Tortfeasors Act* apply to and in respect of damages arising from a breach of the duties imposed by this Act. 1996, c. 27, s. 10.

Application of Act to Crown

11 (1) Subject to subsection (2), this Act is binding on the Crown in right of the Province and in right of Canada.

(2) This Act does not apply to the Crown in right of the Province or in right of Canada as the occupier of

- (a) a public highway or a public road;
- (b) drainage works; or
- (c) a river, stream, watercourse, lake or other body of water except those areas thereof that have been specially developed by the Crown for recreational swimming or for the launching and landing of boats. 1996, c. 27, s. 11.

Application of Act to municipalities

- 12 (1) In this Section,
“highway” includes any public road or street;

“municipality” means a regional municipality, town or municipality of a county or district.

(2) This Act does not apply to a municipality as the occupier of a highway, public walkway or public sidewalk. 1996, c. 27, s. 12.

Exemption from application of Sections 5 to 9

13 Sections 5 to 9 do not apply to or affect

- (a) the liability or duties of an employer to employees of the employer;
 - (b) the liability or duties of any person arising under a contract for the hire of, or for the carriage for reward of persons or property in any vehicle, vessel, aircraft or other means of transportation;
 - (c) the liability or duties of any person by virtue of a bailment; or
 - (d) the liabilities or duties of any person under the *Trails Act*.
- 1996, c. 27, s. 13; 2019, c. 9, s. 9.

Causes of action affected by Act

14 For greater certainty, subject to subsections 7(5) and 9(5), this Act applies only in respect of a cause of action arising on or after December 20, 1996. 1996, c. 27, s. 14.

CHAPTER O-5

An Act to Regulate Off-highway Vehicles

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Short title

1 This Act may be cited as the *Off-highway Vehicles Act*. R.S., c. 323, s. 1.

Interpretation

2 In this Act,
“dealer” means a person who in the ordinary course of business sells
off-highway vehicles;

“Minister” means the Minister of Public Works or such other member of the Executive Council assigned responsibility for this Act;

“occupier” includes a person who

- (a) is in possession of land; or
- (b) has responsibility for and control over land or the activities carried on there, or control over persons allowed to enter land,

and there may be more than one occupier of the same land;

“off-highway vehicle” means

- (a) a snow vehicle;
- (b) an all-terrain vehicle;
- (c) a motorcycle;
- (d) a mini bike;
- (e) a four-wheel-drive or low-tire-pressure vehicle;
- (f) a dune buggy; or
- (g) a vehicle or class of vehicle designated as an off-highway vehicle by the regulations,

but does not include

- (h) a vehicle registered pursuant to the *Motor Vehicle Act*;
- or
- (i) a vehicle or class of vehicle exempted from the provisions of this Act by the regulations;

“peace officer” includes a member of the Royal Canadian Mounted Police, a police officer appointed by a regional municipality, town or municipality of a county or district, a motor vehicle inspector appointed pursuant to the *Motor Vehicle Act* and a conservation officer as defined in the *Forests Act*;

“permit” means a permit issued pursuant to this Act, and includes a temporary permit and a dealer’s permit;

“prescribed” means prescribed by the regulations;

“registered owner” means the person in whose name an off-highway vehicle is registered with the Registrar pursuant to this Act, including a person deemed to be the registered owner pursuant to this Act, or, if the vehicle is not registered, means the owner;

“Registrar” means the Registrar of Motor Vehicles. R.S., c. 323, s. 2; 2005, c. 56, s. 1.

Permit

3 (1) Every person who

- (a) is of the age of majority or who, being less than the age of majority but at least 16 years of age, produces written permission from that person’s parent or guardian in the prescribed form;

- (b) produces prescribed documentation; and
- (c) pays the prescribed fee,

may apply for an off-highway vehicle permit from the Registrar.

(2) The parent or guardian of an owner of an off-highway vehicle who is less than 16 years of age may apply for an off-highway vehicle permit to be used for that vehicle, and the parent or guardian is the registered owner of any vehicle to which the permit applies.

(3) Where the Registrar is satisfied that an application meets with the requirements of this Section, the Registrar shall issue

- (a) a permit for an off-highway vehicle containing such information as the Registrar determines; and
- (b) an identification number.

(4) The Minister may authorize a dealer or other person designated by the Minister to issue a temporary permit in the form approved by the Minister and subject to conditions stated in the permit or prescribed. R.S., c. 323, s. 3.

Prohibition

- 4 (1) No person shall operate an off-highway vehicle unless
- (a) a permit has been issued in respect of the vehicle; and
 - (b) an identification number assigned to the owner is displayed on the vehicle in the prescribed manner.

(2) Subsection (1) does not apply to an off-highway vehicle owned by a person who does not ordinarily reside in the Province if the vehicle is not kept in the Province for more than 90 consecutive days. R.S., c. 323, s. 4; 2005, c. 56, s. 2.

Production of permit

5 Every operator of an off-highway vehicle shall produce the vehicle permit within 24 hours of a demand by a peace officer. R.S., c. 323, s. 5.

Dealer's permit

6 A dealer may apply to the Registrar for a dealer's permit to be displayed in the prescribed manner on an off-highway vehicle that is being demonstrated for sale or resale, service tested or operated for the purpose of the dealer's business. R.S., c. 323, s. 6.

Sale or transfer

7 (1) Where an off-highway vehicle registered pursuant to this Act is sold or transferred by the owner or by operation of law, the owner or person authorized shall

- (a) assign the certificate of registration to the purchaser or transferee and notify the Registrar of the sale or transfer immediately; and

(b) remove the identification number and keep it until the expiry date for reassignment to another vehicle or return it to the Registrar.

(2) A person to whom a registered off-highway vehicle is sold or transferred shall apply to the Registrar for a certificate of registration and shall accompany the application with the certificate of registration assigned to that person and the prescribed fee.

(3) Where an off-highway vehicle registered pursuant to this Act is sold or transferred by the owner and a valid identification number assigned to the transferee is displayed as prescribed, the vehicle is deemed to be registered in the name of the new owner for a period of 30 days from the time of the sale or transfer unless

(a) an application for other registration of the vehicle is sooner made; or

(b) the vehicle is again sold or transferred during that period.

(4) Where the off-highway vehicle is not registered by the new owner within the period referred to in subsection (3), the registration is revoked.

(5) Subject to subsection (6), in the event of the transfer of the title or interest of an owner in and to an off-highway vehicle by reason of the bankruptcy of the owner, execution sale, repossession or other operation of law, the registration is revoked.

(6) Immediately upon the death of the owner of a registered off-highway vehicle, the vehicle is deemed to be registered in the name of the estate of the deceased owner for a period of 60 days unless

(a) an application for other registration of the vehicle is sooner made; or

(b) the vehicle is sold or transferred during that period.

(7) Where no application for registration is sooner made, the off-highway vehicle of the deceased owner is deemed to be unregistered at the expiration of 60 days following that person's death.

(8) Subsections (6) and (7) do not affect the title or interest of any person in the off-highway vehicle or the protection provided by the *Insurance Act* upon the death of an insured vehicle owner. R.S., c. 323, s. 7.

Notice by dealer to Registrar of transfer

8 (1) Every dealer, upon transferring an off-highway vehicle, whether by sale, lease or otherwise, to any person other than a dealer, shall immediately give written notice of the transfer to the Registrar upon the official form provided by the Registrar.

(2) A notice referred to in subsection (1) must contain the date of the transfer, the names and addresses of the transferor and transferee and such description of the off-highway vehicle as is required in the official form.

(3) The notice referred to in subsection (1) must be given weekly, monthly or otherwise as the Registrar determines. 2002, c. 5, s. 46.

Proof of payment of sales tax

9 Where an off-highway vehicle registered pursuant to this Act is sold or disposed of, or the title or interest of an owner in and to such a vehicle is transferred by operation of law, and an application for the registration of the vehicle is made, the Registrar may refuse to register the off-highway vehicle unless the applicant provides proof, in a form satisfactory to the Registrar, that tax required to be paid pursuant to the *Revenue Act* in respect of the vehicle has been paid. R.S., c. 323, s. 8.

Requirement for dealer's licence

10 No person shall act as a dealer for off-highway vehicles unless that person has a dealer's licence issued by the Registrar. R.S., c. 323, s. 9.

Requirement for helmet

11 No person shall operate or be a passenger on

- (a) a snow vehicle;
- (b) an all-terrain vehicle;
- (c) a motorcycle;
- (d) a mini bike;
- (e) a vehicle or class of vehicle designated by the regulations; or
- (f) a conveyance of a prescribed class towed by an off-highway vehicle,

unless that person is wearing a helmet that complies with standards determined by or in accordance with the regulations. R.S., c. 323, s. 10; 2005, c. 56, s. 3.

Operation by persons under 16

12 (1) Except as provided in subsections (2) to (4), no person who is under the age of 16 years shall operate an off-highway vehicle and no person who owns or has control of an off-highway vehicle shall permit the operation of the off-highway vehicle by a person under the age of 16 years.

(2) An off-highway vehicle may be operated by a person under the age of 16 years and not under the age of 14 years if

(a) that person is under the direct supervision of that person's parent or guardian and within the sight of that parent or guardian; and

(b) both the parent or guardian referred to in clause (a) and the person who is under the age of 16 years are certified as having successfully completed off-highway vehicle safety training in accordance with the regulations.

(3) An off-highway vehicle, other than an all-terrain vehicle, may be operated on private property or, in the case of a snow vehicle, on a trail designated pursuant to this Act for snow vehicles by a person under the age of 14 years if

(a) that person is under the direct supervision of that person's parent or guardian and within the sight of that parent or guardian;

(b) both the parent or guardian referred to in clause (a) and the person who is under the age of 14 years are certified as having successfully completed off-highway vehicle safety training in accordance with the regulations; and

(c) the off-highway vehicle does not have an engine size in excess of that recommended by the manufacturer for an operator of the age and weight of the person under the age of 14 years and, in any event, has an engine size of less than that prescribed by the regulations.

(4) An off-highway vehicle of a particular class of off-highway vehicle may be operated under the auspices of an organization accredited by the regulations by a person who is under the age of 16 years on a closed course designed and maintained for that class of off-highway vehicle if

(a) the person is wearing personal protective equipment as prescribed by the regulations;

(b) the person is certified as having successfully completed off-highway vehicle safety training appropriate for the person's age in accordance with the regulations;

(c) course rules are enforced;

(d) the vehicle is operated in a class based upon the person's age, size and ability;

(e) that person is under the direct supervision of that person's parent or guardian;

(f) a trained official is present;

(g) a trained first-responder is present; and

(h) the off-highway vehicle does not have an engine size in excess of that recommended by the manufacturer for an operator of the age and weight of the person under the age of 16 years and, in any event, has an engine size of less than that prescribed by the regulations. R.S., c. 323, s. 11; 2005, c. 56, s. 4.

Off-highway vehicle safety training

13 No person who is of the age of 16 years or more shall operate an off-highway vehicle unless that person is certified as having successfully completed off-highway vehicle safety training in accordance with the regulations. 2005, c. 56, s. 5.

Prohibited operation on highway

14 (1) Except as provided by this Section, the *Road Trails Act* or as authorized by the Minister pursuant to Section 18 or 21, no person shall operate an off-highway vehicle upon a highway, upon the shoulder adjoining the travelled portion of a highway or upon the median of a highway.

(2) For the purpose of loading or unloading an off-highway vehicle from a trailer or other vehicle, a person may operate the off-highway vehicle at the side of a highway immediately adjacent to the place of loading or unloading.

(3) A person may drive an off-highway vehicle across a highway at right angles if

(a) that person stops the off-highway vehicle at the side of the road and yields to all traffic on the highway approaching so close as to constitute a hazard;

(b) there is a clear and unobstructed view along the highway for a distance of 500 feet in each direction; and

(c) there are no passengers on the off-highway vehicle.

(4) An off-highway vehicle may be operated on a highway that is impassable with snow if it is not normally maintained by snow removal or snow clearance equipment and if it is not within the boundaries of a former city, a town or a village continued under the *Municipal Government Act*.

(5) An off-highway vehicle may be operated during daylight hours between the boundary line of a highway and the line of the shoulder farthest removed from the travelled portion of the highway, namely the area commonly known as the “ditch”, with or against the flow of vehicular traffic, but from sunset to sunrise the off-highway vehicle may only be driven in the same direction as the normal flow of the vehicular traffic on that side of the centre line of the highway.

(6) Subject to the *Road Trails Act* and except as provided in subsections (4) and (5), no person shall operate an off-highway vehicle on or across the travelled portion of a highway unless that person is the holder of a valid driver’s licence issued pursuant to the *Motor Vehicle Act*.

(7) The *Motor Vehicle Act* does not apply to the operation of an off-highway vehicle on a highway where such operation is authorized in accordance with this Act. R.S., c. 323, s. 12; 2005, c. 56, s. 6; 2023, c. 4, s. 41.

Wetland, watercourse, dune, barren or other sensitive area

15 (1) No person shall operate an off-highway vehicle in or on

(a) a wetland, swamp or marsh;

(b) a watercourse as defined by the *Environment Act*;

(c) a sand dune;

(d) a coastal or highland barren; or

(e) a sensitive area as designated by or defined in the regulations.

(2) Subsection (1) does not apply to

(a) peace officers in the performance of their duties;

(b) a frozen watercourse;

(c) a coastal or highland barren or wetland, swamp or marsh that is covered by compacted or groomed snow of at least 30 centimetres in depth;

(d) a wetland, swamp or marsh or a watercourse when use is authorized pursuant to the *Environment Act*;

(e) a coastal or highland barren, a sand dune or a sensitive area when use is authorized by an order or a licence issued pursuant to this Section.

(3) The Minister may authorize emergency operation of an off-highway vehicle in or on a coastal or highland barren, a sand dune or a sensitive area by an order providing general authority or by an order issued in specific circumstances.

(4) The Minister may, in accordance with the regulations, issue a licence for the operation of an off-highway vehicle in or on a coastal or highland barren, a sand dune or a sensitive area if

(a) for non-recreational use;

(b) required to access private land; or

(c) on a trail or route that is an essential link with a more extensive off-highway vehicle trail network,

and, in the opinion of the Minister, there is no reasonable alternative for such use and the use will have a minimal environmental impact.

(5) A licence issued pursuant to subsection (4) must designate the specific routes on which the off-highway vehicle may be operated.

(6) A licence issued pursuant to subsection (4) may contain such terms and conditions as the Minister considers necessary or advisable for the protection of the environment. 2005, c. 56, s. 7.

Beach, core habitat, park or protected or ecological site

16 No person shall operate an off-highway vehicle

(a) on a beach as defined by the *Beaches Act*;

(b) in a core habitat as defined by the *Endangered Species Act*;

(c) in a provincial park or park reserve as defined by the *Provincial Parks Act*;

(d) in a protected site or ecological site designated pursuant to the *Special Places Protection Act*,

except as provided by the *Beaches Act*, the *Endangered Species Act*, the *Provincial Parks Act* or the *Special Places Protection Act* or regulations made pursuant thereto. 2005, c. 56, s. 7.

Wilderness area

17 No person shall operate an off-highway vehicle in a wilderness area as defined in the *Wilderness Areas Protection Act* except in accordance with that Act. 2005, c. 56, s. 7.

Designated trails

18 (1) The Minister may, in accordance with the regulations, designate trails for off-highway vehicles, or a class of off-highway vehicles, for the purpose of this Section.

(2) The Minister may enter into an agreement with any person for the purpose of this Section, including, without limiting the generality of the foregoing, the management of a trail designated pursuant to this Section.

(3) No person shall operate an off-highway vehicle on a trail designated pursuant to this Section

(a) unless a trail permit is displayed or carried in accordance with the regulations;

(b) unless insured against third-party liability as required by the regulations; and

(c) except as authorized by the regulations. 2005, c. 56, s. 7.

Off-highway vehicle rallies

19 (1) No person shall hold or participate in an off-highway vehicle rally unless a permit for the rally has been issued pursuant to this Section.

(2) The Minister may issue a permit for an off-highway vehicle rally in accordance with the regulations.

(3) No permit may be issued pursuant to this Section unless

(a) written permission has been received from the owners or occupiers of all land used by the rally;

(b) all necessary precautions to protect the environment have been taken; and

(c) local enforcement authorities have been notified of the rally. 2005, c. 56, s. 7.

Drinking-water supply area

20 (1) At the request of the waterworks operator for a drinking-water supply area, the Minister of Environment and Climate Change may, for the protection of water quality in the supply area, make an order, consistent with any applicable source-water protection plan, controlling, prohibiting or regulating off-highway vehicle use in the supply area.

(2) No person shall operate an off-highway vehicle in a drinking-water supply area contrary to an order made pursuant to subsection (1). 2005, c. 56, s. 7.

Emergency operations

21 The Minister may authorize emergency operation of an off-highway vehicle on a highway as defined in the *Motor Vehicle Act*, on the shoulder adjoining the travelled portion of the highway or on a highway median by order issued in specific circumstances or by general authority defining emergency operation for the purpose of this Section. R.S., c. 323, s. 13.

Permission of owner or occupier

22 (1) No person shall operate an off-highway vehicle on a sidewalk, walkway, school grounds, utility service lane, cultivated land, private forest land, campground, golf course, park, playground or any private property, without the written permission of the owner or occupier.

(2) This Section does not apply to

- (a) crossing a sidewalk to leave or enter a permanent driveway;
- (b) lawful parking, loading or unloading;
- (c) authorized construction or maintenance;
- (d) an area where the operation of off-highway vehicles is permitted by a designation of the area for that purpose by the council of a regional municipality, town or municipality of a county or district made with the consent of the owner or occupier.

(3) Written permission for the purpose of subsection (1) may be given by the owner or occupier of land to an individual or through a recognized club or association. R.S., c. 323, s. 14; 2005, c. 56, s. 8.

Voluntary assumption of risks

23 Notwithstanding the *Occupiers Liability Act*, a person who owns or operates or who is a passenger on an off-highway vehicle on land, with or without the permission of the owner or occupier of the land, is deemed to have willingly assumed all risks related to the ownership or operation of or carriage on the off-highway vehicle except a danger created by the owner or occupier of the land with the deliberate intent of doing harm or damage to the person or property of the owner, operator or passenger. 2005, c. 56, s. 9.

No prescriptive rights

24 No person who operates or who is a passenger on an off-highway vehicle on land, with or without the permission of the owner or occupier of the land, thereby acquires any property rights with respect to the land. 2005, c. 56, s. 9.

Required and prohibited lamps

25 (1) No person shall operate an off-highway vehicle during the period from sunset to sunrise unless the vehicle is equipped

- (a) on the front thereof, with at least one lighted lamp exhibiting a white light visible under normal atmospheric conditions from a distance of at least 300 feet to the front of the vehicle; and
- (b) on the rear thereof, with at least one lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of at least 200 feet to the rear of the vehicle.

(2) An off-highway vehicle may only be equipped with

- (a) the lamps referred to in subsection (1); and

(b) turn signal lights that comply with any requirements in the *Road Trails Act* and the regulations made under that Act and are only

(i) red, white, yellow or amber when visible from behind the off-highway vehicle, and

(ii) white, yellow or amber turn signal lights when visible from in front of the off-highway vehicle. R.S., c. 323, s. 15; 2023, c. 4, s. 42.

Noise

26 No person shall operate an off-highway vehicle if the noise level of the vehicle is higher than the level originally set by the manufacturer because of the removal of the muffler or other noise-dampening device or the modification of the muffler or other noise-dampening device so as to increase the noise level. 2005, c. 56, s. 10.

Liability insurance

27 No person shall operate an off-highway vehicle on any land of which the person is not an owner or occupier unless that person carries third-party liability insurance in at least the amount required by the regulations. 2005, c. 56, s. 10.

Manner of operation

28 No person shall operate an off-highway vehicle

(a) without due care and attention;

(b) without reasonable consideration for other persons, including passengers, or property;

(c) at an excessive rate of speed having regard to the conditions existing at the time;

(d) so as to annoy or worry a domestic or farm animal or wildlife. R.S., c. 323, s. 16; 2005, c. 56, s. 11.

Direction of peace officer

29 A person shall stop an off-highway vehicle on the direction of a peace officer. R.S., c. 323, s. 17.

Off-highway Vehicle Infrastructure Fund

30 (1) A fund to be known as the Off-highway Vehicle Infrastructure Fund is established.

(2) The Fund consists of

(a) money acquired by agreement, gift, donation, bequest or contribution;

(b) income accruing to the Fund; and

(c) penalties received by the Crown in right of the Province pursuant to this Act.

(3) The Minister may expend, in accordance with the *Finance Act*, money from the Fund for

- (a) trail development and maintenance;
 - (b) funding of off-highway vehicle user organizations;
 - (c) projects relating to off-highway vehicle operator health and safety;
 - (d) education and training for operators of off-highway vehicles;
 - (e) any other purpose related to off-highway vehicles.
- 2005, c. 56, s. 12; 2010, c. 2, s. 136.

Offence and penalty

31 (1) Every person who violates a provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a penalty of not less than \$250 nor more than \$2,000.

(2) Notwithstanding subsection (1), a person who is guilty of a second or subsequent offence is liable to a fine of not less than \$500 nor more than \$2,000. R.S., c. 323, s. 18; 2005, c. 56, s. 13.

Seizure and detention

32 (1) A peace officer may seize an off-highway vehicle where the peace officer has reasonable and probable grounds to believe that an offence has been committed under this Act and may detain the same until the final disposition of the case at trial or any charges are otherwise disposed of where the peace officer has reasonable and probable grounds to believe the seizure and detention is necessary to prevent the continuation or repetition of the offence.

(2) Where an off-highway vehicle is seized and detained pursuant to this Act, the costs of impounding and storing it must be paid by the person to whom the off-highway vehicle is to be released before it is released.

(3) Where the costs of impounding and storing an off-highway vehicle pursuant to this Act have not been paid within 30 days of the final disposition as provided in subsection (1), the sheriff shall sell the vehicle in the same manner and in all respects as other goods are sold under execution.

(4) The sheriff shall pay from the money recovered pursuant to subsection (3)

- (a) the sheriff's fees, commission and poundage expenses;
- and
- (b) the costs of impounding and storing the off-highway vehicle,

and any surplus that remains to the person entitled thereto.

(5) Where money is levied upon such execution, the *Creditors Relief Act* does not apply to such portion of such money as is obtained by the levy-

ing on and selling of the off-highway vehicle under the execution. R.S., c. 323, s. 19; 2005, c. 56, s. 14.

Failure to identify person in charge

33 Where the registered owner of an off-highway vehicle wilfully fails to identify the person in charge of the off-highway vehicle at the time at which it is operated in violation of a provision of this Act or the regulations within 48 hours of a demand by a peace officer, the registered owner is guilty of an offence. R.S., c. 323, s. 20.

Liability of registered owner

34 (1) The registered owner of an off-highway vehicle is liable to incur the penalties provided for a violation of this Act or the regulations unless, at the time of the violation, the off-highway vehicle was in the possession of a person without the registered owner's consent, either expressed or implied.

(2) Where the registered owner of an off-highway vehicle is present on or in the off-highway vehicle at the time of the violation of a provision of this Act or the regulations by another person operating that off-highway vehicle, the registered owner as well as the operator is guilty of the offence. R.S., c. 323, s. 21.

Search of records

35 The Registrar, or a person who is authorized by the Registrar to do so, may search the registration records of off-highway vehicles and provide the name and address of the registered owner of an off-highway vehicle to a person who applies and pays the prescribed fee. R.S., c. 323, s. 22.

Prima facie proof

36 A certificate purporting to be under the seal of the Registrar stating that a certificate, licence or permit has or has not been issued to a person or that a person is or is not the person in whose name a certain off-highway vehicle is registered is proof of the matters contained therein, and the certificate must be received in evidence without proof of the seal or signature or of the official character of the person appearing to have signed it. R.S., c. 323, s. 23.

Deemed signature

37 Where the Minister or the Registrar is required or authorized to sign a document of any kind, the document is deemed to be signed where the signing is done by means of engraving, lithographic, stamp or other facsimile signature. R.S., c. 323, s. 24.

Regulations

- 38 (1)** The Governor in Council may make regulations
- (a) respecting the registration of off-highway vehicles and the suspension or revocation of a registration;
 - (b) respecting identification numbers and number plates, and the manner in which they are to be displayed for a class or classes of vehicle;

- (c) respecting duplicate certificates or replacement registration forms issued pursuant to this Act or the regulations;
- (d) respecting off-highway vehicle safety training and certification;
- (e) prescribing the maximum engine size for the purpose of Section 12;
- (f) respecting the operation of off-highway vehicles on a closed course by persons under the age of 16 years;
- (g) respecting the accreditation of organizations for the purpose of subsection 12(4);
- (h) adopting by reference standards for off-highway vehicle safety training;
- (i) designating sensitive areas for the purpose of Section 15;
- (j) respecting licences issued pursuant to Section 15;
- (k) respecting trails for off-highway vehicles;
- (l) respecting off-highway vehicle rallies;
- (m) respecting third-party liability insurance required for the operation of an off-highway vehicle;
- (n) respecting the Off-highway Vehicle Infrastructure Fund;
- (o) respecting the publication of a handbook respecting off-highway vehicles;
- (p) prescribing forms to be used pursuant to this Act or the regulations;
- (q) prescribing fees to be paid pursuant to this Act or the regulations;
- (r) prescribing standards or adopting standards for helmets to be worn by operators and passengers of off-highway vehicles;
- (s) respecting or prohibiting operation of an off-highway vehicle upon a controlled access highway, upon the shoulder adjoining the travelled portion of a controlled access highway or upon the median of a controlled access highway;
- (t) respecting licences for dealers and the suspension or revocation of licences;
- (u) respecting the bonding of dealers and specifying the amount and terms or conditions of bonds;
- (v) requiring off-highway vehicles to be safety inspected and providing for such safety inspections;
- (w) exempting a vehicle or class of vehicle used exclusively for non-recreational purposes from any or all of the requirements of this Act and prescribing the terms or conditions, if any, under which a vehicle or class of vehicle is to be exempt;

(x) exempting a person or class of persons from any or all of the requirements of this Act and prescribing the terms or conditions, if any, under which a person or class of persons is to be exempt;

(y) defining any word or expression used and not defined in this Act;

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

(2) A regulation may apply to all persons or off-highway vehicles or to a class of persons or vehicles to which this Act applies and there may be different regulations for different classes of such persons or vehicles.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 323, s. 25; 2005, c. 56, s. 15.

CHAPTER O-6

An Act Respecting Petroleum Royalties in the Offshore

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Short title

1 This Act may be cited as the *Offshore Petroleum Royalty Act*. 1987,
c. 9, s. 1.

Interpretation

- 2 (1)** In this Act,
- “assessment” includes reassessment;
 - “Minister” means the Minister of Natural Resources and Renewables;
 - “offshore area” means offshore area as defined in the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*;
 - “prescribed” means prescribed by the regulations as amended from time to time;

“representative” means a representative appointed or designated pursuant to Part III of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

(2) In this Act, unless the context indicates otherwise, words and expressions have the same meaning as in the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. 1987, c. 9, s. 2.

Royalties

3 (1) There is reserved to the Crown in right of the Province, and each holder of a share in a production licence is liable for and shall pay, in accordance with the regulations, such royalties as may be prescribed, at the rates prescribed, in respect of petroleum produced from the Nova Scotia lands in the offshore area and in respect of the periods prescribed.

(2) The Minister may require all or part of any royalty payable pursuant to this Act to be paid in money or in kind in accordance with the regulations.

(3) The Governor in Council may, by regulation, authorize the reduction of, or the exemption from the payment of, any royalty payable pursuant to this Act for such periods, in such amounts and subject to such conditions as may be specified in the regulations. 1987, c. 9, s. 3.

Default of payment

4 Each holder of a share in a production licence liable for and required to pay a royalty pursuant to this Act who is in default in accordance with the regulations in the payment of any amount payable pursuant to this Act on account of such royalty shall pay interest and penalties on such amounts in accordance with the regulations. 1987, c. 9, s. 4.

Payments as prescribed

5 Each holder of a share in a production licence liable for and required to pay royalties, penalties or interest pursuant to this Act shall make payments of or on account of such royalties, penalties or interest at the time and in the manner prescribed. 1987, c. 9, s. 5.

Prescribed returns

6 (1) Each holder of a share in a production licence shall file, at the time and in the manner prescribed, reports and returns in such form and containing such information as may be prescribed and shall submit such documentation in connection therewith as may be prescribed.

(2) Where the interest owner of a production licence consists of two or more interest holders, the representative of the interest owner shall, where required by the regulations,

(a) collect and remit on behalf of such interest holders any royalty due pursuant to this Act; and

(b) file on behalf of such holders, at the time and in the manner prescribed, consolidated reports and returns in the form and

containing the information prescribed and submit such documentation in connection therewith as may be prescribed.

(3) Interest holders of a production licence shall provide their representative with the information necessary to file any reports and returns pursuant to clause (2)(b). 1987, c. 9, s. 6.

Records

7 (1) Each holder of a share in a production licence shall, subject to such terms and conditions as may be prescribed, keep books, records, accounts, documents and other information necessary for or incidental to the calculation and verification of the amounts of royalties payable by the holder pursuant to this Act, including such books, records, accounts, documents and other information as may be prescribed.

(2) Books, records, accounts, documents and other information required to be kept pursuant to subsection (1) must be kept at the place and in the manner and during the periods prescribed. 1987, c. 9, s. 7.

Audits permitted

8 Persons required by this Act to file reports and returns are subject to such audit and examination as may be prescribed to be conducted at the times, in the circumstances and in the manner prescribed. 1987, c. 9, s. 8.

Assessment by Minister

9 (1) The Minister may, at any time, assess the royalty, interest or penalties payable pursuant to this Act in respect of any period and give a notice of such assessment to the interest holder required to pay the royalty.

(2) Liability for the royalty payable pursuant to this Act and the interest and penalties, if any, payable in respect thereof is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(3) In making an assessment pursuant to subsection (1), the Minister is not bound by any report or return filed by or on behalf of an interest holder and in making an assessment the Minister may, notwithstanding a report or return so filed or that no such report or return has been filed, assess the royalty, interest and penalties payable pursuant to this Act.

(4) An assessment, subject to being varied or vacated on an objection or appeal pursuant to Section 10 or 11 and subject to a reassessment, is valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding pursuant to this Act relating thereto.

(5) An assessment made by the Minister pursuant to this Section may be enforced in the same manner as an order of the Supreme Court of Nova Scotia. 1987, c. 9, s. 9.

Objection to assessment

10 (1) An interest holder who objects to an assessment may, within 90 days after the date of mailing of the notice of assessment, give a notice of objec-

tion to the Minister by registered mail, in such form and manner as may be prescribed, setting out the reasons for the objection and all the relevant facts.

(2) On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and confirm, vary or vacate the assessment and give notice thereof by registered mail to the interest holder who gave the notice of objection. 1987, c. 9, s. 10.

Appeal

11 (1) Where the Minister confirms or varies an assessment pursuant to subsection 10(2) or fails, within 90 days after the date of mailing by the interest holder of the notice of objection, to notify the interest holder that the Minister has confirmed, varied or vacated the assessment, the interest holder may appeal to the Supreme Court of Nova Scotia in the prescribed manner to have the assessment varied or vacated.

(2) No appeal pursuant to subsection (1) may be instituted after the expiration of 90 days after the date of mailing of a notice confirming or varying an assessment or, where no such notice is given, after the expiration of 180 days after the date of mailing of the notice of objection.

(3) Where an appeal is taken pursuant to subsection (1), the Minister shall forthwith forward to the Court copies of all reports or returns, notices of assessment, notices of objection and other documents, if any, that are relevant to the appeal.

(4) In a proceeding in an appeal to the Supreme Court pursuant to this Section, the Minister shall be a party, may be represented by counsel and may participate fully in the proceeding.

(5) The Court may dispose of an appeal pursuant to subsection (1) by dismissing it or by allowing it and vacating or varying the assessment and may make such orders as are necessary for giving effect to any such disposition.

(6) Proceedings in an appeal to the Supreme Court pursuant to subsection (1) may be held in private on request made to the Court by a party to the appeal. 1987, c. 9, s. 11.

Extension of time

12 (1) Notwithstanding subsections 10(1) and 11(2), the Supreme Court may, on application, make an order, subject to any terms it considers just, extending the time within which a notice of objection to an assessment may be given pursuant to subsection 10(1) or an appeal to the Supreme Court may be instituted pursuant to subsection 11(2) where, in the opinion of the Court, the circumstances of the case are such that it would be just and equitable to do so.

(2) Where notice of objection to an assessment is given pursuant to subsection 10(1) or an appeal to the Supreme Court is instituted pursuant to subsection 11(1), the Minister may suspend, pending disposition of the objection or appeal, the requirement to pay any amount on account of royalty, interest or penalty payable pursuant to this Act, the liability for which the interest holder disputes in the notice of objection or on appeal.

(3) The Minister may, as a condition of suspending payment of any amount in dispute, require the relevant interest holder to furnish security for such payment in a form and amount acceptable to the Minister. 1987, c. 9, s. 12.

Referral to Court by agreement

13 Where the Minister and the holder of a share in a production licence agree in writing that a question of law, fact or mixed law and fact arising pursuant to this Act should be determined by the Supreme Court, that question shall be determined by the Court. 1987, c. 9, s. 13.

Refund of overpayment

14 The Minister shall, at the times and in the circumstances prescribed, refund any overpayment made on account of royalties, interest or penalties payable pursuant to this Act and interest at a prescribed rate per year shall be paid thereon in accordance with the regulations. 1987, c. 9, s. 14.

Set-off

15 Where a person is indebted to the Crown in right of the Province pursuant to this Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that is or may become payable to such person by the Crown in right of the Province. 1987, c. 9, s. 15.

Avoidance of payment

16 (1) Where, in the opinion of the Minister, the holder of a share in a production licence is attempting to avoid payment of royalties pursuant to this Act, the Minister may, in writing, direct that all royalties, interest and penalties payable by that holder be paid forthwith.

(2) Where the Board orders the cancellation of a production licence pursuant to the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, all royalties, interest and penalties payable pursuant to this Act in respect of that production licence must be paid forthwith. 1987, c. 9, s. 16.

Calculation where artificial reduction

17 Where, in the opinion of the Minister, the result of one or more acts, agreements, arrangements, transactions or operations is to artificially or unduly reduce the amount of any royalties payable pursuant to this Act, such royalties must be calculated as though the act, agreement, arrangement, transaction or operation had not taken place or had taken place at fair market value between parties dealing at arm's length. 1987, c. 9, s. 17.

Liability

18 (1) Where an interest holder (in this subsection referred to as the "successor") acquires a production licence or a share in a production licence from another interest holder (in this subsection referred to as the "predecessor"), the successor is jointly and severally liable with the predecessor for all royalties, interest and penalties pursuant to this Act that are payable by the predecessor at the time of such acquisition unless the successor has obtained prior to such acquisition a certificate from the Minister certifying that

- (a) all such royalties, interest and penalties have been paid;
- (b) security for the payment of such royalties, interest and penalties has been accepted by the Minister; or
- (c) arrangements for the payment of such royalties, interest and penalties acceptable to the Minister have been made.

(2) Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, shall, before distributing any property under that person's control belonging to the holder of a share in a production licence, obtain a certificate from the Minister certifying that all royalties, interest and penalties pursuant to this Act that are payable by such interest holder have been paid or that security for the payment thereof has been accepted by the Minister.

(3) Distribution of property without a certificate required by subsection (2) renders the person required to obtain the certificate personally liable for the unpaid royalties, interest and penalties. 1987, c. 9, s. 18.

Minister may direct Board

19 Notwithstanding any other provision of this Act or Part IV of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, where a person is in default in accordance with the regulations in the payment of any amount payable pursuant to this Act in respect of any interest issued in relation to any portion of the offshore area, the Minister may, for so long as the amount remains unpaid, direct the Board to

- (a) refuse to issue to that person any interest in relation to any portion of the offshore area; and
- (b) refuse to authorize, pursuant to Part IV of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, that person to carry on any work or activity related to the exploration for or the production of petroleum on any portion of the offshore area and may suspend any such authorization already given. 1987, c. 9, s. 19.

Income Tax Act applies

20 Sections 231 to 231.5 of the *Income Tax Act* (Canada) apply, with such modifications as the circumstances require, in respect of the administration and enforcement of this Act and, without restricting the generality of the foregoing, as if

- (a) the references therein to "tax" were read as a reference to "royalty";
- (b) the references therein to "Minister" were read as a reference to "Minister" as defined in this Act;
- (c) the references therein to the "Canada Revenue Agency" were read as a reference to the "Department of Natural Resources and Renewables";
- (d) the references therein to the "Tax Court of Canada" were read as a reference to the "Supreme Court of Nova Scotia"; and

(e) the references therein to a “return of income or a supplementary return” were read as a reference to “a report or return” filed pursuant to this Act. 1987, c. 9, s. 20.

Remedies unaffected

21 The existence or exercise of any remedy that the Board or the Crown in right of the Province has pursuant to this Act does not affect any other remedy that the Board or the Crown has at law, including any remedy that the Board may exercise pursuant to Section 102 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. 1987, c. 9, s. 21.

Powers of Minister

22 The Minister may

(a) enter into an agreement with each holder of a share in a production licence respecting administrative and operational matters, such agreement to be subject to the regulations respecting administrative and operational matters necessary for carrying out this Act and to an agreement referred to in clause (b);

(b) with the approval of the Governor in Council, enter into an agreement with each holder of a share in a production licence pertaining to any matter in respect of which the Governor in Council may make regulations and providing that in the event of an inconsistency between the agreement and the regulations, the agreement prevails;

(c) enter into an agreement with the Board and the federal Government for the collection and administration of royalties with the ability to delegate any ministerial power, duty or function pursuant to this Act. 1987, c. 9, s. 22.

Regulations

23 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations

(a) prescribing royalties payable pursuant to this Act and the rates at which such royalties are payable;

(b) prescribing the manner of calculating or determining any royalty prescribed pursuant to clause (a) and any component thereof or value in relation thereto, including the valuation of petroleum produced and any costs, expenses, allowances, credits and other amounts that may be deducted in calculating or determining the amount of royalty payable and generally providing for any other matter or thing necessary for or incidental to such calculation or determination;

(c) exempting, conditionally or unconditionally, any person or persons of any class from the payment of, in whole or in part, any royalty pursuant to this Act or exempting any petroleum produced from the offshore area from the application of this Act;

(d) prescribing the circumstances in which and the terms and conditions subject to which the Minister may require all or part

of any royalty payable pursuant to this Act to be paid in money or in kind and prescribing the manner of calculating or determining the payment in kind;

(e) prescribing or prescribing the manner of calculating or determining penalties for failure to comply with this Act;

(f) prescribing the rate at which interest on arrears of royalties, interest and penalties owing to the Crown in right of the Province pursuant to this Act or on amounts of refunds payable by the Minister pursuant to this Act is payable and the manner of determining or calculating the interest payable; and

(g) prescribing anything that, by this Act, is to be prescribed.

(2) Regulations made pursuant to subsection (1) may be made in respect of all petroleum or any class thereof produced from the offshore area.

(3) Regulations made pursuant to subsection (1) may apply generally to the offshore area or any portion thereof.

(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*. 1987, c. 9, s. 23.

CHAPTER O-7

An Act Respecting the Municipal Taxation of Oil Refineries and Liquefied Natural Gas Plants

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Short title

1 This Act may be cited as the *Oil Refineries and L.N.G. Plants Municipal Taxation Act*. 2004, c. 8, s. 1.

Act does not apply

2 This Act does not apply with respect to the Imperial Oil Limited property located at 600 Pleasant Street, Dartmouth, in the Halifax Regional Municipality. 2014, c. 24, s. 1.

Municipal taxes on oil refinery and L.N.G. plant

3 (1) Notwithstanding the *Assessment Act*, the *Municipal Government Act* or any other enactment,

(a) the municipal taxes payable per year in respect of an oil refinery are such amount as prescribed by the regulations; and

(b) the municipal taxes payable in respect of a liquefied natural gas plant are such amount as prescribed by the regulations,

and no municipal property taxes pursuant to clause 105(6)(a) or area rates pursuant to Section 108 of the *Municipal Government Act* or other municipal taxes or rates prescribed by the regulations are payable.

(2) Subsection (1) applies to

(a) the 2004-05 and subsequent municipal taxation years with respect to an oil refinery referred to in clause (1)(a); and

(b) such municipal taxation year as the regulations prescribe and subsequent taxation years with respect to a liquefied natural gas plant. 2004, c. 8, s. 2; 2007, c. 48, s. 1.

Calculation of uniform assessment

4 Notwithstanding the *Assessment Act*, the *Municipal Grants Act* or any other enactment, for the purpose of the calculation of uniform assessment pursuant to Section 14 of the *Municipal Grants Act*, the capitalized value of taxes paid pursuant to Section 3 must be used in place of taxable assessment. 2004, c. 8, s. 3; 2007, c. 48, s. 2.

Section 616 of Municipal Government Act

5 Section 616 of the *Municipal Government Act* does not apply to this Act. 2004, c. 8, s. 4.

Regulations

- 6 (1)** The Governor in Council may make regulations
- (a) prescribing the taxes payable pursuant to clause 3(1)(a);
 - (b) prescribing municipal taxes or rates that are not payable by virtue of subsection 3(1);
 - (c) defining any word or expression used but not defined in this Act;
 - (d) considered necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) A regulation made pursuant to subsection (1) may be made retroactive to the date set out in the regulation.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2004, c. 8, s. 5; 2007, c. 48, s. 3.

CHAPTER O-8

An Act to Establish the Office of the Ombudsman

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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 *Ombudsman Act*. R.S., c. 327, s. 1.

Interpretation

- 2 In this Act,
“agency” means an agency, board, commission, foundation or corporation established under an enactment that
- (a) is appointed or has a majority of its members appointed by the Governor in Council, a member of the Executive Council or the Province; or
- (b) is supported by or directs the expenditure of public funds of the Province and is designated by the Governor in Council;

“chief officer” includes a deputy minister, the head or chief executive officer of an agency, the mayor of a regional municipality or town, the mayor or warden of a county or district municipality and the head or chief executive officer of a municipal agency;

“department” means a department of the Government of Nova Scotia, and includes an agency;

“House” means the House of Assembly;

“minister” means the member of the Executive Council who presides over a department or who is in charge of or responsible for an agency;

“municipal agency” means an agency, board, commission, foundation, corporation, hospital or a welfare, penal or other institution established by or on behalf of or controlled by a municipal unit or two or more municipal units;

“municipal unit” means a regional municipality, a town or a county or district municipality, and includes a municipal agency;

“officer” means any official, employee or member of a department or a municipal unit;

“Ombudsman” means the Ombudsman appointed under this Act. R.S., c. 327, s. 2; 2004, c. 6, s. 25; 2018, c. 1, Sch. A, s. 134.

Ombudsman

3 (1) There is established, as an officer of the House, a commissioner for investigations to be called the Ombudsman.

(2) The Ombudsman is appointed by the Governor in Council.

(3) The Ombudsman may not be a member of the House and may not hold any office of trust or profit, other than the office of Ombudsman, or engage in any occupation for reward outside the duties of the Ombudsman’s office without prior approval in each particular case by the House or, where the House is not in session, by the Governor in Council.

(4) The Ombudsman must be paid such salary as is determined by the Governor in Council.

(5) Before entering upon the exercise of the duties of the Ombudsman’s office, the Ombudsman shall take an oath that the Ombudsman will faithfully and impartially perform the duties of the Ombudsman’s office and will not divulge any information received by the Ombudsman under this Act except for the purpose of giving effect to this Act.

(6) The Speaker or the Chief Clerk of the House shall administer the oath referred to in subsection (5).

(7) The costs and expenses incurred by the Ombudsman or in the administration of this Act may be paid from the General Revenue Fund. R.S., c. 327, s. 3.

Term of office

4 (1) Unless the Ombudsman's office sooner becomes vacant, the Ombudsman holds office for five years from the date of the Ombudsman's appointment under Section 3 and, if otherwise qualified, is eligible to be reappointed.

(2) The Ombudsman may resign the Ombudsman's office by notice in writing addressed to the Speaker of the House or, where there is no Speaker or where the Speaker is absent from the Province, to the Chief Clerk of the House. R.S., c. 327, s. 4.

Removal or suspension

5 (1) On the recommendation of the House, the Governor in Council may remove or suspend the Ombudsman from the Ombudsman's office for cause or incapacity.

(2) Where the House is not in session, a judge of the Supreme Court of Nova Scotia may suspend the Ombudsman from the Ombudsman's office for cause or incapacity upon an application by the Governor in Council.

(3) Where the Governor in Council makes an application under subsection (2), the practice and procedure of the Supreme Court applies with necessary changes to the application.

(4) Where a judge of the Supreme Court of Nova Scotia suspends the Ombudsman under subsection (2) that judge shall

(a) request the Governor in Council to appoint a person as an acting Ombudsman to hold office until the suspension has been dealt with by the House; and

(b) table a report of the suspension within 10 days following the commencement of the next ensuing session of the House.

(5) A suspension under subsection (2) is not to continue beyond the end of the next ensuing session of the House. R.S., c. 327, s. 5.

Extent of disclosure in report of Ombudsman

6 Notwithstanding subsection 3(5), the Ombudsman may disclose in a report made by the Ombudsman under this Act any matters that, in the Ombudsman's opinion, are necessary to disclose in order to establish grounds for the Ombudsman's conclusions and recommendations. R.S., c. 327, s. 6.

Personnel

7 (1) The Ombudsman may, subject to the approval of the Governor in Council, appoint such assistants and employees as the Ombudsman considers necessary for the efficient carrying out of the Ombudsman's functions under this Act.

(2) Before performing any official duty under this Act a person appointed under subsection (1) shall take an oath, to be administered by the Ombudsman, that the person will not divulge any information received by the person under this Act, except for the purpose of giving effect to this Act. R.S., c. 327, s. 7.

Delegation of powers

8 (1) The Ombudsman, by writing under the Ombudsman's signature, may delegate to a person appointed an assistant under subsection 7(1) any of the Ombudsman's powers under this Act except the power of delegation and the power to make a report under this Act.

(2) A person purporting to exercise power of the Ombudsman by virtue of a delegation under subsection (1) shall produce evidence of the person's authority to exercise that power when required to do so. R.S., c. 327, s. 8.

Ombudsman as commissioner

9 For the purpose of this Act, the Ombudsman is a commissioner under the *Public Inquiries Act*. R.S., c. 327, s. 9.

Act does not apply

10 This Act does not apply to

- (a) judges and justices or the functions of any court of the Province; and
- (b) deliberations and proceedings of the Executive Council or any committee thereof. R.S., c. 327, s. 10.

Investigation

11 (1) Subject to subsection (2), where any person is aggrieved or, in the opinion of the Ombudsman, may be aggrieved, the Ombudsman, on the written complaint of or on behalf of the person aggrieved or on the Ombudsman's own motion, may investigate the administration

- (a) by a department or an officer of a department, of any law of the Province;
- (b) by a municipal unit or an officer of a municipal unit, of any law of the municipal unit or any law of the Province that applies to the municipal unit.

(2) Notwithstanding subsection (1), the Ombudsman may not investigate

- (a) any decision, recommendation, act or omission in respect of which there is, under any Act, a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, whether or not that right of appeal or objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired; or
- (b) any decision, recommendation, act or omission of any person acting as a solicitor or prosecuting officer for the Crown or acting as council for the Crown in relation to any proceeding.

(3) Where a question arises as to the jurisdiction of the Ombudsman to investigate a grievance under this Act, the Ombudsman may apply to the Nova Scotia Court of Appeal for a determination of the question of the Ombudsman's jurisdiction. R.S., c. 327, s. 11.

Complaint, referral of petition or letter from inmate or patient

12 (1) Subject to the provisions of this Act, a person may apply by written complaint to the Ombudsman to investigate a grievance.

(2) Notwithstanding Sections 14, 20 and 21, a committee of the House may refer any petition that is before the committee for consideration or any matter relating to such petition to the Ombudsman for investigation and report.

(3) Notwithstanding Sections 14, 20 and 21, where a matter has been referred to the Ombudsman under subsection (2), the Ombudsman, subject to any special directions of the committee, shall investigate the matter as far as it is within the Ombudsman's jurisdiction and shall make such report to the committee as the Ombudsman thinks fit.

(4) Notwithstanding any Act, where a letter written by a person in custody on a charge or after conviction of any offence or by any inmate or patient of any sanatorium or mental hospital is addressed to the Ombudsman, it must be forwarded immediately, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which the person is an inmate or patient. R.S., c. 327, s. 12.

Statutory prohibitions inapplicable

13 Notwithstanding any other Act providing that a decision, recommendation, act or omission is final or that no appeal lies in respect thereof or that no proceeding, decision, recommendation, act or omission of a department or municipal unit or officer thereof is to be challenged, reviewed, quashed or called in question, the Ombudsman may exercise the powers under this Act. R.S., c. 327, s. 13.

Refusal or cessation of investigation

14 (1) The Ombudsman, in the Ombudsman's discretion, may refuse to investigate or may cease to investigate a grievance if

(a) an adequate remedy or right of appeal already exists, whether or not the complainant has exercised the remedy or right of appeal;

(b) the grievance is trivial, frivolous, vexatious or not made in good faith;

(c) having regard to all the circumstances of the case, further investigation is unnecessary;

(d) the grievance relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before complaining;

(e) the complainant does not have a sufficient personal interest in the subject-matter of the grievance; or

(f) upon a balance of convenience between the public interest and the person aggrieved, the Ombudsman is of the opinion that the grievance should not be investigated.

(2) Where the Ombudsman decides not to investigate or to cease to investigate a grievance the Ombudsman shall inform the complainant and any

other interested person of the Ombudsman's decision and may state the reasons therefor. R.S., c. 327, s. 14.

Notification of investigation

15 Where the Ombudsman intends to investigate a grievance under this Act, the Ombudsman shall

- (a) in the case of a grievance relating to a department, notify the minister and the chief officer of the department;
- (b) in the case of a grievance relating to a municipal unit, notify the chief officer of the municipal unit. R.S., c. 327, s. 15.

Nature of investigation

16 (1) Every investigation under this Act is to be conducted in private.

(2) Subject to this Act, the Ombudsman may hear or obtain information from any person and may make inquiries.

(3) The Ombudsman may hold hearings under this Act but, subject to subsections (4) and (5), no person is entitled as of right to be heard by the Ombudsman.

(4) Where during an investigation the Ombudsman is satisfied that there is prima facie evidence that

- (a) a department or officer of a department administered a law of the Province;
- (b) a municipal unit or officer of a municipal unit administered a law of the municipal unit or any law of the Province that applies to the municipal unit,

so as to cause a grievance or to give cause for a grievance, the Ombudsman shall so advise the minister and the chief officer of the department or the chief officer of the municipal unit, as the case may be, and the officer causing the grievance and give each an opportunity to be heard.

(5) Where a minister, a chief officer or officer appears at a hearing under subsection (4), the minister, chief officer or officer, as the case may be, is entitled to counsel.

(6) The Ombudsman may at any time during or after an investigation consult a minister or chief officer of a department or a municipal unit concerned in the matter of the investigation.

(7) Before forming a final opinion on any matter referred to in subsection 20(1), the Ombudsman shall consult with

- (a) where the investigation relates to a department or a recommendation to the minister or where the minister requests, the minister; or
- (b) where the investigation relates to a municipal unit, the chief officer of the municipal unit.

(8) Where during or after an investigation the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct by a department or municipal unit or an officer, the Ombudsman shall refer the matter to the minister and chief officer of the department or the chief officer of the municipal unit.

(9) Subject to this Act and any rules made under Section 25, the Ombudsman may regulate the Ombudsman's procedure. R.S., c. 327, s. 16.

Furnishing of information

17 (1) Subject to subsections (2) to (7) and Section 18, where the Ombudsman requests a person who, in the opinion of the Ombudsman, is able to furnish information relating to a matter being investigated by the Ombudsman to furnish such information, that person shall furnish that information and produce any documents or papers that, in the opinion of the Ombudsman, relate to the matter and that may be in the possession or under the control of that person, whether or not that person is an officer, and whether or not the documents and papers are in the custody or under the control of that department or municipal unit.

(2) The Ombudsman may summon before the Ombudsman and examine on oath

(a) any officer who, in the Ombudsman's opinion, is able to give any information referred to in subsection (1);

(b) any complainant; and

(c) with the approval of the Attorney General, any other person who, in the opinion of the Ombudsman, is able to give any information referred to in subsection (1).

(3) The oath referred to in subsection (2) is to be administered by the Ombudsman.

(4) Subject to subsection (5), where a person is bound by any law or by an enactment to maintain secrecy in relation to any matter or not to disclose any matter, the Ombudsman shall not require that person to supply any information or to answer any question in relation to that matter or to produce any document or paper relating to the matter which would be in breach of the obligation of secrecy or non-disclosure.

(5) With the prior consent in writing of the complainant, the Ombudsman may require a person to whom subsection (4) applies to supply information or answer questions or produce documents or papers relating only to the complainant and that person shall do so.

(6) The rules for taking evidence in the Supreme Court of Nova Scotia apply to evidence given by a person required to give information, answer questions and produce documents or papers under this Act.

(7) Any person required to attend a hearing under this Act is entitled to the same fees, allowance and expenses as if the person were a witness in the Supreme Court of Nova Scotia.

(8) Except on the trial of a person for perjury, evidence given by any person in proceedings before the Ombudsman and evidence of any proceeding before the Ombudsman is not admissible against any person in any court or in any proceedings of a judicial nature.

(9) No person is liable for an offence against any Act by reason of the person's compliance with a requirement of the Ombudsman under this Act. R.S., c. 327, s. 17.

Limitations on provision of information

18 (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper

(a) may disclose deliberations of the Executive Council; or

(b) may disclose activities of the Executive Council or any member of the Executive Council relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or the document or paper produced.

(2) Subject to subsection (1), a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure of the document, paper or thing, or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman. R.S., c. 327, s. 18.

Right of entry and investigation

19 (1) For the purpose of this Act, the Ombudsman may enter upon any premises occupied by any department or municipal unit and, subject to Sections 17 and 18, carry out any investigation within the Ombudsman's jurisdiction.

(2) Before entering any premises under subsection (1), the Ombudsman shall notify the chief officer of the department or municipal unit of the Ombudsman's intention to enter the premises. R.S., c. 327, s. 19.

Report of Ombudsman if grievance established

20 (1) Where upon investigation the Ombudsman is of the opinion that a grievance exists or may exist because a department or municipal unit or an officer administered or is administering a law of the Province or a law of the municipal unit or a law of the Province that applies to the municipal unit

(a) unreasonably, unjustly, oppressively or in a discriminatory manner, or pursuant to a rule of law, enactment or practice that so results;

(b) under mistake of law or fact, in whole or in part;

(c) wrongly;

(d) contrary to law; or

(e) by using a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or by failing to give reasons for the use of a discretionary power when reasons should have been given,

and if the Ombudsman is of the opinion that

(f) the grievance should be referred to the department or municipal unit or officer for further consideration;

(g) an omission should be rectified;

(h) a decision should be cancelled or rectified;

(i) a practice by reason of which the grievance arose or may arise should be altered;

(j) a law by reason of which the grievance arose or may arise should be reconsidered;

(k) reasons should be given for the use of a discretionary power; or

(l) other steps should be taken as the Ombudsman may advise,

the Ombudsman shall report the Ombudsman's opinion, the Ombudsman's reasons for the opinion and any recommendation to the minister and the chief officer of the department or the chief officer of the municipal unit concerned.

(2) Where the Ombudsman makes a recommendation under subsection (1) the Ombudsman may request the department or municipal unit to notify the Ombudsman within a specified time of the steps it proposes to take to give effect to the Ombudsman's recommendations.

(3) Where, after the time stated under subsection (2), the department or municipal unit does not act upon the recommendation of the Ombudsman, refuses to act thereon or acts in a manner unsatisfactory to the Ombudsman, the Ombudsman may send a copy of the Ombudsman's report and recommendation to the Governor in Council, in the case of a department, or the council of the municipal unit, in the case of a municipal unit, and may thereafter make a report to the House.

(4) The Ombudsman shall include with any report made under subsection (3) a copy of any comment made by the department or municipal unit upon the Ombudsman's opinion or recommendation.

(5) In any report made by the Ombudsman under this Act, the Ombudsman may not make any finding or comment that is adverse to any person unless the Ombudsman gives that person an opportunity to be heard. R.S., c. 327, s. 20.

Duty to inform complainant

21 (1) Where the Ombudsman makes a recommendation under subsection 20(1) and the department or municipal unit does not act upon such recommendation to the Ombudsman's satisfaction, the Ombudsman shall inform the complainant of the Ombudsman's recommendation and may add any comment.

(2) The Ombudsman shall in any case inform the complainant, in the manner and time the Ombudsman considers proper, of the result of the investigation. R.S., c. 327, s. 21.

Review of decision of Ombudsman

22 No proceeding of the Ombudsman is void for want of form and, except on the ground of lack of jurisdiction, no proceedings or decisions of the Ombudsman are to be challenged, reviewed, quashed or called in question in any court. R.S., c. 327, s. 22.

No liability or compellability of Ombudsman or personnel

23 (1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman for any thing the Ombudsman or person may do, report or say in the course of the exercise or intended exercise of the Ombudsman's or person's functions under this Act, unless it is shown the Ombudsman or person acted in bad faith.

(2) The Ombudsman and any person holding any office or appointment under the Ombudsman shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to the Ombudsman's or person's knowledge in the exercise of the Ombudsman's or person's functions under this Act. R.S., c. 327, s. 23.

Reports

24 (1) The Ombudsman shall report annually to the House on the exercise of the Ombudsman's functions under this Act.

(2) The Ombudsman, in the public interest or in the interests of a person, department or municipal unit, may publish reports relating generally to the exercise of the Ombudsman's functions under this Act or to any particular case investigated by the Ombudsman, whether or not the matters to be dealt with in the report have been the subject of a report made to the House under this Act. R.S., c. 327, s. 24.

General rules

25 The House may make general rules for the guidance of the Ombudsman in the exercise of the Ombudsman's functions under this Act. R.S., c. 327, s. 25.

Offences and penalties

26 Every person who

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of the Ombudsman's or person's functions under this Act;

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirements of the Ombudsman or any other person under this Act;

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of the Ombudsman's or person's functions under this Act; or

(d) refuses or wilfully fails to comply with subsection 12(4),
is guilty of an offence and on summary conviction is liable to a penalty not exceeding \$500. R.S., c. 327, s. 26.

Existing right or remedy preserved

27 This Act does not affect, abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any substantive or procedural right or remedy existing elsewhere or otherwise than in this Act. R.S., c. 327, s. 27.

Regulations

28 (1) The Governor in Council may make regulations designating an agency, board, commission, foundation or corporation for the purpose of the definition of “agency”.

(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*. 2004, c. 6, s. 26.

CHAPTER O-9

An Act to Recover Opioid Damages and Healthcare Costs

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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 *Opioid Damages and Healthcare Costs Recovery Act*. 2020, c. 4, s. 1.

Interpretation

- 2** (1) In this Act,
- “active ingredient” means an active ingredient set out in the Schedule;
- “consultant” means a person who provides advisory services to
- (a) a wholesaler in relation to the distribution, sale or offering for sale of opioid products; or
- (b) a manufacturer in relation to the sale of active ingredients or opioid products;
- “cost of healthcare benefits” means the sum of
- (a) the present value of the total expenditure by the Crown for healthcare benefits provided for insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness;

(b) the present value of the estimated total expenditure by the Crown for healthcare benefits that could reasonably be expected to be provided for those insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness; and

(c) the expenditures of the Government of Canada in relation to an action under subsection 4(1);

“Crown” means the Crown in right of the Province;

“disease, injury or illness” includes problematic substance use, addiction and general deterioration of health;

“healthcare benefits” means

(a) insured hospital services and insured professional services as defined in the *Health Services and Insurance Act*;

(b) health services as defined in the *Health Authorities Act*;

(c) payments made by the Crown under the *Coordinated Home Care Act*, the *Health Authorities Act*, the *Homemakers Services Act*, the *Homes for Special Care Act* or the *Social Assistance Act*;

(d) a drug, device or service designated by the Minister of Health and Wellness under the *Insured Prescription Drug Plan Act* to which some level of coverage applies under a program;

(e) other expenditures by the Crown, made directly or through one or more agents or other intermediate bodies, for programs, services, benefits or similar matters associated with disease, injury or illness; and

(f) expenditures by the Government of Canada for programs, services, benefits or similar matters associated with disease, injury or illness in relation to an action under subsection 4(1);

“insured person” means

(a) a person, including a deceased person, for whom healthcare benefits have been provided; or

(b) a person for whom healthcare benefits could reasonably be expected to be provided;

“joint venture” means an association of two or more persons, if

(a) the relationship among the persons does not constitute a corporation, partnership or trust; and

(b) the persons each have an undivided interest in the assets of the association;

“manufacture” includes, for an opioid product, the production, assembly and packaging of the opioid product;

“manufacturer” means a person who manufactures or has manufactured an active ingredient or opioid product or a person who, in the past or currently,

(a) causes or caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of an active ingredient or opioid product;

(b) for any fiscal year of the person, derives or derived at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of active ingredients or opioid products by that person or by other persons;

(c) engages or engaged in, or causes or caused, directly or indirectly, other persons to engage in promoting an active ingredient or opioid product; or

(d) is or was a trade association primarily engaged in

(i) advancing the interests of manufacturers,

(ii) promoting an active ingredient or opioid product, or

(iii) causing, directly or indirectly, other persons to engage in promoting an active ingredient or opioid product;

“opioid product” means any product that contains

(a) a drug or active ingredient set out in the Schedule; or

(b) a drug or active ingredient prescribed by the regulations;

“opioid-related disease, injury or illness” means disease, injury or illness caused or contributed to by an individual’s use or exposure to an opioid product, whether the opioid product is

(a) in the form in which it was manufactured;

(b) combined with another drug or substance; or

(c) used, or in the case of exposure is present, in a form or manner other than

(i) as prescribed or advised by a practitioner, or

(ii) as recommended by the manufacturer of that opioid product;

“opioid-related wrong” means

(a) a tort that is committed in the Province by a manufacturer, wholesaler or consultant and that causes or contributes to opioid-related disease, injury or illness; or

(b) in an action under subsection 3(1) or 4(1), a breach, by a manufacturer, wholesaler or consultant, of a common law, equitable or statutory duty or obligation owed to persons in the Province who have used or been exposed to or might use or be exposed to an opioid product;

“person” includes a partnership, trust, joint venture or trade association;

“practitioner” means a person who

(a) is authorized under the *Medical Act* or the *Veterinary Medicine Act* to prescribe or advise on the therapeutic value, contents and hazards of a drug within the meaning of the *Pharmacy Act*; and

(b) is not prohibited from prescribing a drug that is an opioid product;

“promotion” includes, for an opioid product,

(a) the marketing of the opioid product, whether direct or indirect;

(b) the distribution or sale of the opioid product; and

(c) any research with respect to the opioid product;

“type of opioid product” means an opioid product in the form of a pill, a capsule, an oral liquid, a powder, an injectable, a topical or a combination of any of these;

“use or exposure”, in relation to an opioid product, means ingestion, inhalation, injection, application or assimilation of the opioid product, whether intentional or otherwise;

“wholesaler” means a person who distributes, sells or offers for sale opioid products

(a) to pharmacies, distributors or other persons for resale; or

(b) to hospitals, facilities or care centres for patient use.

(2) The definition of “manufacturer” does not include

(a) an individual;

(b) a wholesaler or retailer of opioid products who is not related to

(i) a person who manufactures an opioid product, or

(ii) a person described in clause (a) of the definition of “manufacturer” in subsection (1); or

(c) a person who

(i) is a manufacturer only because clause (b) or (c) of the definition of “manufacturer” in subsection (1) applies to the person, and

(ii) is not related to

(A) a person who manufactures an opioid product, or

(B) a person described in clause (a) or (d) of the definition of “manufacturer” in subsection (1).

(3) In subsection (2), a person is related to another person if, directly or indirectly, the person is

(a) an affiliate, within the meaning of the *Companies Act*, of the other person;

(b) an affiliate, within the meaning of subsection (4), of the other person; or

(c) an affiliate of an affiliate of the other person.

(4) In clause (3)(b), a person is deemed to be an affiliate of another person if the person

(a) is a corporation and the other person, or a group of persons not dealing with each other at arm’s length of which the other person is a member, owns a beneficial interest in shares of the corporation

(i) carrying at least 50% of the votes for the election of directors of the corporation and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation, or

(ii) having a fair market value, including a premium for control if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the corporation; or

(b) is a partnership, trust or joint venture and the other person, or a group of persons not dealing with each other at arm’s length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group to receive at least 50% of the profits or at least 50% of the assets on dissolution, winding up or termination of the partnership, trust or joint venture.

(5) In clause (3)(b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm’s length of which the other person is a member, has any direct or indirect influence that, if exercised, would result in control in fact of that person except if the other person deals at arm’s length with that person and derives influence solely as a lender.

(6) For the purpose of determining the market share of a manufacturer for a type of opioid product sold in the Province, the court shall calculate the manufacturer’s market share for the type of opioid product by the following formula:

$$\text{mms} = \frac{\text{mm}}{\text{MM}} \times 100\%$$

where

mms is the manufacturer's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

mm is the quantity of the type of opioid product manufactured by the manufacturer that is distributed, sold or offered for sale within the Province from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial; and

MM is the quantity of the type of opioid product manufactured by all manufacturers that is purchased or dispensed within the Province for the purpose of providing healthcare benefits from the date of the earliest opioid-related wrong committed by the manufacturer to the date of trial.

(7) For the purpose of determining the market share of a wholesaler for a type of opioid product sold in the Province, the court shall calculate the wholesaler's market share for the type of opioid product by the following formula:

$$wms = \frac{wm}{WW} \times 100\%$$

where

wms is the wholesaler's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

wm is the quantity of the type of opioid product that is distributed, sold or offered for sale by the wholesaler within the Province from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

WW is the quantity of the type of opioid product that is distributed, sold or offered for sale within the Province for the purpose of providing healthcare benefits from the date of the earliest opioid-related wrong committed by the wholesaler to the date of trial. 2020, c. 4, s. 2; 2023, c. 21, s. 1.

Right of action

3 (1) The Crown has a direct and distinct action against a manufacturer, wholesaler or consultant to recover the cost of healthcare benefits caused or contributed to by an opioid-related wrong.

(2) An action under subsection (1) is brought by the Crown in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the Crown may recover the cost of healthcare benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the opioid-related wrong committed by the defendant.

(4) In an action under subsection (1), the Crown may recover the cost of healthcare benefits

(a) for particular individual insured persons; or

(b) on an aggregate basis, for a population of insured persons,

who have suffered damage caused or contributed to by the use of or exposure to a type of opioid product.

(5) Where the Crown seeks in an action under subsection (1) to recover the cost of healthcare benefits on an aggregate basis,

(a) it is not necessary

(i) to identify particular individual insured persons,

(ii) to prove the cause of the opioid-related disease, injury or illness in any particular individual insured person, or

(iii) to prove the cost of healthcare benefits for any particular individual insured person;

(b) the healthcare records and documents of particular individual insured persons or the documents relating to the provision of healthcare benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness;

(c) a person is not compellable to answer questions with respect to the health of, or the provision of healthcare benefits for, particular individual insured persons;

(d) notwithstanding clauses (b) and (c), on application by a defendant, a court may order discovery of a statistically meaningful sample of the documents referred to in clause (b) and the order must include directions concerning the nature, level of detail and type of information to be disclosed; and

(e) where an order is made under clause (d), the identity of particular individual insured persons must not be disclosed and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed. 2020, c. 4, s. 3; 2023, c. 21, s. 2.

Right of action by Government of Canada

4 (1) The Government of Canada has a direct and distinct action against a manufacturer, wholesaler or consultant to recover the cost of healthcare benefits caused or contributed to by an opioid-related wrong.

(2) An action under subsection (1) is brought by the Government of Canada in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the Government of Canada may recover the cost of healthcare benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the opioid-related wrong committed by the defendant.

(4) In an action under subsection (1), the Government of Canada may recover the cost of healthcare benefits

- (a) for particular individual insured persons; or
- (b) on an aggregate basis, for a population of insured persons who have suffered damage caused or contributed to by the use of or exposure to a type of opioid product.

(5) Where the Government of Canada seeks in an action under subsection (1) to recover the cost of healthcare benefits on an aggregate basis,

- (a) it is not necessary to
 - (i) identify particular individual insured persons,
 - (ii) prove the cause of opioid-related disease, injury or illness in any particular individual insured person, or
 - (iii) prove the cost of healthcare benefits for any particular individual insured person;
- (b) the healthcare records and documents of particular individual insured persons or the documents relating to the provision of healthcare benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness;
- (c) a person is not compellable to answer questions with respect to the health of, or the provision of healthcare benefits for, particular individual insured persons;
- (d) notwithstanding clauses (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in clause (b), and the order must include directions concerning the nature, level of detail and type of information to be disclosed; and
- (e) where an order is made under clause (d), the identity of particular individual insured persons must not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed. 2023, c. 21, s. 3.

Standard of proof and presumptions

5 (1) In an action under subsection 3(1) or 4(1) for the recovery of the cost of healthcare benefits on an aggregate basis, subsection (2) applies if the Crown or Government of Canada proves, on a balance of probabilities, that, in respect of a type of opioid product,

- (a) the defendant breached a common law, equitable or statutory duty or obligation owed to insured persons who have used or been exposed to or might use or be exposed to the type of opioid product;
- (b) using the type of opioid product can cause or contribute to disease, injury or illness; and

(c) during all or part of the period of the breach referred to in clause (a), the type of opioid product manufactured or promoted by the defendant was offered for distribution or sale in the Province.

(2) Subject to subsections (1) and (4), a court shall presume that

(a) the population of insured persons who used or were exposed to the type of opioid product manufactured or promoted by the defendant would not have used or been exposed to the product but for the breach referred to in clause (1)(a); and

(b) the use or exposure described in clause (a) caused or contributed to disease, injury or illness or the risk of disease, injury or illness in a portion of the population described in clause (a).

(3) Where the presumptions under clauses (2)(a) and (b) apply,

(a) the court shall determine on an aggregate basis the cost of healthcare benefits provided after the date of the breach referred to in clause (1)(a) resulting from use or exposure to the type of opioid product; and

(b) each defendant to whom the presumptions apply is liable for the proportion of the aggregate cost referred to in clause (a) equal to its market share in the type of opioid product.

(4) The amount of a defendant's liability assessed under clause (3)(b) may be reduced, or the proportions of liability assessed under clause (3)(b) readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in clause (1)(a) did not cause or contribute to the use or exposure referred to in clause (2)(a) or to the disease, injury or illness or risk of disease, injury or illness referred to in clause (2)(b). 2020, c. 4, s. 4; 2023, c. 21, s. 4.

Joint and several liability of defendants

6 (1) Two or more defendants in an action under subsection 3(1) or 4(1) are jointly and severally liable for the cost of healthcare benefits if

(a) those defendants jointly breached a duty or obligation described in the definition of "opioid-related wrong" in subsection 2(1); and

(b) as a consequence of the breach described in clause (a), at least one of those defendants is held liable in the action under subsection 3(1) or 4(1) for the cost of those healthcare benefits.

(2) For the purpose of an action under subsection 3(1) or 4(1), two or more manufacturers or wholesalers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in the definition of "opioid-related wrong" in subsection 2(1) if

(a) one or more of those manufacturers or wholesalers are held to have breached the duty or obligation; and

(b) at common law, in equity or under an enactment, those manufacturers or wholesalers would be held

- (i) to have conspired or acted in concert with respect to the breach,
- (ii) to have acted in a principal and agent relationship with each other with respect to the breach, or
- (iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered damages as a consequence of the breach. 2020, c. 4, s. 5; 2023, c. 21, s. 5.

Evidence

7 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purpose of establishing causation and quantifying damages or the cost of healthcare benefits respecting an opioid-related wrong in an action or a proceeding

- (a) brought by or on behalf of a person in the person's own name or as a member of a class of persons under the *Class Proceedings Act*;
- (b) brought by the Crown under subsection 3(1);
- (c) brought by the Government of Canada under subsection 4(1);
- (d) referred to in subsection 15(1); or
- (e) brought on behalf of the Crown, including a proceeding continued as described in Section 14. 2020, c. 4, s. 6; 2023, c. 21, s. 6.

Modified limitation period

8 (1) No action or proceeding that is commenced by the Crown or on behalf of a class or proposed class of which the Crown is a member or prospective member before, or within 15 years after, March 10, 2020, in relation to the recovery of the cost of healthcare benefits, or for damages, alleged to have been caused or contributed to by an opioid-related wrong, is barred under the *Limitation of Actions Act* or by a limitation period under any other Act.

(2) No action or proceeding that is commenced by the Government of Canada before, or within 15 years after, March 10, 2020, in relation to the recovery of the cost of healthcare benefits, or for damages, alleged to have been caused or contributed to by an opioid-related wrong, is barred under the *Limitation of Actions Act* or by a limitation period under any other Act.

(3) Any action or proceeding described in subsection (1) in relation to damages alleged to have been caused or contributed to by an opioid-related wrong is revived if the action or proceeding was dismissed before March 10, 2020, merely because it was held by a court to be barred or extinguished by the *Limitation of Actions Act* or by a limitation period under any other Act. 2020, c. 4, s. 7; 2023, c. 21, s. 7.

Apportionment of liability

9 (1) This Section applies to an action for recovery of the cost of healthcare benefits, or for damages, alleged to have been caused or contributed to by an opioid-related wrong, other than an action for the recovery of the cost of healthcare benefits on an aggregate basis.

(2) Where the Crown or Government of Canada is unable to establish which defendant caused or contributed to the use or exposure described in clause (b) and, as a result of a breach of a common law, equitable or statutory duty or obligation,

(a) one or more defendants causes or contributes to a risk of disease, injury or illness by making a type of opioid product available to insured persons; and

(b) an insured person has used or been exposed to the type of opioid product referred to in clause (a) and suffers disease, injury or illness as a result of the use or exposure,

a court may find each defendant that caused or contributed to the risk of disease, injury or illness liable for a proportion of the damages or cost of healthcare benefits incurred, equal to the proportion of its contribution to that risk of disease, injury or illness.

(3) In apportioning liability under subsection (2), a court may consider

(a) the length of time a defendant engaged in the conduct that caused or contributed to the risk of disease, injury or illness;

(b) the market share the defendant had in the type of opioid product that caused or contributed to the risk of disease, injury or illness;

(c) the degree of potency of the opioid product manufactured or promoted by a defendant;

(d) the amount spent by a defendant on promoting the type of opioid product that caused or contributed to the risk of disease, injury or illness;

(e) the degree to which a defendant collaborated or acted in concert with other manufacturers, wholesalers or consultants in any conduct that caused, contributed to or aggravated the risk of disease, injury or illness;

(f) the extent to which a defendant conducted tests and studies to determine the risk of disease, injury or illness resulting from use of or exposure to the type of opioid product;

(g) the extent to which a defendant assumed a leadership role in manufacturing or promoting the type of opioid product;

(h) the efforts a defendant made to warn practitioners and the public about the risk of disease, injury or illness resulting from use of or exposure to the type of opioid product;

(i) the extent to which a defendant continued manufacturing or promoting the type of opioid product after it knew or ought to have known the risk of disease, injury or illness resulting from use of or exposure to the type of opioid product;

(j) the extent to which a defendant continued promoting the type of opioid product after it knew or ought to have known that the amount or dosage of the type of opioid product promoted did not reasonably reflect the health needs of the population of insured per-

sons who were likely to use or be exposed to the type of opioid product;

(k) affirmative steps that a defendant took to reduce the risk of disease, injury or illness to the public; and

(l) other considerations considered relevant by the court. 2020, c. 4, s. 8; 2023, c. 21, s. 8.

Liability of directors or officers

10 (1) A director or officer of a corporation who directs, authorizes, assents to, acquiesces in or participates in an opioid-related wrong committed by the corporation is jointly and severally liable with the corporation for the cost of healthcare benefits, or damages, caused or contributed to by the opioid-related wrong.

(2) Subsection (1) applies whether or not an action against the corporation for recovery of the cost of healthcare benefits, or for damages, has been commenced or concluded.

(3) A director or officer is not liable under subsection (1) if the director or officer proves, on a balance of probabilities, that the director or officer

(a) did not know, and in the exercise of reasonable diligence could not have known, that the corporation was committing an opioid-related wrong; or

(b) exercised reasonable diligence to prevent the corporation from committing the opioid-related wrong. 2020, c. 4, s. 9.

Action for contribution

11 (1) This Section does not apply to a defendant in respect of whom a court has made a finding of liability under Section 9.

(2) A defendant who is found liable for an opioid-related wrong may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution towards the cost of healthcare benefits, or the payment of damages, caused or contributed to by that wrong.

(3) Subsection (2) applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the cost of healthcare benefits, or the damages, caused or contributed to by the opioid-related wrong.

(4) In an action or proceeding described in subsection (2), a court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in subsection 9(3). 2020, c. 4, s. 10.

Regulations

12 (1) The Governor in Council may make regulations

(a) prescribing drugs for the purpose of clause (b) of the definition of “opioid product” in subsection 2(1);

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

(c) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2020, c. 4, s. 11.

Retroactivity

13 This Act has the retroactive effect necessary to give the provision full effect for all purposes, including allowing an action to be brought under subsection 3(1) arising from an opioid-related wrong, whenever the opioid-related wrong occurred. 2020, c. 4, s. 12.

Action in other jurisdiction

14 Where a proceeding in relation to an opioid-related wrong was commenced in another jurisdiction within Canada on behalf of a class or proposed class of which the Crown is a member or prospective member and was ongoing on March 10, 2020,

(a) the proceeding continues in accordance with this Act;

(b) a procedure completed, and an order made, before March 10, 2020, continues to have effect unless

(i) it would be inconsistent with this Act, or

(ii) a court orders otherwise; and

(c) a procedure that began but was not completed before March 10, 2020, must be completed in accordance with this Act. 2020, c. 4, s. 13.

Class proceeding

15 (1) For the purpose of the *Class Proceedings Act*, the Crown may commence a proceeding in relation to an action under subsection 3(1) on behalf of a class consisting of one or more of the following:

(a) the Government of Canada;

(b) the government of a jurisdiction within Canada;

(c) a federal or provincial government payment agency that makes reimbursement for the cost of services that are in the nature of healthcare benefits within the meaning of this Act.

(2) Nothing in subsection (1) prevents a member of the class described in that provision from opting out of the proceeding in accordance with the *Class Proceedings Act*. 2020, c. 4, s. 14.

Effect of prior agreement

16 (1) In subsections (2) and (3), “proceeding” means

(a) a proceeding in relation to an action under subsection 3(1), including a proceeding referred to in subsection 15(1); or

(b) a proceeding continued as described in Section 14.

(2) Notwithstanding any prior agreement that purports to bind the Crown in relation to compensation arising from an opioid-related wrong,

(a) the Crown is not barred from commencing, continuing or participating in a proceeding;

(b) the evidence that may be brought against a party to the agreement in the course of a proceeding is not limited; and

(c) the liability of, or the amount of compensation payable by, a party to the agreement in relation to an opioid-related wrong that is the subject of a proceeding is not limited.

(3) Where an agreement described in subsection (2) has been finalized by receiving the consent of all parties to the agreement and all necessary court approvals, if any, before March 10, 2020, any compensation received by the Crown under the agreement must be deducted from any compensation received by the Crown as a result of a proceeding.

(4) No compensation is payable by the Crown and proceedings may not be commenced or continued to claim compensation from the Crown or to obtain a declaration that compensation is payable by the Crown as a result of the voiding of an agreement described in subsection (2).

(5) A declaratory or other order of any court providing that compensation is payable by the Crown as a result of the voiding of an agreement described in subsection (2) is not enforceable against the Crown. 2020, c. 4, s. 15.

SCHEDULE

- (a) anileridine;
- (b) buprenorphine, including buprenorphine hydrochloride;
- (c) butorphanol, including butorphanol tartrate;
- (d) codeine, except for those products referred to in subsection 36(1) of the Narcotic Control Regulations (Canada) (CRC, c. 1041), including codeine phosphate;
- (e) diacetylmorphine;
- (f) fentanyl, including fentanyl citrate;
- (g) hydrocodone, including hydrocodone bitartrate;
- (h) hydromorphone, including, but not limited to, hydromorphone hydrochloride;
- (i) levorphanol;
- (j) meperidine, including meperidine hydrochloride;
- (k) methadone, including methadone hydrochloride;
- (l) morphine, including morphine hydrochloride and morphine sulfate;
- (m) nalbuphine;
- (n) normethadone, including normethadone hydrochloride;

- (o) opium, including opium and belladonna;
- (p) oxycodone, including oxycodone hydrochloride;
- (q) oxymorphone, including oxymorphone hydrochloride;
- (r) pentazocine, including pentazocine hydrochloride and pentazocine lactate;
- (s) propoxyphene;
- (t) remifentanyl;
- (u) sufentanyl;
- (v) tapentadol, including tapentadol hydrochloride;
- (w) tramadol, including tramadol hydrochloride.

2020, c. 4, Sch.

CHAPTER O-10

An Act Respecting the Practice of Optometry

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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 *Optometry Act*. 2005, c. 43, s. 1.

Interpretation

- 2** In this Act,
- “Association” means the Nova Scotia Association of Optometrists;
 - “Board” means the Board of the College;
 - “College” means the Nova Scotia College of Optometrists;
 - “complaints committee” means a complaints committee of the College appointed pursuant to this Act;
 - “Council” means the Council of the Association;
 - “Executive” means the Executive of the Board;
 - “former Act” means Chapter 328 of the Revised Statutes, 1989, the *Optometry Act*;

“hearing committee” means a hearing committee of the College appointed pursuant to this Act;

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

“optometrist” means a person licensed to practise optometry under this Act;

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

“practice of optometry” means those functions usually performed by an optometrist, including

(a) the examination of the human eye and its adnexa by any acceptable procedure to diagnose visual defects or abnormal conditions;

(b) the treatment of visual defects or abnormal conditions of the human eye or its adnexa by the use of any acceptable procedures, other than surgery, including the prescription and application of lenses or other devices, and the use of therapeutic drugs as set forth in the bylaws and regulations;

(c) the removal of superficial foreign bodies from the human eye or its adnexa;

“professional corporation” means a company incorporated pursuant to the *Companies Act* for the purpose of carrying on the practice of optometry;

“register” means the register or registers 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. 2005, c. 43, s. 2.

NOVA SCOTIA ASSOCIATION OF OPTOMETRISTS

Association continued

3 (1) The Nova Scotia Association of Optometrists constituted by the former Act is continued as a body corporate.

(2) The Association 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. 43, s. 3.

Objects

4 The objects of the Association are to

(a) promote the professional interests of members;

(b) foster relations with associations of optometrists in other provinces of Canada and with other professional bodies within the Province;

- (c) inform and educate the general public with respect to the advantages of maintaining good ocular health and the prevention of eye disease;
- (d) represent, act on behalf of and enter into agreements for and on behalf of its members; and
- (e) improve the proficiency of optometrists in all matters of professional practice through the dissemination of information and by providing and encouraging continuing education. 2005, c. 43, s. 4.

Powers

5
tions, may

- (1) The Association, in addition to all powers vested in corporations, may
 - (a) borrow money for the purpose of carrying on the affairs of the Association and give security for any money so borrowed on any of the real or personal property of the Association by way of mortgage, pledge, charge or otherwise;
 - (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 Association considers expedient;
 - (d) expend the money of the Association in the advancement of its objects and the interests of the profession of optometry in such manner as the Association considers expedient;
 - (e) establish and maintain such offices and agencies as the Association considers expedient;
 - (f) invest and deal with any money and funds of the Association that are not immediately required, in such manner as the Association considers expedient;
 - (g) borrow money for the use of the Association on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the Association and pledge or sell such securities for such sums or at such prices as the Association considers expedient;
 - (h) publish or promote the publication of journals, newsletters, reports, brochures or other papers relative to its interests;
 - (i) act, as it considers expedient, as agent within the Province for the Canadian Association of Optometrists or other associations representing optometrists, and collect and remit fees levied by any such association;
 - (j) receive gifts and bequests from any person and make gifts to promote its interests;
 - (k) act on behalf of any and all of its members;
 - (l) do all other things as are incidental or necessary in furtherance of its objects or in the exercise of the foregoing powers.

(2) The Association may, subject to this Act and the bylaws, delegate the exercise of any of its powers to the Council or any committee of the Association or Council. 2005, c. 43, s. 5.

Power to enter into contracts with Crown

6 (1) The Association 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 optometrists and, without limiting the generality of the foregoing, the Association may enter agreements with respect to

(a) the tariff of fees, other systems of payment and the management of the delivery of optometric services; and

(b) any other matter that may be agreed between the Association 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 Association; and

(b) this Section does not apply with respect to optometrists who are employed by the Department of Health and Wellness, including optometric consultants and advisers to the Department. 2005, c. 43, s. 6.

Membership

7 (1) The Association may admit any registered optometrist into membership in the Association in accordance with the bylaws of the Association.

(2) Subject to the bylaws, the Association may admit persons to different classes of membership in the Association.

(3) Any person who is a member of the Association under the former Act immediately before April 1, 2006, continues to be a member under this Act until that membership expires, lapses or otherwise is terminated in accordance with this Act.

(4) All members have full voting rights upon the payment of the annual membership fees. 2005, c. 43, s. 7.

Council

8 (1) There is a Council of the Association consisting of the President, Vice-president, Secretary-treasurer and no fewer than four other members of the Association, who must be elected by the membership of the Association in accordance with the bylaws and who shall, subject to this Act, control, govern and administer the affairs of the Association.

(2) The President holds office until a successor is elected and shall act as the presiding officer at the meetings of the Council and of the Association, voting only when the votes are evenly divided, and the President shall perform the duties assigned to the President by this Act and the bylaws of the Association.

(3) The Vice-president has all the powers of the President in the absence of the President.

(4) The Secretary-treasurer shall perform the duties assigned to that position by this Act or the bylaws of the Association.

(5) The members of the Council must be paid such fees and expenses as may be prescribed by the bylaws of the Association. 2005, c. 43, s. 8.

Annual general meeting

9 There must be an annual general meeting of the Association at such time and place as the Council may determine. 2005, c. 43, s. 9.

Bylaws

10 (1) The Council may, subject to the approval of the members, make, amend and revoke bylaws, not inconsistent with this Act, relating to the management of the Association and, without limiting the generality of the foregoing, regarding

- (a) fees for membership;
- (b) the assessment of members for any ordinary or extraordinary expenditure that may be considered necessary or expedient in the exercise of the powers of the Association;
- (c) the election of officers of the Association and their terms of office, duties and remuneration;
- (d) the procedures for calling and conducting meetings of the Association or the Council;
- (e) the establishment of committees of the Association;
- (f) the engagement of persons whom the Association may employ;
- (g) the procedure for enacting, amending or revoking any bylaw of the Association;
- (h) any other matter necessary or desirable for the attainment of its objects or the proper implementation of its powers.

(2) A bylaw may be enacted, amended or revoked by the Association if

- (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 in the bylaws are complied with. 2005, c. 43, s. 10.

No action lies

11 No action for damages lies against the Association, an officer or employee of the Association or a member of the Council or a committee appointed by the Council for any act or proceeding taken or entered into in good faith under this Act. 2005, c. 43, s. 11.

NOVA SCOTIA COLLEGE OF OPTOMETRISTS

College

12 (1) The Nova Scotia College of Optometrists is created and established as a body corporate and, subject to this Act, has all the capacity, rights, powers and privileges of a natural person.

(2) The College is composed of all optometrists licensed in accordance with this Act.

(3) The College has perpetual succession and a common seal, with power to acquire, hold, develop, lease, mortgage and otherwise dispose of real and personal property, and may sue or be sued. 2005, c. 43, s. 12.

Objects

13 In order that the public interest may be served and protected, the objects of the College are to regulate the practice of optometry in the Province and to govern optometrists in accordance with this Act, the bylaws and the regulations by

(a) establishing, developing, and maintaining standards of qualification for the practice of optometry;

(b) establishing, developing, maintaining, and promoting standards of professional practice, conduct, ethics and competency for optometrists;

(c) establishing and maintaining a register of optometrists and issuing licences to those entitled to practise optometry in the Province;

(d) establishing and maintaining a register of professional corporations and issuing permits to professional corporations entitled to engage in the practice of optometry in the Province; and

(e) administering Sections 12 to 69 and performing such other duties or exercising such other powers as are imposed or conferred on the College by or under any Act. 2005, c. 43, s. 13.

Board

14 (1) There is a Board of the College consisting of

(a) a minimum of five optometrists elected by optometrists in accordance with the bylaws of the College; and

(b) two persons appointed by the Governor in Council, both of whom are persons who

(i) are not employed in the public service of the Province or any agency of the Crown in right of the Province,

(ii) are neither optometrists nor persons registered under any other Act governing another healthcare profession, practice or discipline, and

(iii) have no personal, financial or other interest in the practice of optometry or a related health profession that could give rise to a conflict of interest.

(2) Board members must be elected or appointed for a term of three years and may be re-elected or reappointed.

(3) Notwithstanding subsection (2), the terms of office for the first members of the Board appointed or elected pursuant to clause (1)(a) are

- (a) two members to serve for a term of one year;
- (b) two members to serve for a term of two years; and
- (c) the remaining members to serve for a term of three years.

(4) Notwithstanding subsections (2) and (3), members of the Board hold office until such time as they are re-elected or reappointed, or their successors are elected or appointed, even if such election or re-election, appointment or reappointment occurs after the expiry of their specified term of office.

(5) Every optometrist who is not a member of the Council is eligible to be elected by optometrists to serve as a member of the Board.

(6) No member of the Board shall serve for more than three consecutive terms.

(7) In subsection (7), “consecutive” means that 12 months or less occurred between the end of one term and the commencement of the next. 2005, c. 43, s. 14.8

Member’s term ends

15 Notwithstanding Section 14, the term of a member of the Board comes to an end if the member

- (a) resigns from the Board by notice in writing delivered to the Registrar;
- (b) being an optometrist, ceases to hold a licence issued pursuant to this Act; or
- (c) is absent from three consecutive meetings of the Board, unless excused by the Board. 2005, c. 43, s. 15.

Executive

16 (1) The Board shall elect annually from among its numbers an Executive consisting of a Chair, a Vice-chair and a Treasurer and of a Registrar who must be an optometrist.

(2) The Executive

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

of the Board with respect to any matters that the Board may delegate to it or that, in the opinion of the Executive, require immediate attention. 2005, c. 43, s. 16.

Duty of Board

17 The Board shall, subject to this Act, govern, control and administer the affairs of the College. 2005, c. 43, s. 17.

Bylaws

18 The College may make bylaws for governing and administering its own affairs and, without limiting the generality of the foregoing,

- (a) for the establishment and maintenance of a register or registers of optometrists licensed to practise and professional corporations, to be kept pursuant to this Act;
- (b) fixing the time and place and procedures for regular meetings of the Board, determining by whom meetings may be called, providing for emergency meetings, determining the notice required for meetings, determining quorum requirements for meetings, and determining the manner of voting at meetings, including voting by proxy;
- (c) providing procedures for electing optometrists to the Board;
- (d) providing for the appointment of such committees of the College as are considered expedient;
- (e) respecting the composition, powers and duties of such committees as may be appointed by the College and providing for the holding and conduct of meetings of such committees;
- (f) respecting the powers and duties of the Registrar and any other officer, agent or employee of the College;
- (g) respecting the information to be included in a register;
- (h) prescribing fees payable by applicants for licences or permits and, where the College considers it advisable, designating different classes of applicants or licences and prescribing different fees for different classes;
- (i) prescribing the fees and allowances to be paid to any member of the Board, or any committee of the College, and providing for the payment of necessary expenses of the Board and committees of the College;
- (j) prescribing the seal of the College;
- (k) respecting the execution of documents by the College;
- (l) prescribing forms and providing for their use;
- (m) providing procedures not inconsistent with this Act for the making, amending and revoking of bylaws;
- (n) respecting the recognition of schools, examinations and competency assessments for registration and licensing. 2005, c. 43, s. 18.

Regulations

19 (1) The College may, after consultation with the Association, and with the approval of the Governor in Council, make regulations

- (a) respecting the registration and licensing of optometrists;

- (b) respecting the continuing competency requirements, including continuing education requirements or practice requirements of applicants for registration;
- (c) respecting the educational qualifications of applicants for registration;
- (d) respecting the limiting or qualifying of an optometrist's licence, including procedures and interventions;
- (e) respecting the evaluation of, and licensing requirements of, applicants for registration who have not regularly practised clinical optometry for such minimum period of time or hours as may be prescribed;
- (f) prescribing a code of ethics and rules of professional practice;
- (g) respecting a peer-assessment program or program of continuing education, including requiring optometrist to participate in any such program and providing for any other matter that will facilitate or give effect to such program;
- (h) respecting the drugs that may be used in the practice of optometry and the criteria to be satisfied by an optometrist seeking a licence to administer such drugs;
- (i) respecting supervised practice, monitoring supervised practice and the delegation of acts of optometry and any other ancillary matters and providing for the establishment of a committee or committees to deal with such matters;
- (j) constituting a complaints committee or committees to consider complaints relating to optometrists;
- (k) prescribing the powers and procedures of a complaints committee;
- (l) prescribing the actions that a complaints committee may take with respect to a complaint, which actions may include
 - (i) dismissing the complaint,
 - (ii) referring the complaint to a hearing committee,
 - (iii) counselling,
 - (iv) cautioning,
 - (v) reprimanding with the consent of the optometrist;
- (m) providing for appeals from a complaints committee to a hearing committee;
- (n) constituting a hearing committee or committees to hear complaints relating to optometrists;
- (o) prescribing the powers and procedures of a hearing committee;

(p) prescribing the sanctions that may be imposed by a hearing committee that makes a finding against an optometrist in respect of a matter referred to it, which sanctions may include

- (i) counselling,
 - (ii) cautioning,
 - (iii) reprimanding,
 - (iv) suspending or revoking a permit or licence with or without conditions,
 - (v) requiring the optometrist to undergo such treatment or re-education as the committee considers necessary,
 - (vi) requiring the optometrist to pay all or part of the costs of the hearing before a hearing committee, including the College's legal costs, if any,
 - (vii) any other sanction the College or the hearing committee considers appropriate;
- (q) respecting the publication of any decision of a hearing committee;
- (r) regulating, controlling and prohibiting the use of terms, titles or designations by optometrists or groups or associations of optometrists in respect of their practices;
- (s) prescribing the records and accounts to be kept by optometrists and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;
- (t) providing that the licence of an optometrist, or the permit of a professional corporation, be suspended without notice or investigation upon contravention of any regulation or bylaw that requires the optometrist or the professional corporation 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;
- (u) respecting exemptions pursuant to Section 66;
- (v) prescribing the grounds upon which the College or a committee of the College may review a decision of the Registrar and the procedures to be followed in reviewing any decision;
- (w) respecting the protection, storage, transfer or possession of patient records of optometrists or former optometrists, including the protection and disposition of the patient records of a deceased optometrist;
- (x) providing for the reinstatement or reissuance of any licence or permit suspended or revoked pursuant to this Act and prescribing the terms and conditions upon which reinstatement or reissuance of a licence or permit may be granted;
- (y) providing for the filing of periodic returns by professional corporations;

(z) providing for the annual review of permits and prescribing the terms and conditions upon which renewals may be granted;

(aa) providing the Registrar with access to the minute book records of a professional corporation;

(ab) prescribing the type of professional liability insurance or other form of malpractice coverage an optometrist or professional corporation must hold;

(ac) prescribing the manner of proof as to matters required to be proven by applicants for licences or permits;

(ad) prescribing the types of names and business names by which a sole proprietor, a partnership or a professional corporation may be known;

(ae) prescribing the nature of communications with the public, including advertising, that may be undertaken by an optometrist as a sole proprietor, a partnership or a professional corporation;

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

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

(ah) respecting and governing such other matters or things as may be required to give effect to the objects of the College under this Act.

(2) The bylaws and 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 bylaw or regulation of the College was, on the specified day or during a specified period, a duly enacted bylaw or 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. 2005, c. 43, s. 19.

Power to delegate

20 The College has the right, subject to this Act and the bylaws and regulations, to delegate the exercise of any of its powers to the Executive or any committee of the College. 2005, c. 43, s. 20.

Register

21 (1) The College 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 therein.

(2) The name, address and qualifications of every person who, immediately before April 1, 2006, is licensed pursuant to the former Act, must be entered in the register, but continues under any requirements or limitations attached to the person's previous licence. 2005, c. 43, s. 21.

Registration and licence

22 (1) The College, or a committee of the College, shall direct the Registrar to enter in the register the name, address and qualifications of any person who

(a) satisfies the College that the person possesses the qualifications required in the regulations for registration in the register;

(b) produces a letter of good standing from the jurisdiction in which the person has practised optometry before applying pursuant to this Section;

(c) complies with this Act, the regulations and the bylaws and any conditions imposed by the Registrar and the College; and

(d) pays any fees and files any document required under this Act or any bylaw or regulation enacted pursuant to this Act.

(2) Upon receiving a direction from the College 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. 2005, c. 43, s. 22.

Date licences expire

23 All licences to practise expire on December 31st in the year in which they are issued. 2005, c. 43, s. 23.

Application for renewal

24 (1) Every person who holds a licence to practise shall annually, on or before December 15th, apply for a renewal thereof in a manner prescribed by the bylaws and regulations and such renewal must be granted upon payment of the annual fees and satisfaction of any other requirements prescribed by the bylaws and the regulations.

(2) Where any person holding a licence to practise fails to pay the annual fees prescribed within three months of the date upon which such fees become payable, the Registrar, after issuing 10 days notice by registered mail addressed to the last known address of such person on the register, shall cause the name of such person to be struck off the register and, subject to subsection (3), the person ceases to be licensed to practise.

(3) Where the name of a person has been struck off the register pursuant to subsection (2), the person shall, at any time within two years thereafter, upon paying such annual fees and any arrears, be entitled to have a licence to practise issued provided all other requirements of this Act and the bylaws and regulations are met. 2005, c. 43, s. 24.

PROFESSIONAL CONDUCT**Complaints committees**

25 The Board shall appoint one or more complaints committees to investigate, in accordance with this Act and bylaws and regulations, any allegation of

unprofessional conduct, conduct unbecoming the profession, incompetence, incapacity or any breach of the code of ethics, standards or rules of professional practice established by the bylaws and regulations of or by an optometrist. 2005, c. 43, s. 25.

Composition of a committee

26 A complaints committee must consist of at least two optometrists and one member of the Board who is not an optometrist. 2005, c. 43, s. 26.

Quorum

27 Notwithstanding Section 26, any two members of a complaints committee constitute a quorum. 2005, c. 43, s. 27.

Complaint

28 A complaint must be in writing and may be initiated by

- (a) any body corporate or association;
- (b) the Executive or the Registrar; or
- (c) any other person. 2005, c. 43, s. 28.

Copy of complaint to optometrist

29 An optometrist named in a complaint must be given a copy of the complaint prior to the commencement of any investigation. 2005, c. 43, s. 29.

Principles and enactments governing complaints committees

30 A complaints committee is governed by the principles of natural justice, this Act and the bylaws and regulations in the conduct of an investigation. 2005, c. 43, s. 30.

Complaints committee powers and immunities

31 The complaints committee and each member of the complaints committee 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. 2012, c. 48, s. 37.

Power to engage assistance

32 A complaints committee may engage such legal or other assistance as it considers necessary in the exercise of its duties. 2005, c. 43, s. 31.

Bylaws and regulations govern disposition of complaint

33 A complaints committee shall dispose of the complaint in accordance with the bylaws and regulations. 2005, c. 43, s. 32.

Temporary suspensions or restrictions

- 34** (1) Notwithstanding anything contained in this Act, where
- (a) a complaints committee receives information that indicates that an optometrist may be incompetent or guilty of professional misconduct or conduct unbecoming; and

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

the complaints committee may immediately, without a hearing,

(c) suspend the licence of the optometrist on a temporary basis; or

(d) impose restrictions on the licence of the optometrist on a temporary basis.

(2) Where a licence is suspended or restricted pursuant to subsection (1), the Registrar shall, forthwith, give written notice of the suspension, and the reasons for the suspension, to the optometrist.

(3) A complaints committee shall, upon receipt of a request from the optometrist, provide an opportunity for a meeting with the committee to the optometrist 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 a hearing committee, which must hold a hearing within 30 days unless the optometrist requests a hearing date that is more than 30 days after the referral of the matter to the hearing committee. 2005, c. 43, s. 33.

Settlement agreement

35 (1) At any time after a complaints committee refers a matter to a hearing committee and before the commencement of a hearing, the optometrist complained of may tender to the complaints committee a settlement agreement, in writing, consented to by legal counsel for the College, that includes an admission of unprofessional conduct, conduct unbecoming the profession, incompetence, incapacity or breach of the code of ethics or standards established by the bylaws and regulations and the optometrist's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing committee.

(2) A complaints committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement to the hearing committee.

(3) Where a complaints committee recommends acceptance of the proposed settlement agreement, the committee shall instruct legal counsel for the College to advise the hearing committee hearing the complaint of its recommendation.

(4) Where the complaints committee refuses to recommend the proposed settlement agreement, the hearing committee shall proceed without reference to the proposed settlement agreement.

(5) Where the hearing committee appointed to hear the complaint accepts the recommendation of the complaints committee, the hearing committee

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 complaints committee,

(a) the hearing committee shall advise the Registrar of its decision;

(b) the hearing committee shall not proceed further with the hearing of the complaint;

(c) a new hearing committee must be appointed to hear the complaint and no member of the committee that considered the proposed settlement agreement may be a member of the new committee; and

(d) the complaints committee retains jurisdiction over a complaint until the commencement of a hearing by a hearing committee. 2005, c. 43, s. 34.

Hearing committees

36 The Board shall appoint a hearing committee to conduct a hearing into any matter referred to it by a complaints committee or to consider an appeal by an optometrist from a decision of the complaints committee to impose a sanction. 2005, c. 43, s. 35.

Composition of committees

37 A hearing committee must consist of a minimum of one member of the Board who is not an optometrist and two members who are optometrists. 2005, c. 43, s. 36.

Quorum

38 Notwithstanding Section 37, any two members of a hearing committee constitute a quorum. 2005, c. 43, s. 37.

Principles and enactment

39 A hearing committee is governed by the principles of natural justice, this Act and the bylaws and regulations in the conduct of a hearing. 2005, c. 43, s. 38.

Power to engage assistance

40 A hearing committee may engage such legal or other assistance as it considers necessary in the exercise of its duties. 2005, c. 43, s. 39.

Conflict

41 No person may concurrently serve on a complaints committee and a hearing committee. 2005, c. 43, s. 40.

Public Inquiries Act

42 Each member of a hearing committee has all the rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2005, c. 43, s. 41.

Jurisdiction unaffected

43 The jurisdiction of a complaints committee or a hearing committee to deal with a complaint or a charge against an optometrist is not affected by the optometrist's failure to renew the annual licence or by the fact the optometrist's name is no longer on the applicable register. 2005, c. 43, s. 42.

Publication of decisions

44 (1) Subject to any publication bans, the College shall publish a hearing committee's decision or a 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 an optometrist has been revoked or suspended or where conditions, limitations or restrictions are imposed on the licence of an optometrist, the College shall place a notice in such publications as it considers necessary in order to inform the public. 2005, c. 43, s. 43.

Appeal

45 (1) An optometrist against whom a hearing committee has rendered a decision and imposed sanctions may appeal from the findings of the hearing committee on any point of law 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 the decision of the hearing committee and 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 hearing committee and the evidence before the hearing 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 may grant a stay of any order made pursuant to this Act pending the outcome of the appeal. 2005, c. 43, s. 44.

Inadmissibility of evidence in legal proceeding

46 (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 a complaints committee or a hearing committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hearing processes of the College, including any information gathered in the course of an investigation or produced for a complaints committee, a hearing committee or staff members of the College.

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

(4) Unless otherwise determined by a court of competent jurisdiction, a decision of a complaints committee or a hearing committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 10.

Jurisdiction preserved

47 Notwithstanding that a member or members of a complaints committee or a hearing committee have ceased to hold office by reason of the lapse of their appointments, such member or members are seized with the jurisdiction to complete any matter the committees have commenced if necessary to retain a quorum and, for this purpose, such member or members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the bylaws and regulations. 2005, c. 43, s. 45.

PROFESSIONAL CORPORATION

Corporation may practise optometry

48 Subject to this Act and the bylaws and regulations, a professional corporation may engage in the practice of optometry and optometrists may be employed by a professional corporation for the purpose of engaging in the practice of optometry. 2005, c. 43, s. 46.

Ownership of shares

49 (1) A majority of the issued shares of a professional corporation must be legally and beneficially owned by one or more optometrists.

(2) A majority of the issued voting shares of a professional corporation must be legally and beneficially owned by one or more optometrists.

(3) Subject to subsections (1) and (2), the spouse or child of an optometrist 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 an optometrist, or the spouse or child of an optometrist, or a group of such individuals so long as no one other than an optometrist, or the

spouse or child of an optometrist, acts as such a trustee without the written consent of the Registrar. 2005, c. 43, s. 47.

Directors

50 A majority of the directors of a professional corporation must be optometrists. 2005, c. 43, s. 48.

Permit required

51 A professional corporation shall not engage in the practice of optometry unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the bylaws and regulations. 2005, c. 43, s. 49.

Practising in own name and restriction on registration

52 (1) Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued may practise optometry in its own name.

(2) Notwithstanding subsection (1), no professional corporation may be registered as an optometrist under this Act. 2005, c. 43, s. 50.

Conditions for permit

53 (1) The Registrar shall issue a permit to any professional corporation that fulfills the following conditions:

- (a) files all required applications in the form prescribed by the bylaws and regulations;
- (b) pays all fees prescribed by the bylaws and 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 bylaws and regulations;
- (e) satisfies the Registrar that the requirements of Sections 49 and 50 have been met;
- (f) satisfies the Registrar that the professional corporation holds such liability insurance as may be prescribed by the bylaws and regulations;
- (g) satisfies the Registrar that the persons who will carry on the practice of optometry for or on behalf of the professional corporation are optometrists; and
- (h) satisfies the Registrar that the professional corporation is in compliance with this Act and the bylaws and regulations.

(2) A permit issued pursuant to subsection (1), or any renewal of a permit pursuant to subsection (3), expires on December 31st of the year in which it was issued or renewed.

(3) The Registrar may renew a permit upon such application and payment of such fee as may be required by the bylaws and regulations where the Registrar determines that the requirements of subsection (1) are satisfied by the professional corporation. 2005, c. 43, s. 51.

Suspension or revocation of permit

54 (1) A permit issued or renewed pursuant to Section 53, may be suspended or revoked at any time by the Registrar, upon giving 15 days notice, in writing, subject to the bylaws and regulations, if a professional corporation fails to satisfy any of the requirements prescribed in subsection 53(1).

(2) The Executive may, in its discretion, and subject to subsection (9), review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (1).

(3) Where, pursuant to subsection (1), a permit is suspended or revoked, the professional corporation may, within 15 calendar days of the effective date of the notice of the suspension or revocation pursuant to subsection (1), request, in writing, that the Executive review the Registrar's decision pursuant to subsection (2).

(4) Where a professional corporation requests a review by the Executive pursuant to subsection (3), and the Executive, in its discretion, decides to review the Registrar's decision, the professional corporation shall, within 30 days of receiving notice of the Registrar's decision, make written submissions to the Registrar and the Executive.

(5) The Executive may investigate the matter as it considers appropriate and may require the professional corporation, or its directors, officers, employees or shareholders, to provide information and documentation to the Executive.

(6) The Executive may ratify, reverse or modify the decision of the Registrar as it considers appropriate.

(7) Where the Executive reinstates or reissues a permit that has been suspended or revoked pursuant to subsection (1), the Executive may prescribe terms and conditions upon which reinstatement or reissuance of a permit may be granted.

(8) Notwithstanding subsection (1),

(a) the Registrar shall suspend a permit without notice or investigation where the professional corporation has failed to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date; and

(b) a permit suspended pursuant to clause (a) must be reinstated by the Registrar upon payment of the required fee or assess-

ment, receipt of a document required to be filed or performance of a required act by the professional corporation.

(9) The Registrar shall not participate as a member of the Executive in any review of a decision of the Registrar by the Executive pursuant to this Section. 2005, c. 43, s. 52.

Restriction on practice of optometry

55 For the purpose of this Act, the practice of optometry 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 an optometrist. 2005, c. 43, s. 53.

Deemed revocation of permit

56 (1) Where a professional corporation practises optometry only through the services of one optometrist and that optometrist dies, retires, becomes incompetent or is no longer licensed pursuant to this Act, or is suspended under this Act, the permit of that professional corporation is deemed to be revoked and such professional corporation shall cease to practise optometry.

(2) Where a professional corporation practises optometry through the services of more than one optometrist and that professional corporation ceases to fulfill any requirement prescribed in subsection 53(1) by reason of

- (a) the death of an optometrist;
- (b) the incompetency of an optometrist;
- (c) the revocation of the licence of an optometrist pursuant to this Act;
- (d) the suspension of the licence of an optometrist pursuant to this Act;
- (e) the retirement from practice by an optometrist,

the 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 optometrist, failing which the permit is deemed to be revoked and the professional corporation shall cease to practise optometry 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 53(1), 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. 2005, c. 43, s. 54.

Transfer of shares

57 Where the shares of a professional corporation engaged in the practice of optometry 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. 2005, c. 43, s. 55.

Application of Act, bylaws and regulations

58 The relationship of an optometrist 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 bylaws and regulations to the optometrist. 2005, c. 43, s. 56.

Liability for acts

59 (1) All persons who carry on the practice of optometry by, through or on behalf of a professional corporation are liable in respect of acts or omissions done or omitted to be done by those persons in the course of the practice of optometry to the same extent and in the same manner as if such practice were carried on by those persons as an individual or a partnership, as the case may be, carrying on the practice of optometry.

(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 an optometrist the authority to exercise the voting rights attached to any or all of the owner's shares. 2005, c. 43, s. 57.

Laws not affected

60 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between an optometrist and a patient.

(2) The relationship between a professional corporation and a patient of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between an optometrist and a patient.

(3) All rights and obligations pertaining to communications made to or information received by an optometrist apply to the shareholders, directors, officers and employees of a professional corporation. 2005, c. 43, s. 58.

Compellable witnesses

61 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 2005, c. 43, s. 59.

Certificate as evidence

62 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 optometry 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. 2005, c. 43, s. 60.

Directors and officers also guilty

63 Where a professional corporation commits an offence contrary to this Act or the bylaws and 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. 2005, c. 43, s. 61.

Offence and penalty

64 (1) Every person who contravenes Sections 48 to 63 or the associated bylaws and regulations is guilty of an offence and liable on summary conviction, in addition to any penalty otherwise provided for in this Act or the bylaws and regulations, for a first offence to a fine not exceeding \$1,000 and for a second or subsequent offence to a fine not exceeding \$3,000.

(2) Where a professional corporation is convicted of an offence contrary to Sections 48 to 63 or the associated bylaws and regulations, the permit of the corporation is suspended in default of payment of 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. 2005, c. 43, s. 62.

PROHIBITIONS**Prohibited activity unless licensed**

65 No person, unless that person is the holder of a licence to practise that has not been suspended or revoked under this Act, shall

- (a) practise optometry;
- (b) practise optometry in violation of any condition or limitation contained in a licence to practise;
- (c) use verbally or otherwise the title of optometrist or any abbreviation of such title, or any name, title, description or designation that may lead any person to believe that such a person is an optometrist licensed to practise or entitled to practise as an optometrist; or
- (d) advertise, hold out or conduct themselves in any way implying or leading any person to believe that such person is an optometrist licensed to practise or entitled to practise as an optometrist. 2005, c. 43, s. 63.

Further prohibitions and offences

66 (1) An optometrist who leaves and ceases to practise in the Province and upon return practises optometry before providing the Registrar with a certificate of good standing from all jurisdictions in which the optometrist practised during such absence, is guilty of an offence.

(2) The College may waive the requirement of subsection (1) and may make regulations exempting optometrists from the requirements of subsection (1) if the optometrist has been absent from the Province for a period shorter than the maximum period prescribed in the regulations.

(3) No person is entitled to receive a fee, reward or remuneration for professional services rendered to any person in the practice of optometry or any appliances or devices supplied to any person in the practice of optometry unless that person is registered in accordance with this Act at the time the service was provided or the appliances or devices were rendered.

(4) No person shall wilfully obtain or attempt to obtain a certificate of registration or licence to practise, or attempt to be registered as an optometrist, by making or producing or causing to be made or produced any false or fraudulent representation or declaration. 2005, c. 43, s. 64.

Summary Proceedings Act and prosecutions

67 (1) Except in respect of the penalty provided for a corporation, where a person violates any provision of this Act, the *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the bylaws and regulations.

(2) In a prosecution for an offence contrary to this Act or the bylaws and regulations, the onus of proof that a person accused of an offence has the right to practise optometry, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(3) Where a violation of this Act or the bylaws and regulations, by a person who does not have the right to practise optometry, continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(4) For the purpose of this Act, proof of the performance of one act in the practice of optometry on one occasion is sufficient to establish that a person has engaged in the practice of optometry.

(5) Any information laid pursuant to this Act may be laid by the Registrar or any person authorized by the Executive.

(6) All fines and penalties payable under this Act or the bylaws and regulations as the result of a prosecution by or on behalf of the College belong to the College. 2005, c. 43, s. 65.

Act does not prohibit activity authorized under another Act

68 Nothing in this Act prohibits the activity of any person authorized by an Act of the Legislature, notwithstanding that the activity or any part of the activity constitutes the practice of optometry pursuant to this Act. 2005, c. 43, s. 66.

Injunctions

69 (1) Where an optometrist whose licence to practise has been suspended or restricted pursuant to this Act or the bylaws and regulations does or intends to do anything contrary to this Act, in addition to any other penalty that may be invoked, the doing of such thing may be restrained by an injunction of the Supreme Court of Nova Scotia at the instance of the College.

(2) Where a person other than an optometrist does or attempts to do anything contrary to this Act the doing of such thing may be restrained by an

injunction of the Supreme Court of Nova Scotia at the instance of the College. 2005, c. 43, s. 67.

GENERAL

Duty to report

70 (1) In this Section, “motor vehicle” and “highway” have the same meaning as in the *Motor Vehicle Act*.

(2) An optometrist shall report to the Registrar of Motor Vehicles the name and address of any patient attending upon the optometrist for professional services who, in the opinion of the optometrist, is afflicted with visual infirmities or disabilities rendering it unsafe for such a patient to drive a motor vehicle upon a highway.

(3) No action lies against any optometrist for the disclosure of any information or any document or anything therein, pursuant to subsection (2), unless the disclosure is made with malice. 2005, c. 43, s. 68.

No action lies

71 (1) No action for damages lies against the College, the Board, the Executive, any committee of the College or any member of any committee of the College or any employee of the College for any act or failure to act or any proceeding initiated or taken in good faith under this Act or in carrying out of any duties or obligations in accordance with 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. 2005, c. 43, s. 69.

Regulations Act

72 All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*. 2005, c. 43, s. 70.

Bylaws

73 All bylaws enacted under the former Act and in force immediately before April 6, 2006, continue in force until amended or repealed pursuant to this Act. 2005, c. 43, s. 73.

CHAPTER O-11

An Act to Establish the Order of Nova Scotia

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

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WHEREAS Nova Scotians have distinguished themselves in the arts, academics, research, agriculture, business, industry, community leadership, public service, volunteer service and other fields of endeavour and thereby brought honour and prestige to themselves and to Nova Scotia;

AND WHEREAS it is fitting that the Government of Nova Scotia encourage excellence by recognizing Nova Scotians who have made outstanding contributions or achievements:

Short title

1 This Act may be cited as the *Order of Nova Scotia Act*. 2001, c. 9, s. 1.

Interpretation

2 In this Act,
“Advisory Council” means the Order of Nova Scotia Advisory Council;

“Chancellor” means the Chancellor of the Order;

“Order” means the Order of Nova Scotia;

“Secretary” means the Secretary of the Order. 2001, c. 9, s. 2.

Supervision and management of Act

3 The Minister of Communities, Culture, Tourism and Heritage has the general supervision and management of this Act. 2001, c. 9, s. 3.

Establishment of Order

4 The Order of Nova Scotia is established. 2001, c. 9, s. 4.

Object of Order

5 The object of the Order is to honour individual Nova Scotians who have distinguished themselves by an outstanding contribution to the cultural life or to the social or economic well-being of the Province, by an outstanding achievement or by excelling in any field of endeavour to the benefit of the people of the Province or elsewhere. 2001, c. 9, s. 5.

Chancellor

6 The Lieutenant Governor is the Chancellor of the Order. 2001, c. 9, s. 6.

Composition of Order

7 The Order consists of the Chancellor and the individuals who become members of the Order pursuant to this Act. 2001, c. 9, s. 7.

Advisory Council

8 (1) There is an Order of Nova Scotia Advisory Council consisting of

(a) a Chair, appointed by the President of the Executive Council;

(b) the Chief Justice of Nova Scotia or a judge of the Nova Scotia Court of Appeal or the Supreme Court of Nova Scotia designated by the Chief Justice of Nova Scotia;

(c) the Clerk of the Executive Council;

(d) the president of a university in the Province, appointed by the President of the Executive Council;

(e) one member of the Order, appointed by the President of the Executive Council;

(f) one other person appointed by the President of the Executive Council;

(g) one person appointed by the Leader of the Opposition in the House of Assembly; and

(h) one person appointed by each leader of a recognized party in the House of Assembly, other than the leaders referred to in clauses (f) and (g).

(2) Every member of the Advisory Council must be a resident of the Province.

(3) Subject to the regulations,

(a) a person appointed pursuant to clause (1)(a), (f), (g) or (h) holds office for a term of three years and may be reappointed once; and

(b) a person appointed pursuant to clause (1)(d) or (e) holds office for a term of three years and may not be reappointed.

(4) Where there is no person eligible or willing to be appointed pursuant to clause (1)(e), an additional person may be appointed pursuant to clause (1)(f). 2001, c. 9, s. 8.

Effect of vacancy

9 A vacancy on the Advisory Council does not impair the right of the remaining members to act. 2001, c. 9, s. 9.

Entitlement to expenses

10 The Chair and other members of the Advisory Council are not entitled to any remuneration but shall be reimbursed for reasonable expenses necessarily incurred in the performance of their duties. 2001, c. 9, s. 10.

Duties of Advisory Council

11 The Advisory Council shall

(a) meet at least annually;

(b) consider nominations for membership in the Order;

(c) submit to the President of the Executive Council lists of nominees who, in the opinion of the Advisory Council, are worthy of membership in the Order; and

(d) advise the President of the Executive Council on any other matter respecting the Order that the President of the Executive Council may refer to the Advisory Council. 2001, c. 9, s. 11.

Procedures

12 The Advisory Council may determine the procedures for the conduct of its business. 2001, c. 9, s. 12.

Secretary of Advisory Council

13 (1) The President of the Executive Council may designate a person in the public service as the Secretary of the Advisory Council.

(2) The Secretary shall

(a) maintain the records of the Order and the Advisory Council;

(b) receive nominations for membership in the Order;

- (c) arrange for investitures; and
- (d) perform any other functions with respect to the Order that the Advisory Council may require. 2001, c. 9, s. 13.

Eligibility for membership

14 (1) Subject to subsections (2) and (3), Canadian citizens who are current or former long-term residents of the Province are eligible to become members of the Order.

(2) No member of the Senate, the House of Commons, the House of Assembly or a municipal council or judge of any court in Canada is eligible to become a member of the Order while holding that office.

(3) A person may be invested as a member of the order posthumously if the person is nominated within one year of the date of that person's death. 2001, c. 9, s. 14.

Life members

15 (1) The Chancellor is a member of the Order for life.

(2) Every former Lieutenant Governor living on August 2, 2001, is a member of the Order for life. 2001, c. 9, s. 15.

Nominations for membership

16 (1) Individuals and organizations may nominate individuals to become members of the Order.

(2) For greater certainty, members of the Advisory Council may nominate individuals to become members of the Order.

(3) Nominations must be submitted to the Secretary.

(4) Subject to subsection (5), each year the Advisory Council shall select, from the nominations submitted to it, up to six candidates for membership in the Order and submit their names to the President of the Executive Council for approval.

(5) In any year in which the Advisory Council selects six candidates, one of the candidates must be a person under the age of 26 years who is selected for being distinguished as set forth in Section 5 while being at least the age of 16 years and under the age of 25 years.

(6) Nothing in subsection (5) precludes the selection of a person described in subsection (5) if fewer than six candidates are selected.

(7) Notwithstanding subsection (4), the Advisory Council may select up to 10 candidates in the first year. 2001, c. 9, s. 16; 2006, c. 41, s. 1.

Recommendations for investiture

17 Each year the President of the Executive Council may recommend to the Chancellor the candidates selected by the Advisory Council and approved by the

President of the Executive Council for investiture as a member of the Order. 2001, c. 9, s. 17.

Investiture

18 The Chancellor shall invest as a member of the Order each person recommended by the President of the Executive Council pursuant to this Act. 2001, c. 9, s. 18.

Effect of investiture

19 Subject to this Act, upon being invested with the Order, a person is a member of the Order for life. 2001, c. 9, s. 19.

Precedence over other honours

20 The Order is the highest honour of the Province and takes precedence over any other honour conferred by the Crown in right of the Province. 2001, c. 9, s. 20.

Rights of members

21 A member of the Order is entitled to

- (a) wear the insignia of the Order as a decoration; and
- (b) use the initials "O.N.S." after the member's name. 2001, c. 9, s. 21.

Termination of membership

22 (1) A member may resign from the Order by giving written notice of intention to resign, signed by the member, to the Secretary.

(2) The Chancellor may terminate a person's membership in the Order

- (a) on the recommendation of the Advisory Council; and
- (b) with the approval of the President of the Executive Council.

(3) Where a person ceases to be a member of the Order pursuant to this Section, that person shall immediately return to the Secretary any documentation of membership in the Order and the insignia of the Order that were presented to that person on that person's investiture as a member of the Order. 2001, c. 9, s. 22.

Prohibition

23 (1) No person who is not a member of the Order shall

- (a) purport to be a member of the Order;
- (b) display or use any insignia of the Order to indicate membership in the Order; or
- (c) use the initials "O.N.S." after that person's name to indicate membership in the Order.

(2) Any person who contravenes this Section is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000. 2001, c. 9, s. 23.

Regulations

- 24 (1) The Governor in Council may make regulations
- (a) prescribing the terms of office of members of the Advisory Council;
 - (b) respecting nominations for membership in the Order for consideration by the Advisory Council;
 - (c) respecting documentation of membership in the Order;
 - (d) prescribing the insignia of the Order and governing their use and display;
 - (e) defining any word or expression used but not defined in this Act;
 - (f) respecting any other matter necessary or advisable to carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2001, c. 9, s. 24.

Source of funding

25 The money required for the purpose of this Act must be paid out of the General Revenue Fund. 2001, c. 9, s. 25.

CHAPTER O-12

An Act Respecting Overholding Tenants

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Short title

1 This Act may be cited as the *Overholding Tenants Act*. R.S., c. 329, s. 1.

Interpretation

2 In this Act,

“judge” means a judge of the Supreme Court of Nova Scotia;

“landlord” means the lessor, owner, person giving or permitting the occupation of land or person entitled to the possession of land, and the heirs, assigns and legal representatives of any of them;

“tenant” includes an occupant, subtenant, under-tenant and their assigns and legal representatives. R.S., c. 329, s. 2; 1992, c. 16, s. 77.

Complaint by landlord

3 (1) Where a tenant, after the tenant’s tenancy or right of occupation has expired or been determined, does not go out of possession of the land held

by the tenant, the landlord or the landlord's agent may, without any demand upon the tenant, file a complaint under oath in the form prescribed by the regulations, or to the like effect, with a judge having jurisdiction in the place where the land is situated.

(2) The judge may issue a summons, in the form prescribed by the regulations, directed to the tenant and stating the time and place at which the complaint will be heard and determined. R.S., c. 329, s. 3.

Service of summons

4 A true copy of the summons and complaint must be served on the tenant at least five days before the day appointed for the hearing, by delivering it to the tenant personally or, if the tenant cannot conveniently be found, by leaving it for the tenant at the tenant's last or usual place of abode. R.S., c. 329, s. 4.

Hearing

5 (1) Where the tenant does not appear at the time and place appointed for the hearing, a judge, upon proof of due service of the summons and complaint, may issue an order for possession in the form prescribed by the regulations.

(2) Where the tenant appears, a judge shall hear the parties and may issue an order for possession in the form prescribed by the regulations, to be executed on or after a day named in the order not more than 15 days after the issuance of the order, or may dismiss the complaint.

(3) The judge may adjourn the hearing from time to time.

(4) The successful party may be allowed by the judge as the party's costs a sum not exceeding \$15 inclusive of disbursements incurred by the party. R.S., c. 329, s. 5.

JUDGMENT FOR RENTAL ARREARS

Claim for rent

6 (1) The landlord may include in the landlord's complaint a claim for any arrears of rent and for the value of the tenant's use and occupation.

(2) The tenant may file a defence, counterclaim or set-off to the claim or may oppose the same at the hearing without filing a defence thereto.

(3) The judge, after hearing evidence of the claim, may give judgment for any amount not exceeding \$500 that the judge considers proper in the circumstances, including costs to the successful party.

(4) The landlord may issue execution in the usual manner on any such judgment. R.S., c. 329, s. 9; 1992, c. 16, s. 79.

APPEALS

Appeal

7 The landlord or tenant may appeal from any decision or order of the judge to the Nova Scotia Court of Appeal. R.S., c. 329, s. 10; 1992, c. 16, s. 80.

Bond on appeal

8 (1) The appellant shall file with the judge cash, or a bond with one or two sureties to be approved by the judge, in an amount to be fixed by the judge, upon the condition that the appellant shall abide by and fulfill the judgment of the Supreme Court of Nova Scotia and pay such costs as may be awarded against the appellant in the Supreme Court and the Nova Scotia Court of Appeal.

(2) A judge of the Nova Scotia Court of Appeal shall not hear an application to fix a day for the appeal until the bond has been filed or cash deposited. R.S., c. 329, s. 11; 1992, c. 16, s. 81.

Stay of proceedings

9 On the application of the appellant, the judge, as soon as the appeal bond is filed or cash deposited, shall order that any further proceedings on any order or execution that the judge has issued be stayed. R.S., c. 329, s. 12.

Transmission of record

10 (1) As soon as the appeal bond is filed or cash deposited, the judge shall forward to the Registrar of the Nova Scotia Court of Appeal all papers in the action, including the appeal bond or, in the case of a cash deposit, a certificate that the cash has been so deposited, transcript of the evidence and of the decision or order.

(2) Should the appellant not apply within the time limited by subsection 11(1), the Registrar shall return the papers to the judge with a certificate that the appeal has lapsed and the judge shall proceed as if no appeal has been taken and may add the costs of the lapsed appeal to the costs recoverable. R.S., c. 329, s. 13; 1992, c. 16, s. 82.

Application to fix time and place of appeal

11 (1) The appellant shall, within 10 days after the decision or order of the judge has been made, apply to the Nova Scotia Court of Appeal to fix a time and place to hear the appeal.

(2) The application must be supported by the affidavit of the appellant, or the appellant's agent, setting forth the principal grounds of appeal and that the appeal is not being made for the purpose of delay. R.S., c. 329, s. 14; 1992, c. 16, s. 83.

Duty of court to fix time

12 The Nova Scotia Court of Appeal shall appoint a time to hear the appeal, which must be not later than the 14th day after the date of the application. R.S., c. 329, s. 15; 1992, c. 16, s. 84.

Notice

13 (1) Notice of the time and place of hearing the appeal, together with a copy of the affidavit upon which the appointment was obtained, must be served upon the respondent at least three days before the hearing of the appeal.

(2) Where it is made to appear to the judge of the Nova Scotia Court of Appeal on *ex parte* application that personal service could not be effected on the respondent as provided in subsection (1), the judge may fix a new time for the hearing of the appeal and may direct a mode in which substituted service of the notice on the respondent may be effected. R.S., c. 329, s. 16; 1992, c. 16, s. 85.

Nature of hearing

14 All appeals under this Act may be heard by a judge in chambers. R.S., c. 329, s. 17; 1992, c. 16, s. 86.

Judgment

15 Every appeal must be heard *de novo* and the Nova Scotia Court of Appeal shall give such judgment or make such order as the law and the evidence require, whether such judgment or order confirms, reverses or varies the decision appealed from, and the Court of Appeal may hear and determine the complaint whether the decision appealed from purports to be final or not. R.S., c. 329, s. 18; 1992, c. 16, s. 87.

Costs on appeal

16 In all cases the Nova Scotia Court of Appeal shall award the successful party the party's costs before the judge appealed from as well as on appeal, which costs the Court of Appeal shall fix at such sum as it thinks fit. R.S., c. 329, s. 19; 1992, c. 16, s. 88.

Enforcement of order

17 Upon the production of the order of the Nova Scotia Court of Appeal, the judge appealed from shall immediately give the successful party such relief under this Act as the order directs. R.S., c. 329, s. 20; 1992, c. 16, s. 89.

REGULATIONS**Regulations**

18 (1) The Minister of Justice may make regulations prescribing forms for the purpose of this Act.

(2) The forms contained in the Schedule to Chapter 329 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Section.

(3) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.