

REVISED STATUTES
OF
NOVA SCOTIA
2023

BEING A
CONSOLIDATION AND REVISION OF
THE PUBLIC GENERAL STATUTES OF THE PROVINCE
PRINTED AND PUBLISHED PURSUANT TO
CHAPTER 443 OF THE REVISED STATUTES, 1989,
THE STATUTE REVISION ACT, AND
REPRESENTING THE LAW AS OF DECEMBER 31, 2023, AND
IN FORCE ON A DAY TO BE FIXED BY
THE GOVERNOR IN COUNCIL BY PROCLAMATION

VOLUME Pa-Ph



© 2024 His Majesty the King in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

VOLUME Pa-Ph
Revised Statutes of Nova Scotia
2023

Chapter		Page
P-1	Paramedics Act.....	6182
P-2	Parenting and Support Act	6218
P-3	Partition Act	6249
P-4	Partnership Act.....	6259
P-5	Partnerships and Business Names Registration Act.....	6280
P-6	Patient Access to Care Act	6292
P-7	Patient Safety Act.....	6296
P-8	Patients Abandoned Property Act	6298
P-9	Pawning of Service Emblems Act.....	6300
P-10	Payment into Court Act.....	6301
P-11	Peggy’s Cove Commission Act	6303
P-12	Pension Benefits Acts	6309
P-13	Perennia Food and Agriculture Corporation Act	6399
P-14	Perpetuities Act	6408
P-15	Personal Directives Act.....	6410
P-16	Personal Health Information Act	6421
P-17	Personal Information International Disclosure Protection Act	6468
P-18	Personal Property Security Act	6477
P-19	Petroleum Products Pricing Act	6559
P-20	Petroleum Resources Act	6564
P-21	Petroleum Resources Removal Permit Act	6576
P-22	Pharmacy Act.....	6586
P-23	Physiotherapy Act	6629

CHAPTER P-1

**An Act Respecting
the Practice of Paramedicine**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
College	
Established	3
Objects	4
Council	
Established	5
Duties and powers	6
Composition	7
Term of office.....	8
Voting and membership	9
Petition against election	10
Officers.....	11
Registrar	12
Agents and employees	13
Bylaws respecting election to Council.....	14
Quorum	15
Annual meeting and report.....	16
Meetings.....	17
President's vote	18
Committees	19
President to preside	20
Bylaws and regulations	21
Registration and Licensing	
Register and roster	22
Public record	23
Registration and Registration Appeal Committees	24
Registration and licences	25
Changes to Register	26
Changes to roster.....	27
Restoring name to register and roster	28
Registration and licence fees.....	29
Registration information changes	30
Registration and licence review	31
Publication of registration list.....	32
Licence to practise must be current.....	33
Protected Titles and Practices	
Eligibility to practise paramedicine	34
Discipline or complaints from outside the Province.....	35
Practices not prohibited.....	36
Professional Conduct	
Purpose.....	37

Legal or other assistance.....	38
Confidentiality and permitted disclosure.....	39
Matter arising in course of investigation.....	40
Inadmissibility of evidence in legal proceeding.....	41
Prior criminal or disciplinary proceedings.....	42
Registrar not member of disciplinary committee.....	43
Investigation.....	44
Jurisdiction of College over former members.....	45
Complaints.....	46
Investigation Committee	
Establishment and composition.....	47
Powers.....	48
Duties.....	49
Registrar may refer matters.....	50
Powers without written complaint.....	51
Powers with written complaint.....	52
Resulting reports.....	53
Investigators.....	54
Meetings and jurisdiction.....	55
Procedure and rights of respondent.....	56
Publication ban.....	57
Interim suspension or restrictions.....	58
Majority vote.....	59
Expiration of term of committee member.....	60
Rights of respondent at meeting.....	61
Distribution of written decision to suspend or impose restrictions.....	62
Hearing Committee	
Establishment.....	63
Hearing panel.....	64
Members not eligible to sit on investigation committee.....	65
Powers.....	66
Hearing.....	67
Settlement proposal.....	68
Public Inquiries Act.....	69
Proceeding before hearing panel.....	70
Summons of witness.....	71
Appearance by member at hearing.....	72
Admissibility of evidence.....	73
Service of documents.....	74
Communication outside hearing.....	75
Hearings open.....	76
Distribution of copies of decision of hearing panel.....	77
Finding of misconduct and publication bans.....	78
Decision has effect.....	79
Application for reinstatement.....	80
Expiration of term of panel member.....	81
Majority vote.....	82
Disclosure of panel decision.....	83
Restoration of licence and duties of Registrar.....	84
Reinstatement Committee	
Establishment.....	85
Duties.....	86
Public Inquiries Act.....	87
Rights of member appearing before committee.....	88
Admissibility of evidence.....	89
Costs of the Council.....	90
Appeal.....	91
Offences	
Unlicensed practice or practice contrary to restrictions.....	92

Offence and penalty.....	93
Onus of proof, separate offences.....	94
Prosecution by College.....	95
Information may be laid.....	96
Injunction.....	97
General	
Duty to report.....	98
Fines payable to College.....	99
No action lies.....	100
Certificate prima facie evidence.....	101
Proof of registration and licence.....	102
Service of documents.....	103
Rendering of first aid by member.....	104

Short title

1 This Act may be cited as the *Paramedics Act*. 2015, c. 33, s. 1.

Interpretation

2 (1) In this Act,

“bylaw” means a bylaw of the College;

“College” means the College of Paramedics of Nova Scotia;

“committee” includes a committee of the Council, an investigation committee, a reinstatement committee, the Registration Committee or the Hearing Committee, as the context requires;

“competence” means the ability to integrate and apply the knowledge, skills and judgement required to practise safely and ethically in a designated role and practice setting;

“complaint” means a notice in writing indicating possible professional misconduct, conduct unbecoming the profession, incompetence or incapacity of a member;

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

“Council” means the Council of the College;

“disciplinary committee” means an investigation committee or the Hearing Committee;

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

“essential competencies” means the minimum occupational skills required for each class of licence;

“hearing” means a process before the Hearing Committee following the issuance of a notice of hearing, in which the parties lead evidence and make submissions to the Hearing Committee, but does

not include the consideration by the Hearing Committee of a settlement proposal, an application for a consented-to revocation or any hearing or proceeding before an investigation committee;

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

“hearing panel” means a hearing panel appointed pursuant to subsection 64(1);

“incapacity” means a medical, physical, mental or emotional condition, disorder or addiction that renders or rendered a member unable to practise with competence or that may endanger or has endangered the health or safety of individuals;

“incompetence”, in relation to a respondent, means the display of a lack of knowledge, skill or judgement in the respondent’s practice of paramedicine that, having regard to all the circumstances, rendered it unsafe for the respondent to practise at the time or renders it unsafe for the respondent to continue in practise without remedial assistance;

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

“investigator” means a person designated by the Registrar or an investigation committee to conduct or supervise an investigation into a complaint;

“judge” means a judge of the Supreme Court of Nova Scotia;

“legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before any tribunal, board or commission or arbitration, in which evidence is or may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the contravention of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations;

“licence” means a valid and subsisting licence issued in accordance with this Act and the regulations that authorizes the holder of it to practise paramedicine;

“licensing sanction” means

- (a) conditions or restrictions on a licence imposed;
- (b) a consensual reprimand ordered;
- (c) a reprimand issued;
- (d) a suspension of a licence; or
- (e) a revocation of registration,

by a disciplinary committee or an equivalent body of another jurisdiction;

“medical practitioner” means a medical practitioner as defined in the *Medical Act*;

“member”, unless the context otherwise requires, means a person whose name is entered in the Register;

“Minister” means the Minister of Health and Wellness;

“paramedic” means a person who is licensed to practise paramedicine under this Act;

“party” means the College or a respondent, as the context requires;

“practice of paramedicine” means the practices and procedures usually performed by a paramedic under the direct or indirect supervision of a medical practitioner;

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

(a) the code of ethics approved by the Council;

(b) the accepted standards of the practice of paramedicine; and

(c) this Act, the regulations or policies approved by the Council;

“Provincial Medical Director” means the medical director responsible for emergency health services for the Province;

“public representative” means a member of the Council or of a committee of the Council who is not a member of the College;

“Register” means the Register of the College kept pursuant to this Act;

“Registrar” means the Registrar of the College appointed pursuant to this Act;

“Registration Appeal Committee” means the Registration Appeal Committee appointed pursuant to this Act;

“Registration Committee” means the Registration Committee appointed by Council pursuant to this Act;

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

“respondent” means a person who is the subject of a complaint or an appeal pursuant to this Act or the regulations;

“roster” means the record of a class of licence or a category of licence established pursuant to this Act or the regulations;

“standards of practice” means the entry-level professional practice expectations for any member in any setting or role, approved by the Council or otherwise inherent in the profession.

(2) A person is registered if the person’s name has been recorded in the Register in accordance with the regulations. 2015, c. 33, s. 2.

COLLEGE

Established

3 (1) The College of Paramedics of Nova Scotia is established as a body corporate.

(2) The College has perpetual succession and a common seal, with the power to acquire, hold and dispose of real and personal property and to sue and be sued. 2015, c. 33, s. 3.

Objects

4 (1) The objects of the College are to

- (a) serve and protect the public interest in the practice of paramedicine;
- (b) preserve the integrity of the paramedic profession; and
- (c) maintain public and member confidence in the ability of the profession to regulate the practice of paramedicine.

(2) In order to effectively carry out the objects of the College, the College shall

- (a) regulate the practice of paramedicine and govern its members through
 - (i) the registration, licensing, professional conduct and other processes set out in this Act and the regulations,
 - (ii) the approval and promotion of a code of ethics, and
 - (iii) the establishment and promotion of
 - (A) standards for the practice of paramedicine, and
 - (B) a continuing professional development program; and
- (b) do all such other lawful acts and things as are incidental to the attainment of the objects and purpose. 2015, c. 33, s. 4.

COUNCIL

Established

5 There is a Council of the College constituted as provided in Section 7. 2015, c. 33, s. 5.

Duties and powers

6 (1) The Council shall manage and regulate the affairs and business of the College.

(2) To more effectively carry out the objects of the College and the purpose of this Act, the Council may

- (a) examine applicants applying to be licensed;
- (b) issue or cause to be issued licences to persons who by this Act and the regulations are qualified to practise paramedicine;
- (c) establish and maintain the Register;
- (d) hear complaints against members and administer disciplinary procedures through the Council's disciplinary committees;
- (e) suspend, revoke, restrict or refuse to renew licences; and
- (f) review the operation of this Act and the regulations and make recommendations thereon.

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

- (a) engage such agents and employees as it considers expedient;
- (b) expend the money of the College in the advancement of its objects in such manner as it considers expedient;
- (c) establish and maintain such offices and agencies as it considers expedient;
- (d) invest and deal with any money and funds of the College that are not immediately required, in such manner as it considers expedient;
- (e) 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 it considers expedient;
- (f) secure the repayment of money borrowed, in such manner and upon such terms and conditions as it considers fit, and, in particular, by the execution and delivery of mortgages of all or any part of the real or personal property of the College, both present and future; and
- (g) do such things as are incidental to or necessary for the exercise of the powers referred to in clauses (a) to (f). 2015, c. 33, s. 6.

Composition

- 7 (1) The Council consists of
- (a) eight members of the College who
 - (i) hold active practising status as paramedics,
 - (ii) are elected by the members of the College,
 - (iii) are members in good standing, and
 - (iv) represent the geographical districts and classes of licence set out in the bylaws; and

(b) four public representatives appointed by the Governor in Council.

(2) A member of the Council elected pursuant to clause (1)(a) who moves to a district or class of licence other than the district or class of licence the member was elected to represent

(a) may complete the member's term on Council; and

(b) subject to subsection 8(4), may re-offer for re-election in the district or under the class of licence the member then practises in.

(3) Members of the Council must be elected or appointed to office in such manner as the bylaws set out or as set out in regulation. 2015, c. 33, s. 7.

Term of office

8 (1) For the purpose of this Section and Section 11, two terms are consecutive if the second term commences 12 or fewer months after the first term ends.

(2) Persons elected or appointed as members of the Council hold office for a term of three years.

(3) Notwithstanding anything contained in this Section, persons appointed by the Governor in Council hold office until their successors are appointed or until they are reappointed.

(4) No person may be a member of the Council for more than two consecutive terms. 2015, c. 33, s. 8.

Voting and membership

9 Every practising member in good standing is eligible to vote in an election of the Council and to be nominated as a candidate for membership on the Council. 2015, c. 33, s. 9.

Petition against election

10 A member may in such manner as the bylaws set out petition the Council against the election of a person to the Council. 2015, c. 33, s. 10.

Officers

11 (1) The Council shall elect annually from among its members a President and a Vice-president.

(2) The Council may elect annually such other officers for the Council and for such terms of office as the Council considers necessary to assist it in carrying out its duties pursuant to this Act.

(3) No person may be elected President or Vice-president for more than two consecutive terms.

(4) Where an officer of the Council resigns or otherwise ceases to hold office before the expiration of the officer's term, the Council shall appoint a person from among its members to hold such office for the balance of the unexpired term. 2015, c. 33, s. 11.

Registrar

12 (1) The Council shall appoint a Registrar who must be a member of the College and holds office during the pleasure of the Council at such salary or other remuneration as the Council determines.

(2) The Registrar may delegate any functions assigned to the Registrar by this Act, the regulations or the bylaws.

(3) The Registrar is a non-voting member of the Council. 2015, c. 33, s. 12.

Agents and employees

13 The Council may appoint such agents or employees at such salaries or other remuneration, and for such terms of office, as the Council considers necessary to assist it in carrying out its duties pursuant to this Act. 2015, c. 33, s. 13.

Bylaws respecting election to Council

14 The Council may make bylaws with respect to the election of members to the Council

(a) establishing a nominations committee, its composition and duties;

(b) setting out the procedure for the nomination of candidates;

(c) setting out the number of members to be elected to represent each class of licence;

(d) providing for the appointment or designation of presiding officers for the election;

(e) setting out the forms to be used;

(f) setting out the procedure to be used for the holding of the elections and for determining the persons to be elected as members of the Council;

(g) setting out the procedure for retaining ballots and considering petitions against the election of a person to the Council;

(h) with respect to Council members elected pursuant to clause 7(1)(a), prescribing the manner in which vacancies on the Council may be filled and the manner of removing those Council members. 2015, c. 33, s. 14.

Quorum

15 (1) A majority of the members of Council, other than the Registrar, constitutes a quorum.

(2) Notwithstanding subsection (1), where there is a vacancy in a position that is appointed pursuant to clause 7(1)(b), such vacancy does not count in determining a quorum. 2015, c. 33, s. 15.

Annual meeting and report

16 (1) There must be an annual meeting of the College held at such time and place as the Council determines.

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

(3) Auditors must be recommended by the Council but are subject to the approval of the College at the annual meeting. 2015, c. 33, s. 16.

Meetings

17 The Council shall meet at least four times in each calendar year at such time and place as the Council determines. 2015, c. 33, s. 17.

President's vote

18 Except in the event of an equal number of votes being given for and against a resolution at any meeting, the President or other presiding officer may not vote. 2015, c. 33, s. 18.

Committees

19 The Council may appoint such committees from among members of the Council or the College as the Council considers necessary to assist it in carrying out its duties pursuant to this Act. 2015, c. 33, s. 19.

President to preside

20 (1) Subject to subsection (2), the President shall preside at all meetings of the Council and of the College.

(2) Where the President is absent from a meeting, the Vice-president or, in the Vice-president's absence, some other member of the Council chosen by the members present shall preside at the meeting. 2015, c. 33, s. 20.

Bylaws and regulations

21 (1) Subject to this Act, the Council shall govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make bylaws

- (a) respecting the management of the College;
- (b) providing for the division of the Province into geographical districts for the election of members of the Council pursuant to subclause 7(1)(a)(iv);
- (c) respecting the holding of meetings of the College or Council and the conduct of such meetings;
- (d) fixing the time and place for regular meetings of the Council, determining who may call meetings, regulating the conduct of meetings, providing for emergency meetings and regulating the notice required with respect to meetings;

- (e) respecting the manner in which resolutions are forwarded to the Council;
- (f) respecting the appointment of such committees, in addition to committees appointed pursuant to this Act or the regulations, as the Council may consider expedient;
- (g) respecting the composition, powers and duties of such committees as may be appointed by the Council, and providing for the holding and conduct of meetings of such committees, if such requirements are not otherwise set out in this Act or the regulations;
- (h) establishing the quorum for meetings of committees if quorum requirements are not otherwise set out in this Act or the regulations;
- (i) setting the fees payable by applicants and members and, where Council considers it advisable, designating different fees for the different classes and categories of licence set out in the regulations;
- (j) respecting the collection of fees payable by applicants and members;
- (k) setting the fees and expenses payable to members of the Council and committees and providing for the payment of necessary expenses of the Council and committees;
- (l) respecting examinations as prerequisites to registration;
- (m) respecting the schedule for a member's registration;
- (n) respecting the location of the head office of the College;
- (o) respecting the seal of the College;
- (p) respecting the execution of documents by the College;
- (q) providing procedures consistent with this Act for the making, amending and revoking of bylaws;
- (r) establishing a code of ethics and standards of practice for the practice of paramedicine;
- (s) respecting the records and accounts to be kept by a member with respect to a member's practice, and providing for the production, inspection and examination of such records and accounts;
- (t) respecting the essential competencies for the practice of paramedicine;
- (u) establishing the conditions a person whose licence has expired must satisfy in order to apply for the reissuing of a licence;
- (v) respecting the powers, duties and qualifications of the officers, agents and employees of the College;
- (w) respecting any other matter or thing necessary for the administration of the College.

- (2) Subject to the approval of the Governor in Council, the Council may make regulations
- (a) respecting the powers, duties and qualifications of the Registrar;
 - (b) respecting the registration and licensing of members, but not including the scheduling of a member's registration;
 - (c) prescribing the type and amount of professional liability insurance or other form of malpractice coverage a member must hold;
 - (d) respecting the information to be included in the Register;
 - (e) creating one or more rosters and prescribing rights, privileges, qualifications and obligations of the members included in the Register and each roster and the conditions for the entry and maintenance of members' names in the Register and each roster;
 - (f) respecting the recognition of paramedic programs;
 - (g) respecting a continuing competency program, and requiring members to participate in any such program for continued licensure and registration, and providing for any other matter that will facilitate or give effect to such program;
 - (h) respecting the direct and indirect supervision of members;
 - (i) respecting the imposition of terms or conditions on a member's registration or licence;
 - (j) providing for the classes of licence and categories of licence, the qualifications for classes and categories of licences and the procedure for moving to a different class or category of licence;
 - (k) respecting the suspension or revocation of licences issued pursuant to this Act and the reinstatement of such licences and allowing for conditions or restrictions to be attached to a reinstated licence;
 - (l) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members, with respect to the practice of those members;
 - (m) 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;
 - (n) subject to clause 7(1)(b), changing the number and characteristics of appointments to the Council;
 - (o) respecting the appointment of non-members to committees;
 - (p) subject to subsection 34(2), respecting the supervision of paramedic acts;

- (q) respecting the investigation of complaints;
 - (r) respecting the holding of hearings concerning complaints;
 - (s) respecting the resolution of complaints;
 - (t) respecting the powers, authority and processes of the College, the Registrar, a disciplinary committee, a reinstatement committee, and panels of those committees, as the case may be, with respect to complaints, professional conduct matters and settlement proposals;
 - (u) respecting the composition of an investigation committee, the Registration Committee, the Registration Appeal Committee, the Hearing Committee and the Fitness-to-practice Committee;
 - (v) respecting the powers, authority and processes of the Registrar, the Registration Committee and the Registration Appeal Committee relevant to registration and licensing matters;
 - (w) respecting the options available to the Registration Committee with respect to an application for the reissuing of a licence;
 - (x) authorizing the establishment of a fitness-to-practice program and respecting the powers, authorities and duties of the Fitness-to-practice Committee to deal with issues of incapacity;
 - (y) respecting the options available to the Registrar with respect to an application for the reissuing of a licence;
 - (z) respecting the options available to the Council when hearing the applicant and the Registrar with respect to an application for the reissuing of a licence;
 - (aa) respecting the procedure for the registration review process;
 - (ab) providing for the audit of a member's practice;
 - (ac) respecting the reporting and publication of decisions in disciplinary matters;
 - (ad) respecting the annual publishing of the list of registered members;
 - (ae) allowing for an award of costs on a solicitor-client or other basis;
 - (af) respecting the ability of the Registrar, an investigative panel or a hearing panel to impose a fine if a member has engaged in practice while not holding a current licence;
 - (ag) 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.
- (3)** The Governor in Council may make regulations
- (a) defining any word or expression used but not defined in this Act;

(b) further defining any word or expression defined in this Act.

(4) The Council shall circulate proposed regulations to members for review and input before submitting them to the Governor in Council for approval.

(5) The exercise by the Council of the authority contained in subsection (2) or by the Governor in Council of the authority contained in subsection (3) is a regulation within the meaning of the *Regulations Act*.

(6) All regulations and bylaws of the College must be available for inspection by any person, free of charge, at the head office of the College during business hours and be posted on its website.

(7) A certificate purporting to be signed by the Registrar stating that a certain bylaw or regulation of the College was, on a 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. 2015, c. 33, s. 21.

REGISTRATION AND LICENSING

Register and roster

22 (1) The Council shall keep a Register in which the name of every person who qualifies for registration in accordance with this Act and the regulations is recorded.

(2) The Register must include the information set out in the regulations.

(3) The classes and categories of licences to be recorded in the Register are as set out in the regulations.

(4) The Board shall cause to be maintained a roster for each category of licence as provided by the regulations. 2015, c. 33, s. 22.

Public record

23 The Council shall cause to be kept a record available to the public showing the information required by the regulations. 2015, c. 33, s. 23.

Registration and Registration Appeal Committees

24 (1) The Council shall appoint a Registration Committee and a Registration Appeal Committee, the membership of each of which is as set out in the regulations.

(2) The Council shall designate one of the members of the Registration Committee as the Chair of that Committee and one of the members of the Registration Appeal Committee as the Chair of that Committee.

(3) A majority of the Registration Committee members or the Registration Appeal Committee members constitutes a quorum.

(4) The Registrar, the Registration Committee and the Registration Appeal Committee shall perform such registration and licensing functions as are set out in this Act, the regulations and the bylaws.

(5) Subject to subsections (6) to (8), the Registrar, the Registration Committee and the Registration Appeal Committee have all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(6) The Registrar, the Registration Committee and the Registration Appeal Committee may exercise a power or privilege conferred by subsection (5) only if authorized to do so by the Chair of the Committee.

(7) The Registrar and each member of the Registration Committee is authorized to sign documents on behalf of the Registration Committee issued under the authority of the *Public Inquiries Act*, if the Chair of the Registration Committee has authorized the issuing of such documents.

(8) The Registrar and each member of the Registration Appeal Committee is authorized to sign documents on behalf of the Registration Appeal Committee issued under the authority of the *Public Inquiries Act*, if the Chair of the Registration Appeal Committee has authorized the issuing of such documents. 2015, c. 33, s. 24.

Registration and licences

25 (1) The Registrar shall record in the Register the name of every person who satisfies the criteria for registration set out in the regulations.

(2) The Registrar shall issue a licence to a person who satisfies the criteria for the licence set out in the regulations.

(3) The Registrar may impose conditions or restrictions on the licence of a member with the consent of the member if the Registrar considers such conditions or restrictions to be necessary in the interest of the public.

(4) Where the Registrar imposes conditions or restrictions with the consent of the member pursuant to subsection (3), the conditions or restrictions are not licensing sanctions.

(5) The Registrar may impose conditions or restrictions on the licence of a member without the consent of the member in the manner described in the regulations.

(6) The Registrar shall renew a licence when the holder of the licence meets the criteria for renewal set out in the regulations. 2015, c. 33, s. 25.

Changes to Register

26 (1) The Registrar shall change a member's entry in a Register if

(a) information has been entered incorrectly;

- (b) the member dies;
- (c) the registration of the member has been revoked;
- (d) an investigation committee, as part of an informal resolution of a complaint, or the Hearing Committee authorizes the resignation of the member from a register; or
- (e) the Registrar, as part of an informal resolution of a complaint or otherwise, has, at the request of the member, authorized the resignation of the member.

(2) Where a change has been made to a Register pursuant to clause (1)(b), (c), (d) or (e) to remove a member's name from the Register, the person ceases to be a member. 2015, c. 33, s. 26.

Changes to roster

27 (1) The Registrar shall cause the removal of the name of a member from a roster

- (a) if information has been entered incorrectly requiring the removal of the member's name;
- (b) if the member no longer meets the criteria for entry on the roster;
- (c) at the request of the member, if approved by the Registrar;
- (d) for non-payment of fees or other assessments levied pursuant to this Act or the regulations;
- (e) if the licence of the member has been suspended, for the term of the suspension;
- (f) if the registration of the member has been revoked;
- (g) if an investigation committee, the Hearing Committee or the Registrar authorizes the resignation of the member from the Register; or
- (h) if the member dies.

(2) The name of a person removed from the appropriate roster pursuant to clause (1)(a), (b), (c), (d) or (e) must be restored upon

- (a) payment of the fee set out in the bylaws; and
- (b) compliance by the person with this Act and the regulations.

(3) A statement certified under the hand of the Registrar respecting the membership and entry of a person's name in a roster is admissible in evidence as prima facie proof of that person's entry on such roster. 2015, c. 33, s. 27.

Restoring name to register and roster

28 (1) Where a person's name has been removed from a register pursuant to clause 26(1)(d) or (e) or from a roster pursuant to clause 27(1)(g), the person may apply to have the person's name restored to the register and the roster only

if the panel or Registrar, as the case may be, when authorizing the person's resignation also authorized the person to reapply for membership.

(2) Where a person's name has been removed from a register pursuant to clause 26(1)(c) or from a roster pursuant to clause 27(1)(f), the person's name may be restored to the register only if the Reinstatement Committee determines that it may, and subject to any conditions or restrictions that the Reinstatement Committee directs. 2015, c. 33, s. 28.

Registration and licence fees

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

(a) a registration fee at the time that the member is registered; and

(b) on or before a date determined by Council in each year thereafter, an annual licence fee determined by Council.

(2) The licence of any member who fails to pay fees as required by subsection (1) or who fails to comply within the period set out in the regulations with any continuing competency requirements established in the regulations is liable to be suspended in accordance with the procedure set out in the regulations.

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

(4) Where the licence of a member has been suspended pursuant to subsection (2), or in any other case where the licence of a registered person has expired pursuant to this Act for non-payment of fees, such person may apply to the Registrar for the reissuing of the licence. 2015, c. 33, s. 29.

Registration information changes

30 A member of the College whose registration information changes shall promptly inform the Registrar, who shall enter the change in the Register. 2015, c. 33, s. 30.

Registration and licence review

31 Where an applicant

(a) has been refused registration;

(b) has been refused a licence; or

(c) has terms and conditions imposed on a licence without the consent of the applicant,

the Registrar shall advise the applicant of the review process set out in the regulations. 2015, c. 33, s. 31.

Publication of registration list

32 (1) The Registrar shall publish annually, in the manner set out in the regulations, a list that includes the names of those persons listed in the Register.

(2) Where the right of a person to practise has been limited by the imposition of conditions or restrictions pursuant to this Act or the regulations, particulars of the conditions or restrictions imposed on that person must be noted in the records of the College and may be disclosed to the public in accordance with this Act. 2015, c. 33, s. 32.

Licence to practise must be current

33 (1) Every person who employs a person in the practice of paramedicine and every agency that procures employment for a person in the practice shall

(a) ensure that the person, at the time of employment and for each year employed thereafter, holds a current licence to practise in the profession as set out in the regulations; and

(b) where the person's employment is terminated or the person resigns because of allegations of professional misconduct, conduct unbecoming the profession, incompetence or incapacity, report the matter to the Registrar forthwith and provide a copy of the report to the person whose employment is terminated.

(2) The licence of a member may be surrendered by the member only after the member gives written notice to the Council and with the consent of the Council. 2015, c. 33, s. 33.

PROTECTED TITLES AND PRACTICES

Eligibility to practise paramedicine

34 (1) Except as provided in this Act and the regulations, no person, other than a paramedic, shall

(a) publicly or privately, for hire, gain or hope of reward, practise or offer to practise paramedicine;

(b) purport to be, in any way, entitled to practise paramedicine; or

(c) assume any title or description implying or designed to lead the public to believe that the person is entitled to practise paramedicine.

(2) A paramedic may practise paramedicine only under the direct or indirect supervision of a medical practitioner. 2015, c. 33, s. 34.

Discipline or complaints from outside the Province

35 (1) A member who engages in practice outside the Province and who was subject to any disciplinary findings while outside the Province or has outstanding complaints from outside the Province shall not engage in practice upon returning to the Province before providing the Registrar with notice of such disciplinary findings or complaints and receiving from the Registrar a notice authorizing the member to resume practice in the Province.

(2) Where the Registrar receives a notice pursuant to subsection (1), the Registrar may file a complaint. 2015, c. 33, s. 35.

Practices not prohibited

- 36** Nothing in this Act applies to or prevents
- (a) the consultation in the Province with a member by a paramedic entitled to practise paramedicine in any other province of Canada or country;
 - (b) the domestic administration of family remedies;
 - (c) the practice of the religious tenets or general beliefs of any religious organization;
 - (d) 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; or
 - (e) the practice of any profession authorized pursuant to an enactment of the Province by a professional licensed pursuant to such enactment, practising within the scope of practice for that profession. 2015, c. 33, s. 36.

PROFESSIONAL CONDUCT**Purpose**

37 In accordance with the objects of the College, the purpose of the professional conduct process is to inhibit professional misconduct, conduct unbecoming the profession or incompetence by a member or to inhibit a member from practising while incapacitated. 2015, c. 33, s. 37.

Legal or other assistance

38 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 and conduct of any disciplinary matter. 2015, c. 33, s. 38.

Confidentiality and permitted disclosure

39 (1) All complaints received or under investigation, all information gathered in the course of the professional conduct process and all proceedings and decisions of a disciplinary committee that are not open to or available to the public in accordance with this Act or the regulations must be kept confidential by the person who possesses such information.

(2) Notwithstanding subsection (1), where it is consistent with the objects of the College,

- (a) the Registrar, on the recommendation of a disciplinary committee, may disclose to law enforcement authorities any information about possible criminal activity on the part of a member that is obtained during an investigation pursuant to this Act;
- (b) a disciplinary committee may authorize the Registrar to release specific information to specific persons;
- (c) the Registrar may disclose information with respect to a complaint or matter before a committee to the regulatory body of another jurisdiction if it is relevant and concerns the fitness of a member for membership in the regulatory body of the other jurisdiction; and

(d) the Registrar may disclose information with respect to a complaint for the purpose of the administration of this Act or to meet the objects of the College. 2015, c. 33, s. 39.

Matter arising in course of investigation

40 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. 2015, c. 33, s. 40.

Inadmissibility of evidence in legal proceeding

41 (1) A witness in any legal proceeding, whether a party thereto or not, is excused from answering any question as to any proceedings of a disciplinary committee or reinstatement committee, and is excused from producing any report, statement, memorandum, recommendation or other document prepared for the purpose of the professional conduct process, including any information gathered in the course of an investigation or produced for a disciplinary committee or reinstatement committee.

(2) Subsection (1) does not apply to documents or records that have been made available to the public by the College.

(3) Unless otherwise determined by a court of competent jurisdiction, a decision of a disciplinary committee or reinstatement committee is not admissible in a civil proceeding other than an appeal or review pursuant to this Act. 2015, c. 33, s. 41.

Prior criminal or disciplinary proceedings

42 (1) Notwithstanding anything contained in this Act or the regulations, where a person

(a) has been charged with, has pleaded guilty to or has been found to be guilty of any offence inside or outside of Canada that is inconsistent with the proper professional behaviour of a member, including a conviction under

- (i) the *Criminal Code* (Canada),
- (ii) the *Controlled Drugs and Substances Act* (Canada), or
- (iii) any other legislation specified in the regulations,

and no pardon has been granted;

(b) has been found guilty of a disciplinary finding in another jurisdiction;

(c) has had a licensing sanction imposed by another jurisdiction; or

(d) is the subject of an investigation or disciplinary process in any jurisdiction,

and such person is a member or applies for registration or a licence or the renewal of a licence, the Registrar may, by such notice as the Registrar specifies, require the

person to attend a hearing before a disciplinary committee to fully disclose the facts and circumstances of any of the matters referred to in clauses (a) to (d).

(2) For the purpose of a hearing pursuant to subsection (1), a disciplinary committee may take any of the actions authorized to be taken by the committee pursuant to this Act or the regulations.

(3) For the purpose of subsection (1), a certificate of conviction of a member is conclusive evidence that the member has committed the offence stated therein, unless it is proven that the conviction has been quashed or set aside.

(4) Where any of the criteria set out in clauses (1)(a) to (d) apply to a person holding a licence, the person shall immediately report the matter to the Registrar. 2015, c. 33, s. 42.

Registrar not member of disciplinary committee

43 The Registrar may not be a member of any disciplinary committee. 2015, c. 33, s. 43.

Investigation

44 (1) The College shall investigate, on its own initiative or on the complaint of another, alleged instances of professional misconduct, conduct unbecoming the profession, incompetence or incapacity and, when appropriate, dispose of the matter in accordance with the regulations.

(2) Except where considered prejudicial to the attainment of the objects of the College, the professional conduct process followed by the College must take into account the potential for the rehabilitation of the respondent.

(3) A member shall co-operate with the College in the conduct of its professional conduct process. 2015, c. 33, s. 44.

Jurisdiction of College over former members

45 Where a member ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College for the purpose of the professional conduct process, if the subject-matter of the professional conduct process arose out of the person's conduct while registered or licensed. 2015, c. 33, s. 45.

Complaints

- 46 (1) A complaint may be initiated by
- (a) the Registrar;
 - (b) a committee of the College; or
 - (c) any other person.

(2) Where the Registrar and the complainant agree, a complaint may be withdrawn. 2015, c. 33, s. 46.

INVESTIGATION COMMITTEE

Establishment and composition

47 (1) The Council may appoint an investigation committee to investigate a complaint.

(2) An investigation committee is composed of such number of members of Council and non-members as is determined by the regulations.

(3) The Council shall appoint a chair of an investigation committee.

(4) Any two members of an investigation committee constitute a quorum.

(5) Failure of one or more investigation committee members to receive notice of a meeting does not invalidate the proceedings at the meeting, and nothing herein precludes the committee members from waiving notice of meetings. 2015, c. 33, s. 47.

Powers

48 (1) Subject to subsection (2), the Registrar, an investigator, an investigation committee and each member of an investigation committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(2) The Registrar, an investigator or a member of an investigation committee may exercise a power or privilege only if authorized to do so by the chair of the investigation committee. 2015, c. 33, s. 48.

Duties

49 An investigation committee shall

- (a) investigate the complaint referred to it;
- (b) investigate any other matter referred to the committee by the Registrar; and
- (c) perform such other duties as may be assigned to the committee by the Council. 2015, c. 33, s. 49.

Registrar may refer matters

50 The Registrar may refer a matter to an investigation committee notwithstanding that a written complaint has not been filed with the Registrar or the College. 2015, c. 33, s. 50.

Powers without written complaint

51 Without receipt of a written complaint, an investigation committee may

- (a) do all things necessary to provide a full and proper investigation; and

(b) appoint a person to conduct an investigation or a practice audit, or both. 2015, c. 33, s. 51.

Powers with written complaint

52 (1) Upon receiving a written complaint about a member and providing the member with a copy of the complaint, an investigation committee may require the member to

(a) submit to physical or mental examinations by such qualified persons as the committee designates;

(b) submit to an inspection or audit of the practice of the member by such qualified persons as the committee designates;

(c) submit to such examinations as the committee directs to determine whether the member is competent to practise paramedicine; and

(d) produce records and accounts kept with respect to the member's practice.

(2) Where the member fails to comply with subsection (1), the investigation committee may suspend or restrict the registration or the licence, or both, of the member until the member complies. 2015, c. 33, s. 52.

Resulting reports

53 Where an investigation committee has, pursuant to clause 52(1)(a), (b) or (c), required a member to submit to a physical or mental examination, inspection or audit of the member's practice or such other examination as the committee directs, the committee shall receive any resulting report and provide a copy to the member. 2015, c. 33, s. 53.

Investigators

54 An investigation committee or person appointed to conduct an investigation pursuant to clause 51(b) may

(a) employ such other experts as the committee or person considers necessary;

(b) require the member being investigated 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; and

(c) investigate any other matter relevant to the conduct, capacity or fitness of the member to practise paramedicine that arises in the course of the investigation. 2015, c. 33, s. 54.

Meetings and jurisdiction

55 (1) An investigation committee may set its own procedure for meetings.

(2) An investigation committee retains jurisdiction over a matter until such time as a hearing commences before a hearing panel or the matter is oth-

erwise resolved by a hearing panel or in accordance with this Act and regulations. 2015, c. 33, s. 55.

Procedure and rights of respondent

56 (1) A complaint must be disposed of in accordance with the regulations.

(2) When a complaint is forwarded to an investigation committee for disposition, the committee shall give its decision in writing and send a copy of the written decision, by registered mail or personal service, to the respondent and the complainant and may send some or all of the written decision to such other persons as the committee determines.

(3) In a proceeding before an investigative committee, a respondent has the right to

- (a) be represented by legal counsel or a union representative;
- (b) receive disclosure of the complaint;
- (c) receive notice of any other matters under investigation;
- (d) receive such other information as natural justice requires;
- (e) receive such other information as may be determined by the Registrar; and
- (f) be afforded a reasonable opportunity to present a response and make submissions. 2015, c. 33, s. 56.

Publication ban

57 (1) An investigation committee may, in its discretion, impose a publication ban on such portion of any decision it has issued that is available to the public pursuant to this Act or the regulations.

(2) No person may publish any portion of a decision that is the subject of a publication ban. 2015, c. 33, s. 57.

Interim suspension or restrictions

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

- (a) an investigation committee receives information that indicates that a member may be professionally incompetent or guilty of professional misconduct or conduct unbecoming the profession; and
- (b) the investigation committee concludes that it is in the public interest to suspend the member from practice or restrict the practice of the member,

the investigation committee may, without a hearing,

- (c) immediately suspend the licence of the member;
- (d) immediately impose restrictions on the licence of the member; or

(e) where a person does not hold a current licence, suspend the ability of the person to obtain a licence, until the suspension or restrictions are lifted, superseded or annulled by an investigation committee or a hearing panel.

(2) The member must forthwith be given notice in writing, with reasons, of a decision made pursuant to subsection (1).

(3) A member who receives written notice pursuant to subsection (2) may request in writing, within 30 days after receiving such notice, an opportunity to meet with the investigation committee.

(4) Where a request is received pursuant to subsection (3), 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, confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1). 2015, c. 33, s. 58.

Majority vote

59 All investigation committee decisions require the vote of a majority of the members of the investigation committee. 2015, c. 33, s. 59.

Expiration of term of committee member

60 Where a proceeding is commenced before an investigation committee and the term of office of any person sitting on the investigation committee expires, that person remains part of the committee until the proceeding is concluded. 2015, c. 33, s. 60.

Rights of respondent at meeting

61 Where an investigation committee meets with a respondent pursuant to subsection 58(4), the member has the right to

(a) be represented by legal counsel or a union representative at the member's own expense;

(b) receive disclosure of the complaint, any written report of an investigator provided to the committee and any other document produced or received by the committee; and

(c) be afforded a reasonable opportunity to present a response and make submissions. 2015, c. 33, s. 61.

Distribution of written decision to suspend or impose restrictions

62 Where an investigation committee issues an interim suspension or imposes restrictions on a respondent's licence, the committee shall provide a written copy of the decision to the complainant and the respondent and determine whether any part of the committee's decision is to be provided to other affected individuals, other regulatory bodies in other jurisdictions, any past, present or intended employer of the respondent or the public. 2015, c. 33, s. 62.

HEARING COMMITTEE

Establishment

- 63** (1) The Council shall appoint a Hearing Committee composed of such number of members and non-members as is determined by the regulations.
- (2) The Council shall appoint a Chair and a Vice-chair of the Hearing Committee.
- (3) The Vice-chair shall act as chair in the absence of the Chair.
- (4) Where, for any reason, neither the Chair nor the Vice-chair is available for the purpose of Sections 70 and 71, the Council may appoint a member of the Hearing Committee as interim chair of the Hearing Committee.
- (5) A quorum of the Hearing Committee consists of three persons. 2015, c. 33, s. 63.

Hearing panel

- 64** (1) Where an investigation committee refers a complaint to the Hearing Committee, the Chair of the Hearing Committee shall appoint a hearing panel consisting of at least three persons from the Committee, at least one of whom must be a public representative and at least one of whom must be a member of the College, to act as the Hearing Committee for the purpose of the professional conduct process.
- (2) The Chair of the Hearing Committee may sit on the hearing panel and shall act as the chair of the panel in this event.
- (3) Where the Chair of the Hearing Committee is not appointed to the hearing panel, the Chair of the Hearing Committee shall appoint a chair for such panel.
- (4) Failure of a hearing panel member to receive a notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the hearing panel members from waiving notice of meetings. 2015, c. 33, s. 64.

Members not eligible to sit on investigation committee

- 65** No member of the Hearing Committee may be a member of any investigation committee. 2015, c. 33, s. 65.

Powers

- 66** Subject to the regulations, the Hearing Committee may do all things necessary to provide a full and proper inquiry. 2015, c. 33, s. 66.

Hearing

- 67** (1) Where an investigation committee refers a matter to the Hearing Committee, the Registrar shall, within 30 days from the date of the referral, fix a date, time and place for holding a hearing, to commence not later than 90 days from the date of the referral, or such later date as the respondent and the College

may agree to or the Hearing Committee may order following an opportunity for submissions from both parties as to such date.

(2) A notice of hearing, containing the information set out in the regulations, must be forwarded by the Registrar to the respondent and the complainant at least 30 days before the hearing.

(3) The College shall place the notice referred to in subsection (2) in such publications as it considers necessary in order to inform the public. 2015, c. 33, s. 67.

Settlement proposal

68 Where an investigation committee refers a matter to the Hearing Committee, the College, before the commencement of a hearing by the hearing panel, may enter into a settlement proposal with the respondent, which must be dealt with in accordance with the regulations. 2015, c. 33, s. 68.

Public Inquiries Act

69 (1) Subject to subsection (2), the Hearing Committee and each member of the Hearing Committee has all of the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(2) A member of the Hearing Committee may exercise a power or privilege conferred by subsection (1) only if authorized to do so by the Chair of the Hearing Committee. 2015, c. 33, s. 69.

Proceeding before hearing panel

70 (1) A proceeding held by a hearing panel must be conducted in accordance with the regulations.

(2) In a proceeding before a hearing panel, each party has the right to

- (a) natural justice;
- (b) be represented by legal counsel or a union representative at the party's own expense;
- (c) present evidence and make submissions, including the right to cross-examine witnesses;
- (d) know all the evidence considered by the panel;
- (e) receive written reasons for a decision within a reasonable time. 2015, c. 33, s. 70.

Summons of witness

71 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 the Hearing Committee,

the Registrar shall sign and issue a summons to a witness for the purpose of procuring the attendance and evidence of the witness before the Hearing Committee. 2015, c. 33, s. 71.

Appearance by member at hearing

72 It is the duty of a member who is charged in a disciplinary matter to appear at the hearing but in the event of non-attendance by such member, a hearing panel, upon proof by affidavit, statutory declaration or other evidence acceptable to the panel of service of the notice of hearing pursuant to Section 74, 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. 2015, c. 33, s. 72.

Admissibility of evidence

73 (1) Evidence is not admissible before a hearing panel unless, at least 10 days before the hearing, the opposing party has been given

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
- (c) in the case of evidence of a witness, the identity of the witness.

(2) Notwithstanding subsection (1), a hearing panel may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (1) and may make such directions it considers necessary to ensure that a party is not prejudiced. 2015, c. 33, s. 73.

Service of documents

74 At any stage of the professional conduct process, any document required to be served on or provided to a respondent or any other person is deemed to be served or provided if

- (a) the intended recipient or the intended recipient's counsel acknowledges receipt of the document;
- (b) a registered mail receipt respecting the document is provided from Canada Post;
- (c) an affidavit of service of the document on the person is provided; or
- (d) the College provides evidence satisfactory to the Hearing Committee that all reasonable efforts to effect service of the document have been exhausted. 2015, c. 33, s. 74.

Communication outside hearing

75 No member of a hearing panel holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communi-

cation, except for communications in which the sole purpose is to make administrative arrangements. 2015, c. 33, s. 75.

Hearings open

76 Subject to the regulations, a hearing must be open to the public. 2015, c. 33, s. 76.

Distribution of copies of decision of hearing panel

77 The Registrar shall provide the respondent, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of a hearing panel except that, where there are references identifying patients or other persons other than the complainant, those references as well as any personal information about those persons must be deleted if, in the Registrar's opinion, it is appropriate to do so. 2015, c. 33, s. 77.

Finding of misconduct and publication bans

78 (1) Where a hearing panel finds professional misconduct, conduct unbecoming the profession, incompetence or incapacity, the panel shall dispose of the matter in accordance with the regulations.

(2) A hearing panel may impose a publication ban, in its discretion, on such portion of any decision it has issued that is available to the public pursuant to this Act or the regulations.

(3) No person may publish any portion of a decision that is the subject of a publication ban. 2015, c. 33, s. 78.

Decision has effect

79 A decision of a hearing panel has effect immediately upon being served on the member or from such time as the decision may direct. 2015, c. 33, s. 79.

Application for reinstatement

80 (1) Where a hearing panel has revoked the registration or licence of a member, the panel shall determine whether the member is entitled to apply for reinstatement of the registration or licence or whether the revocation is final.

(2) Where a hearing panel determines that a member whose registration or licence has been revoked may apply for reinstatement, the panel shall determine when the member may apply for reinstatement. 2015, c. 33, s. 80.

Expiration of term of panel member

81 Where a proceeding is commenced before a hearing panel and the term of office of any person sitting on the panel expires, that person remains part of the panel until the proceeding is concluded. 2015, c. 33, s. 81.

Majority vote

82 All hearing panel decisions require the vote of a majority in favour of the decision of the panel of the Committee appointed pursuant to subsection 64(1) or a majority of those panel members present and constituting a quorum of such panel in the event the full panel is not sitting. 2015, c. 33, s. 82.

Disclosure of panel decision

83 (1) Subject to any publication ban in existence, where a licensing sanction has been issued by the investigative panel or a hearing panel, the Registrar shall

(a) make such entries on the Register and rosters and on the licence of the member as required by the regulations;

(b) publish such information on the website of the College and in official publications of the College as required by the regulations;

(c) notify other affected licensing bodies as required by the regulations; and

(d) provide such information to individuals or the public as is prescribed by the regulations.

(2) Where a hearing panel dismisses a matter, it shall disclose its decision in such manner as it determines. 2015, c. 33, s. 83.

Restoration of licence and duties of Registrar

84 (1) Subject to subsection (2), where the period of suspension of a member expires, the conditions imposed on the member are satisfied or the restrictions imposed on the member are removed, the Registrar shall restore the licence to the member in the form it existed prior to the imposition of the suspension, conditions or restrictions, if the member otherwise meets the criteria for the issuing of a licence.

(2) Where the licence has expired, the member shall pay the prescribed fee for renewal of the licence before it is reissued.

(3) Where action has been taken pursuant to subsection (1), the Registrar shall

(a) make the appropriate entries in the Register and rosters;

(b) where registering bodies in other jurisdictions had previously been informed of the suspension, conditions or restrictions, notify such registering bodies of the lifting of the suspension, conditions or restrictions; and

(c) notify such other persons as directed by the committee that initially imposed the suspension, conditions or restrictions. 2015, c. 33, s. 84.

REINSTATEMENT COMMITTEE**Establishment**

85 (1) Upon receipt of an application for reinstatement following revocation of a licence the Council shall appoint a reinstatement committee, composed of not fewer than three members of the Registration Committee, at least one of whom must be a public representative.

(2) The Council shall appoint the chair of the reinstatement committee.

(3) A quorum of the reinstatement committee consists of a majority of the members of the committee. 2015, c. 33, s. 85.

Duties

86 (1) The reinstatement committee shall, in the circumstances set out in this Act and the regulations, review applications for reinstatement of registrations and licences and perform such other duties as set out in this Act and the regulations.

(2) Applications for reinstatement must proceed in accordance with the regulations.

(3) Where a member's licence has been reinstated pursuant to this Section, the reinstatement committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public. 2015, c. 33, s. 86.

Public Inquiries Act

87 (1) Subject to subsection (2), the Registrar, a reinstatement committee and each member of a reinstatement committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(2) The Registrar or a member of a reinstatement committee may exercise a power or privilege conferred by subsection (1) only if authorized to do so by the chair of the reinstatement committee. 2015, c. 33, s. 87.

Rights of member appearing before committee

88 In a proceeding before a reinstatement committee, a member has the right to

- (a) be represented by legal counsel or a union representative at the member's own expense;
- (b) disclosure of any information to be provided to the committee; and
- (c) a reasonable opportunity to present a response and make submissions. 2015, c. 33, s. 88.

Admissibility of evidence

89 (1) Evidence is not admissible before a reinstatement committee unless, at least 10 days before the hearing, the opposing party has been given

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and

(c) in the case of evidence of any other witness, the identity of the witness.

(2) Notwithstanding subsection (1), the reinstatement committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (1) and may make such directions it considers necessary to ensure that a party is not prejudiced. 2015, c. 33, s. 89.

Costs of the Council

90 (1) In this Section, “costs of the Council” include

- (a) expenses incurred by the College, the Council, an investigation committee and a hearing panel;
- (b) honoraria paid to members of an investigation committee and a hearing panel;
- (c) solicitor-and-client costs and disbursements of the College relating to the investigation and hearing of a complaint; and
- (d) additional costs resulting from a member causing the postponement of a hearing without sufficient reason.

(2) Where a hearing panel finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the Council, in whole or in part.

(3) Where a member is ordered to pay costs pursuant to subsection (2), the Council may make it a condition of the licence of the member that such costs be paid forthwith or at such time and on such terms as the Council may fix. 2015, c. 33, s. 90.

Appeal

91 (1) A respondent may appeal on any point of law from the findings of a hearing panel to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of a hearing panel consists of a copy of the transcript of the proceedings, the decision of the panel and the evidence before the panel 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 made to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of a hearing panel takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act. 2015, c. 33, s. 91.

OFFENCES

Unlicensed practice or practice contrary to restrictions

92 (1) A person licensed pursuant to this Act shall not practise paramedicine in contravention of any term, condition or restriction on the person's licence.

- (2)** A person shall not practise paramedicine
- (a) while the person's licence is suspended or revoked; or
 - (b) without a licence. 2015, c. 33, s. 92.

Offence and penalty

- 93 (1)** Every person who
- (a) contravenes this Act or the regulations; or
 - (b) knowingly furnishes false information in any application pursuant to this Act or in any statement required to be furnished pursuant to this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or, where the person is an individual, to imprisonment for a term of not more than six months, or to both.

(2) Where a body corporate contravenes this Act or the regulations, a director, officer or agent of the body who authorized, permitted or acquiesced in the contravention is also guilty of an offence and liable on summary conviction to the penalties set out in subsection (1), whether or not the body corporate has been prosecuted or convicted. 2015, c. 33, s. 93.

Onus of proof, separate offences

94 (1) In a prosecution for an offence under this Act or the regulations, the onus of proof that a person accused of an offence has the right to practise paramedicine, or that a person comes within any of the exemptions provided by this Act, is on the accused person.

(2) Where an offence pursuant to this Act or the regulations is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day that the offence is committed or continued.

(3) For the purpose of this Act and the regulations, proof of the performance by a person who is not a member of a single act in the practice of paramedicine is sufficient to establish that the person has engaged in the practice of paramedicine. 2015, c. 33, s. 94.

Prosecution by College

95 All fines payable as a result of a prosecution by or on behalf of the College belong to the College. 2015, c. 33, s. 95.

Information may be laid

96 For greater certainty, an information may be laid by the Registrar or any person. 2015, c. 33, s. 96.

Injunction

97 (1) In the event of a threatened or continuing contravention of this Act or the regulations, the College may apply to a judge for an injunction to restrain a person from continuing or committing a contravention, and the judge, where the judge considers it to be just, may grant such an injunction.

(2) A judge may, on application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a contravention of this Act or the regulations.

(3) A judge may make such order as to costs as the judge considers appropriate in any proceedings pursuant to this Section. 2015, c. 33, s. 97.

GENERAL

Duty to report

98 (1) A member has a duty to report to the Registrar if the member has reasonable grounds to believe that another member of the College

- (a) has engaged in professional misconduct or conduct unbecoming the profession;
- (b) is incompetent or incapacitated; or
- (c) is practising in a manner that otherwise constitutes a danger to the public.

(2) No action for damages or other relief lies against a member for any report made pursuant to subsection (1) if the report was made in good faith. 2015, c. 33, s. 98.

Fines payable to College

99 Any fine payable as a result of a prosecution by or on behalf of the College and any costs ordered to be paid pursuant to this Act or the regulations are debts due to the College recoverable by civil action, in addition to any other remedy available to the College for non-payment of a fine or cost. 2015, c. 33, s. 99.

No action lies

100 (1) No action for damages lies against the College, the Council, the Provincial Medical Director, the Registrar, a member, officer, agent or employee of the College or the Council or a member of a committee or subcommittee of the College or the Council for

- (a) any act or failure to act or any proceeding initiated or taken in good faith under this Act or in carrying out duties or obligations under this Act; or
- (b) any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything 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 or other documents in that person's possession or control if done pursuant to this Act.

(4) No member, officer, agent or employee of the College and no person on the Council or a committee or subcommittee of the College or the Council is personally liable for any of the debts or liabilities of the College unless such person expressly agrees to be liable.

(5) No action for damages lies against any person for making a complaint to the College about a member if the complaint is made in good faith. 2015, c. 33, s. 100.

Certificate prima facie evidence

101 A certificate purporting to be signed by the Registrar stating that any person named in the certificate was or was not, on a specified day or during a specified period, registered and licensed, is prima facie evidence in any court of that fact without proof that the person signing it is the Registrar or without proof of the Registrar's signature. 2015, c. 33, s. 101.

Proof of registration and licence

102 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 subsection 32(1) 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 the annual list. 2015, c. 33, s. 102.

Service of documents

103 (1) 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.

(2) 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 subsection (1) is prima facie proof of service.

(3) Service of any document on the College may be made by service on the Registrar. 2015, c. 33, s. 103.

Rendering of first aid by member

104 Where a member of the College voluntarily renders first aid or emergency treatment without the expectation of monetary compensation to a person outside of a hospital, or in any other place not having proper and necessary medical

facilities, that member 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 due to, or such death was caused by, conduct on the part of the member that, if committed by a person of ordinary experience, learning and skill, would constitute negligence. 2015, c. 33, s. 104.

CHAPTER P-2

**An Act Respecting
the Parenting and Support of Children
and the Support of Spouses**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Duties of person under parenting order.....	3
Court order.....	4
Priority	5
Factors considered.....	6
Supported spouse.....	7
Use of family residence.....	8
Duty of parent or guardian.....	9
Support order.....	10
Powers of court.....	11
Support for child of unmarried parents.....	12
Agreement by father to maintain.....	13
Support for dependent parent.....	14
Factors considered.....	15
Several obligation	16
Parenting plan	17
Powers of court.....	18
Duties during parenting time.....	19
Requests during parenting time.....	20
Duties during contact time.....	21
Change of residence.....	22
Relocation	23
Application to change notification requirements.....	24
Authorization or prohibition of relocation.....	25
Relocation considerations	26
Report.....	27
Order for child to appear.....	28
Proceedings and costs	29
Application by applicant.....	30
Certificate of pregnancy.....	31
Addition of possible father.....	32
Blood test	33
Statement to social worker inadmissible.....	34
Filing of statement of income and expenses.....	35
Power to require information	36
Other aid not to be considered	37
Court not bound by agreement.....	38
Person to whom support is paid.....	39
Periodic or lump sum payment	40
Contents of support order.....	41
Garnishee order.....	42
Security for support.....	43
Powers of court.....	44
Deemed cost of living increases.....	45
Review of order by court	46
Denial of time application.....	47
Failure to exercise time.....	48
Order preventing removal of child.....	49
Court imposed conditions on removal of child.....	50
Application of Sections.....	51

Power to require appearance.....	52
Enforcement of judgment	53
Right to appeal	54
Appeal by stated case.....	55
Child of void marriage.....	56
Child of voidable marriage	57
Civil rights and privileges of legitimated child	58
Status and capacity of legitimated child	59
Prior rights unaffected	60
Registration and effect of agreement.....	61
Death or adoption of child for whom money paid.....	62
Access to record of address	63
Agreement with Government of Canada	64
Frivolous or vexatious proceedings	65
Duty of lawyer	66
Regulations	67
Existing order preserved.....	68
Proceeding commenced before April 1, 2022.....	69
Custody deemed to be parenting time and decision-making responsibility	70
Variation of order made before April 1, 2022.....	71

Short title

1 This Act may be cited as the *Parenting and Support Act*. 2015, c. 44, s. 2.

Interpretation

2 In this Act,

“application” means an application made in accordance with the *Family Court Rules* or the *Civil Procedure Rules*;

“contact time” means the time when, under an agreement or a court order, a person who is neither a parent nor a guardian is with the child;

“court” means the Family Court or the Supreme Court (Family Division), unless the context otherwise requires;

“Court of Appeal” means the Nova Scotia Court of Appeal;

“custody” means the responsibility and authority for the care and upbringing of a child and for the making of decisions regarding the care, supervision and development of the child;

“decision-making responsibility” means the responsibility for making significant decisions about a child’s well-being, including in respect of

- (a) health;
- (b) education;
- (c) culture, language, religion and spirituality; and
- (d) significant extra-curricular activities;

“dependent child” means a child who is under the age of majority or, although over the age of majority, is unable, by reason of illness, disability or other cause, to withdraw from the charge of the parents or the guardians or obtain the necessities of life;

“dependent parent” means a parent who, by reason of age, disease or infirmity, is unable to provide for the parent’s own reasonable needs;

“Family Court” means the Family Court for the Province of Nova Scotia;

“family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

(a) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life; or

(b) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour, including

(i) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

(ii) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal autonomy,

(iii) stalking, or

(iv) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

“guardian” includes a person who has, in law or in fact, decision-making responsibility for and parenting time with a child and is not a parent of the child;

“Guidelines” means the Provincial *Child Support Guidelines* made as regulations under this Act;

“interaction” means direct or indirect association with a child, but does not include contact time or parenting time;

“judge” means a judge of the Family Court or the Supreme Court (Family Division) unless the context otherwise requires;

“Minister” means the Minister of Community Services or a person designated by the Minister;

“parent” includes

(a) a person who is determined to be the parent of a child under this Act;

(b) a person who has demonstrated a settled intention to treat a child as the person’s own child, but not a foster parent under the *Children and Family Services Act*; and

(c) a person who has been ordered by a court to pay support for a child;

“parenting plan” means a written agreement regarding parenting time, decision-making responsibility and parenting arrangements for a child;

“parenting time” means the time when, under an agreement or a court order, a parent or guardian is with the child, including time according to the customs of the child’s Mi’kmaw band, if applicable;

“possible father” includes any one or more men who have had sexual intercourse with a woman who is the mother of a child and by whom it is possible that she was pregnant;

“reasonable needs” means whatever is reasonably suitable for the maintenance of the person in question, having regard to the ability, means, needs and circumstances of that person and of any person obliged to contribute to such reasonable needs;

“spouse” means either of two persons who

- (a) are married to each other;
- (b) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity;
- (c) have entered into a form of marriage with each other that is void, if either or both of them believed that the marriage was valid when entering into it;
- (d) are domestic partners or are former domestic partners within the meaning of Section 57 of the *Vital Statistics Act*;
- (e) not being married to each other, cohabited in a conjugal relationship with each other continuously for at least two years; or
- (f) not being married to each other, cohabited in a conjugal relationship with each other and have a child together;

“Supreme Court (Family Division)” means the Supreme Court of Nova Scotia (Family Division). R.S., c. 160, s. 2; 1997 (2nd Sess.), c. 3, s. 1; 2000, c. 29, s. 3; 2012, c. 25, s. 1; 2015, c. 44, s. 3; 2021, c. 15, s. 1.

Duties of person under parenting order

3 (1) Every person subject to an order respecting decision-making responsibility, parenting time, contact time or interaction in relation to a child shall exercise that responsibility, time or interaction in a manner that is consistent with the best interests of the child.

(2) Every party to a proceeding under this Act concerning a child shall, to the best of the party’s ability, protect the child from conflict arising from the proceeding.

(3) To the extent that it is appropriate to do so, the parties to a proceeding under this Act shall try to resolve the matters that may be the subject of an order under this Act through a dispute-resolution process.

(4) Every party to a proceeding under this Act and every person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so.

(5) For greater certainty, every person who is subject to an order under this Act shall comply with the order until it is no longer in effect.

(6) Every document that formally commences a proceeding under this Act, or that responds to such a document, and that is filed with a court by a party to a proceeding must contain a statement by the party certifying that the party is aware of the duties under subsections (1) to (5). 2021, c. 15, s. 2.

Court order

4 (1) The court may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

(2) Where an application is made pursuant to subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

(3) The court may make an order pursuant to subsection (1) or an interim order pursuant to subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just. 1997 (2nd Sess.), c. 3, s. 2; 2000, c. 29, s. 8; 2015, c. 44, s. 4.

Priority

5 (1) Where the court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.

(2) Where the amount of a spousal support order is less than it otherwise would have been as a result of giving priority to child support, any subsequent reduction or termination of that child support constitutes a change of circumstances for the purpose of an application for a variation order in respect of the spousal support order. 1997 (2nd Sess.), c. 3, s. 2; 2000, c. 29, s. 4; 2015, c. 44, s. 5.

Factors considered

6 In determining whether to order a person to pay support to that person's spouse and the amount of any support to be paid, the court shall consider

- (a) the division of function in their relationship;
- (b) the express or tacit agreement of the spouses that one will maintain the other;
- (c) the terms of a marriage contract or separation agreement between the spouses;
- (d) custodial and parenting arrangements made with respect to the children of the relationship;
- (e) the obligations of each spouse towards any children;
- (f) the physical or mental disability of either spouse;
- (g) the inability of a spouse to obtain gainful employment;

- (h) the contribution of a spouse to the education or career potential of the other;
- (i) the reasonable needs of the spouse with a right to support;
- (j) the reasonable needs of the spouse obliged to pay support;
- (k) the separate property of each spouse;
- (l) the ability to pay of the spouse who is obliged to pay support having regard to that spouse's obligation to pay child support in accordance with the Guidelines; and
- (m) the ability of the spouse with the right to support to contribute to the spouse's own support. R.S., c. 160, s. 4; 1997 (2nd Sess.), c. 3, s. 3; 2000, c. 29, ss. 5, 8; 2015, c. 44, s. 6.

Supported spouse

7 A supported spouse has an obligation to assume responsibility for the supported spouse's own support unless, considering the ages of the spouses, the duration of the relationship, the nature of the needs of the supported spouse and the origin of those needs, it would be unreasonable to require the supported spouse to assume responsibility for the supported spouse's own support and it would be reasonable to require the other spouse to continue to bear this responsibility. 2015, c. 44, s. 7.

Use of family residence

8 (1) In this Section, "family residence" means the ordinary residence that is owned or leased by at least one parent or guardian of a child or at least one spouse and in which

- (a) the child resides with a parent or guardian; or
- (b) a spouse resides without children.

(2) When making an order regarding parenting arrangements under this Act, the court may determine that the best interests of the child under subsection 18(8) require the making of an order granting the use of the family residence to a parent or guardian of a child and make such an order.

(3) Where there are no children of the spouses, the court, on application by one of the spouses, may make an order granting to one of the spouses the use of the family residence upon considering the particular circumstances of each spouse, including

- (a) the financial circumstances of each spouse;
- (b) the needs of a spouse with a disability;
- (c) the availability of alternative adequate housing; and
- (d) whether there has been a finding of domestic violence.

(4) When making an order under subsection (2) or (3), the court may order the use of the family residence by a parent, guardian or spouse

- (a) for a specified interim period;

(b) for an unspecified period until the permanent use of the family residence is determined by a court having jurisdiction in the matter or by agreement of the spouses; or

(c) where the family residence is leased, until the lease is terminated.

(5) An order under this Section does not grant a proprietary interest in the family residence and does not authorize any material alterations to the residence. 2015, c. 44, s. 9.

Duty of parent or guardian

9 A parent or guardian of a child who is under the age of majority is under a legal duty to provide for the reasonable needs of the child except where there is lawful excuse for not providing them. 2015, c. 44, s. 10.

Support order

10 Upon application, a court may make an order, including an interim order, requiring a parent or guardian to pay support for a dependent child. 1997 (2nd Sess.), c. 3, s. 4; 2015, c. 44, s. 11.

Powers of court

11 (1) In determining the amount of support to be paid for a dependent child or for a child under Section 12, the court shall do so in accordance with the Guidelines.

(2) The court may make an order pursuant to subsection (1), including an interim order, for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as the court thinks fit and just.

(3) A court may award an amount that is different from the amount that would be determined in accordance with the Guidelines if the court is satisfied that

(a) special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or special provisions have otherwise been made for the benefit of a child; and

(b) the application of the Guidelines would result in an amount of child support that is inequitable given those special provisions.

(4) Where the court awards, pursuant to subsection (3), an amount that is different from the amount that would be determined in accordance with the Guidelines, the court shall record its reasons for doing so.

(5) Notwithstanding subsection (1), a court may award an amount that is different from the amount that would be determined in accordance with the Guidelines on the consent of the parents or guardians if satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.

(6) For the purpose of subsection (5), in determining whether reasonable arrangements have been made for the support of a child, the court shall have regard to the Guidelines, but the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the Guidelines. 1997 (2nd Sess.), c. 3, s. 4; 2000, c. 29, s. 8; 2015, c. 44, s. 12.

Support for child of unmarried parents

12 (1) Upon application during the pregnancy of a woman or after a woman gives birth to a child, or at any adjournment thereof, a court may order the possible father or the woman or both of them to pay

(a) towards the expenses incidental to the lying-in, support of the mother during lying-in and expenses of the birth of the child;

(b) towards the support of the child while the child is a dependent child;

(c) the expenses of the funeral of the child if the child has died prior to the date of the order; and

(d) the expenses of the funeral of the mother if she has died at or in consequence of the birth of the child.

(2) Where there are two or more possible fathers, a court may order each of them to make payments in accordance with subsection (1). R.S., c. 160, s. 11; 1997 (2nd Sess.), c. 3, s. 5; 2015, c. 44, s. 13.

Agreement by father to maintain

13 (1) Where a man admits the paternity of the child and enters into an agreement, to which the Minister or an agency under the *Children and Family Services Act* is a party, to provide adequately for the support of the child, either by lump sum or periodic payments or a combination thereof, and to pay other expenses he might be ordered to pay under this Act, no proceedings may be instituted or continued against him in that regard while he is carrying out the terms of the agreement.

(2) A copy of every agreement made pursuant to subsection (1), or any amendment to that agreement, must be filed with the Minister and, with the consent of the parties, may be registered with a judge.

(3) An agreement, including amendments, registered pursuant to this Section for all purposes has the effect of an order for support made under this Act. R.S., c. 160, s. 13; 2015, c. 44, s. 14.

Support for dependent parent

14 Upon the hearing of an application, a court may order a child who is of the age of majority to pay support for the child's dependent parent. R.S., c. 160, s. 15; 2015, c. 44, s. 16.

Factors considered

15 In determining the amount of support to be paid for a dependent parent, the court shall consider

(a) the reasonable needs of the dependent parent;

- (b) the ability of the dependent parent to contribute to the parent's own support; and
- (c) the reasonable needs and ability to pay of the child obliged to pay support. R.S., c. 160, s. 16; 2015, c. 44, s. 17.

Several obligation

16 An order may be made against a child of a dependent parent whether or not an order is in force in respect of any other child of the parent. R.S., c. 160, s. 17.

Parenting plan

17 (1) The particulars respecting care, supervision and development of a child may be set out in a parenting plan for the child.

(2) A parenting plan may assign to one or more parents or guardians the decision-making responsibility for any area of the child's care, supervision and development.

(3) A parenting plan may cover any areas of the child's care, supervision and development, including

- (a) the child's living arrangements, including where the child will reside and with whom the child will reside and associate;
- (b) parenting time;
- (c) emergency, medical, dental and other health-related treatments, including all preventative-care treatments for the child;
- (d) the giving, refusing or withdrawing of consent to treatments referred to in clause (c);
- (e) the child's education and participation in extracurricular activities;
- (f) the child's culture, language and heritage;
- (g) the child's religious and spiritual upbringing;
- (h) travel with the child;
- (i) the relocation of the child;
- (j) obtaining information from third parties regarding health, education or other information about the child;
- (k) communication between the parents and guardians, as the case may be, regarding the child; and
- (l) a preferred dispute-resolution process for any non-emergency dispute regarding parenting arrangements. 2015, c. 44, s. 18; 2021, c. 15, s. 3.

Powers of court

18 (1) On application by a parent or guardian or, with leave of the court, on application by a grandparent or other person, the court may make a parenting order respecting

- (a) decision-making responsibility;

- (b) parenting time;
- (c) a parenting arrangement dealing with any of the areas set out in subsection 17(3);
- (d) a parenting plan made under Section 17; and
- (e) any other matter the court considers appropriate.

(2) On application by a parent, guardian or grandparent or, with leave of the court, on application by another person, the court may make an order respecting

- (a) contact time;
- (b) interaction; and
- (c) any other matter the court considers appropriate.

(3) The order referred to in clause (2)(b) may include any provision respecting interaction, including provisions permitting the person granted interaction to

- (a) attend specified activities of the child;
- (b) send gifts to and receive gifts from the child;
- (c) communicate with the child, whether orally, in writing or by other means; and
- (d) receive from a person designated in the order photographs of the child and information regarding the health, education and well-being of the child.

(4) An agreement registered under this Act or a court order may grant parenting time or decision-making responsibility for a child to one or more persons.

(5) This Section does not apply

- (a) if there is an adoption agreement respecting the child pursuant to the *Children and Family Services Act* that has not expired or been terminated, except with leave of the court upon application of a parent who is not a party to the adoption agreement;
- (b) if the child has been placed for adoption and adoption proceedings under the *Children and Family Services Act* have not been dismissed, discontinued or unduly delayed; or
- (c) if there is an order respecting parenting time or decision-making responsibility for the child made pursuant to the *Divorce Act* (Canada).

(6) Subject to this Act, the parents of a child are joint guardians and are equally entitled to the decision-making responsibility for the child unless otherwise

- (a) provided by the *Guardianship Act*; or
- (b) ordered by a court of competent jurisdiction.

(7) In any proceeding under this Act concerning decision-making responsibility, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

(8) In determining the best interests of the child, the court shall consider all relevant circumstances, including

(a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including the child's aboriginal upbringing and heritage, if applicable;

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;

(g) the nature, strength and stability of the relationship between the child and each parent or guardian;

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child;

(j) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child; and

(k) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

(9) In determining the best interests of the child on an application for contact time or interaction by a grandparent, the court shall also consider

(a) when appropriate, the willingness of each parent or guardian to facilitate contact time or interaction between the child and the grandparent; and

(b) the necessity of making an order to facilitate contact time or interaction between the child and the grandparent.

(10) In determining the impact of any family violence, abuse or intimidation, the court shall consider

(a) the nature of the family violence, abuse or intimidation;

(b) how recently the family violence, abuse or intimidation occurred;

(c) the frequency of the family violence, abuse or intimidation;

(d) the harm caused to the child by the family violence, abuse or intimidation;

(e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

(f) all other matters the court considers relevant.

(11) When making an order concerning decision-making responsibility, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (8)(k). R.S., c. 160, s. 18; 1990, c. 5, s. 107; 2012, c. 7, s. 2; 2012, c. 25, s. 2; 2014, c. 19, s. 1; 2015, c. 44, s. 19; 2021, c. 15, s. 4.

Duties during parenting time

19 Unless otherwise provided by court order or agreement and in addition to the duties under Section 3, a parent or guardian shall, during parenting time with the child,

(a) be responsible for the child's day-to-day care and supervise the child's daily activities; and

(b) have exclusive authority to make day-to-day decisions affecting the child. 2015, c. 44, s. 20; 2021, c. 15, s. 5.

Requests during parenting time

20 Unless otherwise provided by court order or agreement, a person with parenting time may, at any time, inquire and receive information regarding the health, education and welfare of the child. 2015, c. 44, s. 20.

Duties during contact time

21 Unless otherwise provided by court order or agreement and in addition to the duties under Section 3, the person shall, during contact time with the child,

- (a) be responsible for the care and supervision of the child; and
- (b) comply with the decisions regarding the child made by the person or persons with decision-making responsibility for the child. 2015, c. 44, s. 20; 2021, c. 15, s. 6.

Change of residence

22 (1) Where a parent or guardian plans to change

- (a) that person's place of residence;
- (b) the child's place of residence; or
- (c) both that person's and the child's place of residence,

that person shall notify any other parent or guardian of the child and any person who has an order for contact time with the child of the planned change of residence.

(2) Where a change of the place of residence is planned by a person who has an order for contact time with the child, that person shall notify the parents and guardians of the child and any person who has an order for contact time with the child of the date of the planned change of residence.

(3) The notifications under subsections (1) and (2) must be in writing and include

- (a) the date of the planned change of the place of residence;
- (b) the location of the new place of residence and, where known, the address; and
- (c) all available contact information for the person giving the notification.

(4) The written notifications under subsections (1) and (2) must be delivered with as much notice as possible in advance of the date of the planned change in the place of residence.

(5) Where the person planning to change the place of residence is unable to provide the notification under subsection (4) at least 60 days in advance of the date of the planned change, that person shall provide reasons, in the notification, why such notice could not be given.

(6) This Section does not apply where an agreement registered under this Act or a court order provides a different notification requirement for a planned change of the place of residence. 2015, c. 44, s. 20.

Relocation

- 23** (1) In this Section and Sections 24 to 26, “person planning to relocate” means
- (a) a person who is planning a change of that person’s place of residence and is a parent or guardian or a person who has an order for contact time with the child;
 - (b) a parent or guardian who is planning a change of both that person’s and the child’s place of residence; or
 - (c) a parent or guardian who is planning a change of the child’s place of residence;
- “relocation” means a change to the place of residence of
- (a) a parent or guardian;
 - (b) a person who has an order for contact time with the child; or
 - (c) a child,
- that can reasonably be expected to significantly impact the child’s relationship with a parent, a guardian or a person who has an order for contact time with the child.

(2) A person planning to relocate shall notify, at least 60 days before the expected date of the planned relocation, the parents and guardians of the child, and any person who has an order for contact time with the child, of the planned relocation.

- include (3) The notification under subsection (2) must be in writing and
- (a) the date of the planned relocation;
 - (b) the location of the new place of residence and, where known, the address;
 - (c) all available contact information for the person giving the notification; and
 - (d) the proposed changes to decision-making responsibility, parenting arrangements, parenting time, contact time and interaction resulting from the relocation.

(4) This Section does not apply if an agreement registered under this Act or a court order provides a different notification requirement for a planned relocation. 2015, c. 44, s. 20; 2021, c. 15, s. 7.

Application to change notification requirements

- 24** (1) On application, the court may change or waive the notification requirements under Section 22 or 23 if the court is satisfied that
- (a) giving notification may create a risk of family violence;

(b) there is no ongoing relationship between the child and the person who would be entitled to receive notification of the application; or

(c) there exists sufficient reason to change or to waive the notification requirements.

(2) A person may make an application under subsection (1) without giving notice to any other person. 2015, c. 44, s. 20.

Authorization or prohibition of relocation

25 (1) Subject to a court order authorizing or prohibiting the relocation of a child or an order changing or waiving the notification requirements, when the notification requirements under Section 23 have been complied with, the relocation of the child may occur on or after the date of the planned relocation, unless an application is made to the court to prohibit the relocation within 30 days of receiving the notification.

(2) On application by

(a) a parent or guardian of the child;

(b) a person with an order for contact time with the child;

or

(c) any person that has been granted leave of the court to make the application,

the court may make an order authorizing or prohibiting the relocation of a child and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.

(3) An application for an order authorizing or prohibiting the relocation of a child may be filed at any time prior to or after the relocation occurs. 2015, c. 44, s. 20.

Relocation considerations

26 (1) Where a proposed relocation of a child is before the court, the court shall give paramount consideration to the best interests of the child.

(2) The burden of proof under subsection (1) is as follows:

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(c) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;

(d) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child;

(e) for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.

(3) Unless the court otherwise orders, only a person entitled to receive notification under Section 23 may oppose a relocation.

(4) In deciding whether to authorize a relocation of a child, the court may not ask or permit a party who opposes the relocation to ask whether the party who intends to relocate the child would relocate without the child or not relocate if the child's relocation is prohibited.

(5) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including

- (a) the circumstances listed in subsection 18(8);
- (b) the reasons for the relocation;
- (c) the effect on the child of changed parenting time and contact time due to the relocation;
- (d) the effect on the child of the child's removal from family, school and community due to the relocation;
- (e) the appropriateness of changing the parenting arrangements;
- (f) compliance with previous court orders and agreements by the parties to the application;
- (g) any restrictions placed on relocation in previous court orders and agreements;
- (h) any additional expenses that may be incurred by the parties due to the relocation;
- (i) the transportation options available to reach the new location; and
- (j) whether the person planning to relocate has given notice as required under this Act and has proposed new decision-making responsibility, parenting time and contact time schedules, as applicable, for the child following relocation.

(6) The relocation of a child is deemed to constitute a change in circumstances for the purpose of a variation order under Section 44.

(7) A relocation of a child that has been prohibited by the court under subsection 25(2) does not, in itself, constitute a change in circumstances for the purpose of a variation order under Section 44. 2015, c. 44, s. 20; 2021, c. 15, s. 8.

Report

27 At the hearing of an application under Section 18, 24 or 25 or an application to vary or rescind an order for decision-making responsibility, parenting arrangements, parenting time, contact time or interaction, a court may request the Minister of Justice to cause a written report to be made to the court respecting the child, the child's parents or guardians or other persons as the court directs. R.S., c. 160, s. 19; 2015, c. 44, s. 21; 2021, c. 15, s. 9.

Order for child to appear

28 Where an application respecting an order for decision-making responsibility, parenting arrangements, parenting time, contact time or interaction is pending before the court, the court may order that the child be brought before the court at any time, and for this purpose may make such order as the court considers proper. R.S., c. 160, s. 20; 2015, c. 44, s. 22; 2021, c. 15, s. 10.

Proceedings and costs

29 (1) Except as otherwise provided in this Act, the *Family Court Rules* or the *Civil Procedure Rules*, the *Summary Proceedings Act* applies to proceedings under this Act.

(2) Costs may be ordered in the discretion of the court hearing a proceeding pursuant to this Act and the amount must be determined in accordance with the *Family Court Rules* or the *Civil Procedure Rules*. R.S., c. 160, s. 21; 2015, c. 44, s. 23.

Application by applicant

30 (1) An application may be made by a person claiming support for the applicant or on behalf of the applicant's dependent child or dependent parent.

(2) An application may be made by

(a) a person; or

(b) a representative of a government department or agency, a regional municipality, an incorporated town or a municipality of a county or district,

providing support for a spouse, dependent child, woman who is a mother of a child or dependent parent.

(3) Where an order for support has been made or registered under this Act, a person, a representative of a government department or agency, a regional municipality, an incorporated town or a municipality of a county or district entitled to make the original application is entitled to apply to vary, rescind or suspend the order, whether or not that person, representative of a government depart-

ment or agency, regional municipality, town or municipality made the original application.

(4) Where

(a) an application is made pursuant to this Act to grant, vary, rescind or suspend an award of support; and

(b) a party to the application is in receipt of benefits pursuant to the *Employment Support and Income Assistance Act* or assistance pursuant to the *Social Assistance Act*,

the Department of Community Services may be notified of the application and a representative may appear and be heard in court in respect of the matter. R.S., c. 160, s. 23; 1994-95, c. 6, s. 63; 1997 (2nd Sess.), c. 3, s. 7; 2000, c. 29, s. 8; 2015, c. 44, s. 25.

Certificate of pregnancy

31 An application made for lying-in expenses or for support of a pregnant woman must have appended to it a certificate of a qualified medical practitioner that the woman is pregnant. R.S., c. 160, s. 24; 2015, c. 44, s. 26.

Addition of possible father

32 (1) Where at a hearing to determine paternity, a possible father produces evidence of a witness who admits to having sexual intercourse with the mother and this evidence indicates that it is possible that the mother is pregnant by the witness, the witness may be added to the application as a possible father.

(2) Where, at a hearing to determine paternity, the judge hears evidence indicating that the mother may be pregnant by a man who is not named in the application, the judge may order the man to be added to the application as a possible father.

(3) A possible father added to an application pursuant to subsection (1) or (2) must be given the opportunity to respond to the application. R.S., c. 160, s. 26.

Blood test

33 (1) In a proceeding regarding decision-making responsibility, parenting arrangements, parenting time, contact time, interaction or child support, the court may order that the mother, the child and a possible father undergo such blood test, genetic test or other test as is considered appropriate by the court to determine whether the possible father

(a) is the father of the child; or

(b) can be excluded as being a possible father of the child for the purpose of Section 12.

(2) Where the mother refuses to undergo the test or refuses to allow the child to undergo the test ordered under subsection (1), the court may infer that the possible father is not the father of the child.

(3) Unless the court or judge otherwise orders, the costs of the tests are payable by the party who applies for them. R.S., c. 160, s. 27; 2015, c. 44, s. 28; 2021, c. 15, s. 11.

Statement to social worker inadmissible

34 Where a person has made a statement or given information to a social worker employed by the Department of Community Services or by an agency under the *Children and Family Services Act* while the social worker was engaged in carrying out the social worker's duties, the statement or information is not admissible in evidence against the person in proceedings under Section 12 of this Act. R.S., c. 160, s. 28; 2015, c. 44, s. 29.

Filing of statement of income and expenses

35 (1) Upon application for support under this Act, the applicant and the respondent shall file

(a) in the case of an application for spousal support, all financial statements and such other documents as required by the court, the regulations or *Rules of Court*; or

(b) in the case of an application for child support, the information required by the Guidelines or other regulations, the court or the *Rules of Court*.

(2) A party who objects to filing a financial statement may apply to a court for an exemption from subsection (1) upon the ground that such a statement is unnecessary for a proper determination of the application or that the application is frivolous or vexatious.

(3) Notwithstanding that a statement or document has not been filed pursuant to subsection (1), a court may conduct the hearing of an application and make such order as the case requires. R.S., c. 160, s. 29; 1997 (2nd Sess.), c. 3, s. 8; 2000, c. 29, s. 7; 2015, c. 44, s. 30.

Power to require information

36 (1) Upon application for support under this Act in those circumstances prescribed by the regulations, including a variation order or a review, the court or a court officer may request a person, including the applicant or respondent, a corporation or public body, including the Crown, to provide information respecting

(a) the wages, salary or other remuneration;

(b) sources of income;

(c) the assets or liabilities;

(d) the financial status;

(e) changes in circumstances that affect the amount of support to be paid under the order;

(f) the location, address and place of employment;

(g) the location, address and place of residence,

of the applicant or respondent and including

(h) copies of income tax returns;

(i) financial statements of a corporation of which the applicant or respondent is a shareholder, officer or director; and

(j) such other information as required by the court, a court officer, the regulations, the *Family Court Rules* or the *Civil Procedure Rules*,

that is within the knowledge of, or shown on a record in the possession or control of, the person, corporation or public body, including the Crown.

(2) A person, including the applicant or respondent, a corporation or a public body, including the Crown, that receives a request for information shall provide it within 14 days of the day on which the request is received.

(3) Where it appears that a court officer has been refused information after making a request pursuant to subsection (1), the court may order a person, including the applicant or respondent, a corporation or a public body, including the Crown, to provide the court officer with any of the information prescribed in subsection (1).

(4) Where the court officer obtains an order pursuant to subsection (3), the court may award costs.

(5) This Section applies notwithstanding any other Act or regulation and notwithstanding any common law rule of confidentiality, except solicitor-client privilege.

(6) No action lies against a person who provides information in accordance with this Section.

(7) Any person, including the applicant or respondent, a corporation or public body, including a servant or agent of the Crown who knowingly withholds, misleads or gives false information to the court or a court officer or in response to an order of the court pursuant to this Section is guilty of an offence. 1997 (2nd Sess.), c. 3, s. 9; 2015, c. 44, s. 31; 2021, c. 15, s. 12.

Other aid not to be considered

37 An order may be made under this Act whether or not the person, spouse, dependent child or dependent parent is receiving aid from any government or from any regional municipality, town or other municipality or from any public, local or private body, organization or institution, or is being cared for in any sanatorium, hospital, home or other charitable or public institution and such aid must not be considered when making the order. R.S., c. 160, s. 30; 2000, c. 29, s. 8; 2021, c. 15, s. 13.

Court not bound by agreement

38 In a proceeding under this Act, a court may consider the terms of any agreement, including a parenting plan, whether registered under Section 61 or not, respecting decision-making responsibility, parenting arrangements, parenting time, contact time or interaction, in relation to a child, or respecting support payable to a party, but the court is not bound by the agreement if the court is of the opinion that the terms of the agreement are not in the best interests of the child or a party. 2015, c. 44, s. 32; 2021, c. 15, s. 14.

Person to whom support is paid

39 The court may order support to be paid to the person for whose benefit the payment is ordered, to that person's parent or child, to some other responsible person or to the court. R.S., c. 160, s. 32; 2021, c. 15, s. 15.

Periodic or lump sum payment

40 A court may order support to be paid periodically, in a lump sum or in a combination thereof. R.S., c. 160, s. 33; 2021, c. 15, s. 16.

Contents of support order

41 An order for payment of support must specify

- (a) the amount to be paid;
- (b) when payment is to be made;
- (c) where or to whom payment is to be made;
- (d) a breakdown of the amount as between spousal and child support;
- (e) the names and birth dates of the children, if child support is ordered; and
- (f) such other information as prescribed by the Guidelines, the *Family Court Rules* or the *Civil Procedure Rules*. R.S., c. 160, s. 34; 1997 (2nd Sess.), c. 3, s. 10; 2015, c. 44, s. 33.

Garnishee order

42 (1) Where the court considers it appropriate in a proceeding under this Act, the court may make an execution order in the nature of garnishee directing an employer of the debtor to deduct such amount as is specified in the order from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due and to pay the amounts deducted in the manner prescribed in the order.

(2) Upon application, the court may discharge, vary or suspend any term of an order made under this Section.

(3) An order made under this Section has priority over any other seizure or attachment of wages arising before or after the service of the order except an execution order issued by the Supreme Court of Nova Scotia that relates to support.

(4) Unless a court otherwise orders, an execution order in the nature of garnishee issued pursuant to this Section may be served on any employer of the debtor. R.S., c. 160, s. 35; 2015, c. 44, s. 34.

Security for support

43 (1) Where a court of competent jurisdiction orders the payment of support pursuant to this or any other enactment, the court may require the person obliged to pay support to give such security, including a charge on property, that the court orders, for the performance of the order respecting support.

(2) A court that requires a person to give security pursuant to subsection (1) may, on application, direct the sale or other realization of the security upon such terms and conditions as the court considers appropriate. R.S., c. 160, s. 36; 2015, c. 44, s. 35.

Powers of court

44 (1) The court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a support order or an order for decision-making responsibility, parenting arrangements, parenting time, contact time or interaction where there has been a change in circumstances since the making of the order or the last variation order.

(2) In making a variation order regarding decision-making responsibility, parenting arrangements, parenting time, contact time or interaction, the court may include any provision that could have formed part of the original order that is being varied.

(3) In making a variation order with respect to child support, the court shall apply Section 11. R.S., c. 160, s. 37; 1997 (2nd Sess.), c. 3, s. 11; 2015, c. 44, s. 36; 2021, c. 15, s. 17.

Deemed cost of living increases

45 Where an order for the periodic payment of support is made for the benefit of a person who is in receipt of assistance paid by or provided by the Minister pursuant to the *Employment Support and Income Assistance Act* or municipal assistance paid pursuant to the *Social Assistance Act*, the amount of the payment specified in the order is deemed to be varied in accordance with increases in the cost of living once in every 12-month period in the manner prescribed by the regulations. R.S., c. 160, s. 38; 2015, c. 44, s. 37; 2021, c. 15, s. 18.

Review of order by court

46 (1) Where a court order for the periodic payment of support is made for the benefit of a person who is in receipt of assistance provided by the Minister under the *Employment Support and Income Assistance Act* or municipal assistance under the *Social Assistance Act*, the court, upon its own motion, at the time and in the manner prescribed by the regulations, shall cause notice to be given to the parties and at a hearing shall review the adequacy of the amount of the payment for support in the circumstances existing at the time the review is made, and the court may vary, rescind or suspend the order.

(2) An order to vary, rescind or suspend an order in accordance with this Section is treated in all respects, including an appeal, as if it were made upon the application of one of the parties. R.S., c. 160, s. 39; 2015, c. 44, s. 38.

Denial of time application

47 (1) Where a person who has parenting time, contact time or interaction under an agreement registered under this Act or a court order is denied that time or interaction, the person may make an application to address the denial.

(2) The application must be filed no more than 12 months from the date the applicant was denied the parenting time, contact time or interaction.

(3) In determining whether a denial of parenting time, contact time or interaction was wrongful, the court shall consider all relevant circumstances, including whether there was

(a) a reasonable belief that the child would suffer family violence, abuse or intimidation if the parenting time, contact time or interaction was to be exercised;

(b) a reasonable belief that the applicant was impaired by drugs or alcohol at the time the parenting time, contact time or interaction was to be exercised;

(c) repeated failure, without reasonable notice or excuse, by the applicant to exercise parenting time, contact time or interaction in the 12 months immediately prior to the denial; or

(d) a failure by the applicant to give notice of when parenting time, contact time or interaction would be reinstated following advance notice that the time would not be exercised.

(4) Where the court finds that the parenting time, contact time or interaction has been denied, but not wrongfully denied, the court may order that the applicant have compensatory parenting time, contact time or interaction with the child.

(5) Upon finding that the applicant was wrongfully denied the parenting time, contact time or interaction, the court may order

(a) that any of the parties to the application or the child attend counselling or a specified program or obtain a specified service, and which parties must pay for the counselling, program or service;

(b) that the applicant have compensatory parenting time, contact time or interaction;

(c) that the respondent reimburse the applicant for expenses incurred as a result of the respondent's denial of the parenting time, contact time or interaction;

(d) that the transfer of the child for parenting time or contact time be supervised, and which parties must pay for the costs associated with the supervision;

(e) that parenting time, contact time or interaction be supervised, and which parties must pay for the costs associated with the supervision;

(f) the payment of costs for the application by one or more of the parties;

(g) that the parties appear for the making of an additional order; and

(h) the payment of no more than \$5,000 to the applicant or to the applicant in trust for the child.

(6) A finding that the parenting time, contact time or interaction was wrongfully denied constitutes a material change in circumstances for the pur-

pose of a variation order regarding decision-making responsibility, parenting time, contact time or interaction.

(7) The court may, without the applicant filing a variation application, make the variation order referred to in subsection (6) at the hearing of the denial application.

(8) Where the court is satisfied that it is likely that an order under subsection (5) will not be complied with, the court may additionally order that the respondent

(a) post security with the court in such amount or form as the court directs; and

(b) report to the court or to a person named by the court at the time and in the manner specified by the court.

(9) An order for security under subsection (8) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means, as the court directs, or for the release of all or part of the security. 2015, c. 44, s. 39; 2021, c. 15, s. 19.

Failure to exercise time

48 (1) Where a person has failed, with or without notice, to exercise parenting time, contact time or interaction in accordance with an agreement registered under this Act or a court order, any parent or guardian of the child may make an application to address the failure.

(2) The application must be filed no more than 12 months from the date of the failure.

(3) In determining an application filed in accordance with subsection (2), the court may order

(a) that any of the parties to the application or the child attend counselling or a specified program or obtain a specified service, and which parties must pay for the counselling, program or service;

(b) that the respondent exercise compensatory parenting time, contact time or interaction;

(c) that the respondent reimburse the applicant for expenses incurred as a result of the respondent's failure to exercise the parenting time, contact time or interaction;

(d) that the transfer of the child for parenting time or contact time be supervised, and which parties must pay for the costs associated with the supervision;

(e) that parenting time, contact time or interaction be supervised, and which parties must pay for the costs associated with the supervision;

(f) the payment of costs for the application by one or more of the parties;

(g) that the parties appear for the making of an additional order; and

(h) the payment of no more than \$5,000 to the applicant or to the applicant in trust for the child.

(4) A finding by the court that the parenting time, contact time or interaction has not been exercised, without reasonable excuse, constitutes a material change in circumstances for the purpose of a variation order regarding decision-making responsibility, parenting time, contact time or interaction.

(5) The court may, without the applicant filing a variation application, make the variation order referred to in subsection (4) at the hearing of the failure application.

(6) Where the court is satisfied that it is likely that an order under subsection (3) will not be complied with, the court may additionally order that the respondent

(a) post security with the court in such amount or form as the court directs; and

(b) report to the court or to a person named by the court at the time and in the manner specified by the court.

(7) An order for security under subsection (6) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means, as the court directs, or for the release of all or part of the security. 2015, c. 44, s. 39; 2021, c. 15, s. 20.

Order preventing removal of child

49 (1) On application, the court may make an order preventing a person from removing a child from the Province or from a place in the Province identified by the applicant.

(2) The application may be filed at any time. 2015, c. 44, s. 39.

Court imposed conditions on removal of child

50 (1) On application and upon being satisfied that a person intends to remove a child from the Province and is not likely to return the child to the Province, the court may order that the person who intends to remove the child

(a) post security with the court in such amount and form as the court directs;

(b) surrender the person's or the child's passport and travel records, or both the person's and the child's passports and travel records, to an individual named by the court;

(c) transfer specific property to a trustee named by the court; and

(d) pay child support to a trustee named by the court.

(2) An order for security under subsection (1) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means, as the court directs, or for the release of all or part of the security.

- (3) A person named by the court under this Section to
- (a) hold passports and travel records;
 - (b) hold property; or
 - (c) receive child support,

shall do so in accordance with the directions set out in the court order. 2015, c. 44, s. 39.

Application of Sections

51 Sections 49 and 50 do not apply if Section 24, 25 or 26 applies. 2015, c. 44, s. 39.

Power to require appearance

52 (1) Where it is made to appear under oath that a person has failed to comply with an order pursuant to this Act, the court may require the person to appear to explain the failure to comply or a party to the order may make an application to bring the matter before the court for determination.

(2) In an application pursuant to subsection (1), the court shall determine the issue and may make any additional order the court considers necessary to ensure the order of the court is complied with, including an order for contempt which may include imprisonment continuously or intermittently for not more than six months.

(3) Nothing in this Section affects the application of the *Maintenance Enforcement Act* if a party under a maintenance order has failed to comply with that order. 1997 (2nd Sess.), c. 3, s. 12.

Enforcement of judgment

53 (1) For the purpose of this Section, a reference to a judgment, order or decree of the Supreme Court of Nova Scotia includes a reference to a judgment, order or decree of the Court for Divorce and Matrimonial Causes.

(2) A person entitled to decision-making responsibility, parenting arrangements, parenting time, contact time or interaction in relation to a child or spousal support or child support under a judgment, order or decree of the Supreme Court of Nova Scotia, or an order of any other superior court in Canada registered in the Supreme Court of Nova Scotia, may register the judgment, order or decree with a judge.

(3) Unless it is varied, rescinded or suspended, a judgment, order or decree registered under subsection (2) may, subject to the *Maintenance Enforcement Act*, be enforced in the same manner as an order made under this Act.

(4) Where a court that is asked to enforce a judgment, order or decree of the Supreme Court of Nova Scotia is satisfied that

- (a) the circumstances have changed; and

(b) the judgment, order or decree should be varied, rescinded or suspended,

the court may file a report with the prothonotary or clerk of the court that issued the judgment, order or decree or with such other person as the *Civil Procedure Rules* may provide.

(5) A court filing a report under subsection (4) shall advise the parties by providing to them a copy of the report and such other documents as the *Civil Procedure Rules* may require.

(6) The court that receives the report may deal with the report in the same manner as it would deal with the report of a referee made pursuant to the *Civil Procedure Rules*. R.S., c. 160, s. 43; 1994-95, c. 6, s. 63; 2015, c. 44, s. 40; 2021, c. 15, s. 21.

Right to appeal

54 An appeal lies to the Nova Scotia Court of Appeal from any decision, judgment or order made pursuant to this Act by the court or the Supreme Court (Family Division). 1998, c. 12, s. 2.

Appeal by stated case

55 (1) The court may of its own motion or upon the application of any party, and upon such security being given as the court directs, state a case in writing for the opinion of the Court of Appeal upon any question that in the opinion of the court is a question of law.

(2) The Court of Appeal shall hear and determine the question or questions of law arising thereon and remit the matter to the court with its opinion. R.S., c. 160, s. 46; 2015, c. 44, s. 41.

Child of void marriage

56 The child of a void marriage is deemed to be the legitimate child of the child's mother and father if the mother and father have at any time celebrated a marriage in accordance with the laws of the place in which the marriage was celebrated and if either the mother or father or both believed that the marriage was valid. R.S., c. 160, s. 47.

Child of voidable marriage

57 For the avoidance of doubt, a decree of nullity is granted in respect of a voidable marriage, a child who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being annulled continues to be legitimate notwithstanding the annulment. R.S., c. 160, s. 48.

Civil rights and privileges of legitimated child

58 Where the mother and father of any child born out of lawful wedlock intermarry, the child is deemed to have had from the date of the child's birth and to have for all purposes within the Province all the civil rights and privileges of a child born in lawful wedlock, including the right to inherit property upon an intestacy in the same manner and to the same extent as a child born in lawful wedlock. R.S., c. 160, s. 49.

Status and capacity of legitimated child

59 Where the mother and father of any child born out of lawful wedlock intermarry, the child for all purposes has and is deemed to have had the status and capacity of a child born in lawful wedlock of the mother and father from the date of birth and for all purposes to be a lawful lineal descendant and a child of the mother and father. R.S., c. 160, s. 50.

Prior rights unaffected

60 Nothing in Sections 57, 58 and 59 affects any right, title or interest in or to property if such right, title or interest has been vested in any person

(a) prior to October 1, 1980, in the case of any intermarriage that has taken place before that date; or

(b) prior to the intermarriage in the case of any intermarriage that takes place on or after October 1, 1980. R.S., c. 160, s. 51.

Registration and effect of agreement

61 (1) A judge may, with the consent of a party, register in the court an agreement, including a parenting plan, entered into between the parties respecting decision-making responsibility, parenting arrangements, parenting time, contact time or interaction or respecting support, and any amendment made to that agreement.

(2) A judge may, with the consent of a party, register in the court an agreement respecting the use of the family residence for an interim period, and any amendment made to that agreement.

(3) Before registering an agreement under subsection (1) or (2), a judge may inquire into the merits of the agreement and, after giving the parties an opportunity to be heard, may vary its terms as the judge considers appropriate.

(4) An agreement, including amendments, registered under this Section has for all purposes the effect of an order made under this Act. 2015, c. 44, s. 42; 2021, c. 15, s. 22.

Death or adoption of child for whom money paid

62 Where a child on whose behalf money has been paid pursuant to an agreement filed or registered or an order made under this Act dies or is adopted, any balance of money remaining with the person to whom it was paid must be returned to the person who made the payment or the person's heirs, executors, administrators or assigns, except if the death of a child is unlawfully caused by the person who made the payment in which case the money is forfeited to the Minister of Finance and Treasury Board. R.S., c. 160, s. 53.

Access to record of address

63 (1) Where it appears to the court or a court officer that for the purpose of a proceeding pursuant to this Act it is necessary to learn or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court or court officer may order an individual, corporation or entity, including a public agency, to provide particulars of the address contained in records in its cus-

today and the individual, corporation or entity shall provide whatever particulars it is able to provide.

(2) This Section binds the Crown in right of the Province.

(3) No action lies against a person who gives information in accordance with subsection (1). R.S., c. 160, s. 54; 1994-95, c. 6, s. 63; 1997 (2nd Sess.), c. 3, s. 13.

Agreement with Government of Canada

64 The Minister of Justice on behalf of the Government, may, with the approval of the Governor in Council, enter into an agreement with the Minister of Justice for Canada on behalf of the Government of Canada for a child support service established by the regulations under this Act, to conduct the administrative recalculation of the amount of child support orders under the *Divorce Act* (Canada). 2012, c. 25, s. 3.

Frivolous or vexatious proceedings

65 (1) Where a court is satisfied that a person has habitually, persistently and without reasonable grounds started frivolous or vexatious proceedings or has conducted a proceeding in a frivolous or vexatious manner in the court, the court may make an order restraining the person from

(a) starting a further proceeding on the person's own behalf; or

(b) continuing to conduct a proceeding,

without first obtaining leave of the court.

(2) An application for an order under subsection (1) may be made by the party against whom the proceeding has been started or conducted, a court officer or, with leave of the court, any other person. 2015, c. 44, s. 43.

Duty of lawyer

66 (1) It is the duty of every lawyer who undertakes to act on behalf of a person in a proceeding under this Act to discuss with the person the advisability of negotiating the matters that may be the subject of an order under this Act and to inform the person of the available alternative dispute resolution options to assist in negotiating those matters, unless the circumstances of the proceeding are of such a nature that it would clearly not be appropriate to do so.

(2) Each document filed by a lawyer with the court to commence a proceeding under this Act, including applications filed under Section 44, must include a certificate of compliance with this Section signed by the lawyer. 2015, c. 44, s. 43; 2021, c. 15, s. 23.

Regulations

67 (1) The Governor in Council may make regulations

(a) prescribing forms and providing for their use;

(b) respecting the way in which the amount of an order for child support is to be determined;

- (c) respecting the circumstances in which discretion may be exercised in the making of an order for child support;
- (d) authorizing a court to require that the amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;
- (e) authorizing a court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order;
- (f) respecting the recalculation at prescribed intervals of the amount payable under orders for child support;
- (g) respecting the recalculation at prescribed intervals of the amount of child support orders under the *Divorce Act* (Canada);
- (h) respecting the circumstances that give rise to the making of a variation order in respect of a child support order;
- (i) respecting the determination of income for the purpose of the application of the Guidelines;
- (j) authorizing a court to impute income for the purpose of the application of the Guidelines;
- (k) respecting the production of income or financial information from an individual, corporation or entity and providing for sanctions when that information is not provided;
- (l) respecting the investment and manner of disbursement of funds paid into court;
- (m) respecting the calculation of cost-of-living adjustments to be made to support orders, the timing of the adjustments and the manner in which it is to be done;
- (n) respecting the automatic review of support orders, the timing of the review and the manner in which it is to be done;
- (o) respecting the automatic review of child support orders under the *Divorce Act* (Canada), the timing of the review and the manner in which it is to be done;
- (p) respecting the disclosure of financial information;
- (q) respecting costs and fees for services pursuant to this Act;
- (r) respecting mediation and alternative dispute-resolution mechanisms;
- (s) defining any word or expression used but not defined in this Act;
- (t) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 160, s. 55; 1997 (2nd Sess.), c. 3, s. 14; 2012, c. 25, s. 4; 2021, c. 15, s. 23.

Existing order preserved

68 An order for the payment of maintenance or expenses made under the former *Children of Unmarried Parents Act*, the former *Children's Maintenance Act*, the former *Parents' Maintenance Act* or the former *Wives' and Children's Maintenance Act*, continues in force according to its terms, and may be enforced, varied, rescinded or suspended in the same manner as an order made pursuant to this Act. R.S., c. 160, s. 56.

Proceeding commenced before April 1, 2022

69 A proceeding commenced under this Act before April 1, 2022, and that is not finally disposed of before that date must be dealt with and disposed of in accordance with this Act as it read as of that date. 2021, c. 15, s. 24.

Custody deemed to be parenting time and decision-making responsibility

70 (1) Unless a court orders otherwise, a person who had custody of a child by virtue of an order made under this Act immediately before April 1, 2022, is deemed as of that date to be a person to whom parenting time and decision-making responsibility have been allocated.

(2) A person who is deemed under subsection (1) to be a person to whom parenting time and decision-making responsibility have been allocated is not required to give notice under Section 22 or 23 if an agreement registered under Section 61 or an order made under subsection 18(1), to which the person is a party, specifies that no notice is required in respect of a relocation or a change in the place of residence of the person or of a child to whom the agreement or order relates. 2021, c. 15, s. 24.

Variation of order made before April 1, 2022

71 (1) An order made under subsection 18(1) before April 1, 2022, or an order made in proceedings disposed of by the court in a manner described in Section 70, may, while the order is still in effect, be varied, rescinded or suspended in accordance with Section 44.

(2) For greater certainty, amendments to this Act do not, in themselves, constitute a change in circumstances for the purpose of a variation order under Section 44. 2021, c. 15, s. 24.

CHAPTER P-3

**An Act Respecting
the Partition of Lands**

Table of Contents

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

	Section
Interpretation	
Short title.....	1
Interpretation.....	2
Jurisdiction of Supreme Court preserved.....	3
Land Subject to Partition	
Land subject to partition	4
Right of action.....	5
Persons entitled to maintain action	6
Tenant jointly or in common for term.....	7
Restriction on action of tenant for term	8
Parties and Service	
Statement of claim	9
Unknown interested person.....	10
Failure to appear.....	11
Right of interested person out of Province to appear.....	12
Party to action by leave.....	13
Guardian.....	14
Pleadings	
Statement of defence.....	15
Amendment of statement of claim.....	16
Order for Partition	
Order for partition	17
Commissioners and their Duties	
Commissioners.....	18
Oath.....	19
Notice of right to be present.....	20
Evidence and subpoena.....	21
Division of land.....	22
Validity of report.....	23
Land Incapable of Division	
Set off of land.....	24
Alternate occupation	25
Liability of occupier.....	26
Remedy for trespass.....	27
Sale of Land	
Sale of land.....	28

Report and Confirmation	
Report of commissioners	29
Powers of Court respecting report	30
Effect of confirmation of partition	31
Registration and confirmation of report	32
Opening of Partition	
Application for new partition.....	33
New order for partition	34
Method of new partition	35
Compensation for improvements.....	36
Effect of Judgment for Partition in Certain Cases	
Action for land by non-party after judgment.....	37
Action for assigned share by non-party after judgment.....	38
Style of action under Section 38 and time limit	39
More than one claimant for same share of land.....	40
Application of Section 40	41
Action by non-party part owner after judgment	42
Claim by heir or devisee	43
New partition resulting from eviction.....	44
Effect of partition on lien.....	45
Death of Parties	
Death of party	46
Costs	
Costs	47
General Provisions	
Status of title held under partition	48
Land in different counties	49

INTERPRETATION

Short title

1 This Act may be cited as the *Partition Act*. R.S., c. 333, s. 1.

Interpretation

2 In this Act,
 “land” includes mining areas;
 “Court” means the Supreme Court of Nova Scotia. R.S., c. 333, s. 2.

Jurisdiction of Supreme Court preserved

3 The provisions of this Act do not restrict the jurisdiction and powers of the Court, possessing the jurisdiction and powers of the former Court of Chancery in England as to the partition of land, but are to be construed as enlarging the same. R.S., c. 333, s. 3.

LAND SUBJECT TO PARTITION

Land subject to partition

4 All persons holding land as joint tenants, co-parceners or tenants in common, may be compelled to have such land partitioned, or to have the same sold and the proceeds of the sale distributed among the persons entitled, in the manner provided in this Act. R.S., c. 333, s. 4.

Right of action

5 Any one or more of the persons so holding land may bring an action in the Court for a partition of the same, or for a sale thereof, and a distribution of the proceeds among the persons entitled. R.S., c. 333, s. 5.

Persons entitled to maintain action

6 An action brought under Section 5 may be maintained by any person who has an estate in possession, but not by one who is entitled only to any remainder or reversion. R.S., c. 333, s. 6.

Tenant jointly or in common for term

7 When two or more persons hold jointly or in common, as tenants for any term of years, any of them may bring an action under Section 5 against the person's co-tenants in the same manner as if they had all been tenants of the freehold. R.S., c. 333, s. 7.

Restriction on action of tenant for term

8 No tenant for any term of years, unless 20 years at the least remain unexpired, may maintain an action brought under Section 5 against any tenant of the freehold. R.S., c. 333, s. 8.

PARTIES AND SERVICE

Statement of claim

9 (1) The statement of claim must set forth the rights and titles, so far as known to the plaintiff, of all persons interested in the land who would be bound by the partition, whether they have an estate of inheritance, or for life, or years, or whether it is an estate in possession, or in remainder, or reversion, and whether vested or contingent.

(2) Where the plaintiff holds an estate for life, or years, the person entitled to the remainder or reversion, after the plaintiff's estate, is considered as one of the persons so interested. R.S., c. 333, s. 9.

Unknown interested person

10 Where there are any persons interested in the land whose names are unknown to the plaintiff, the Court or judge may, if, having regard to the nature and extent of the interests of such persons, it appears expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such persons whose names are unknown to the plaintiff, and the judgment or order of the Court is binding on the persons so represented, subject to this Act. R.S., c. 333, s. 10.

Failure to appear

11 Where any person entitled to notice fails to appear, and if the service of the originating notice or other notice to the person appears to the Court or the judge to have been insufficient, the Court or a judge may order such further notice as is thought proper. R.S., c. 333, s. 11.

Right of interested person out of Province to appear

12 Where, in any stage of the action, it appears to the Court that any person interested, whether a party or not, is out of the Province and has not had an opportunity to appear in the action, it may be adjourned until sufficient time is allowed to enable the person to appear. R.S., c. 333, s. 12.

Party to action by leave

13 Any person who is not a party may be made a party by leave of the Court or a judge, on filing an affidavit showing that the person is entitled to a share in the land, and in all subsequent proceedings the person must be named as a party to the action. R.S., c. 333, s. 13.

Guardian

14 The Court or a judge may assign a guardian for the suit for any infant or incompetent person who is interested in the premises, in the same manner as a guardian is admitted for an infant plaintiff or defendant in any other action, and the judgment or order of the Court is binding on the persons so represented, subject to this Act. R.S., c. 333, s. 14; 2007, c. 17, s. 19.

PLEADINGS

Statement of defence

15 The defendant, in the defendant's statement of defence, may plead any matter tending to show that the plaintiff ought not to have partition, either in whole or in part. R.S., c. 333, s. 15.

Amendment of statement of claim

16 Where any person was made a party by leave of the Court or a judge, the plaintiff may, without leave, amend the plaintiff's statement of claim and plead, or the plaintiff may reply that such person has no estate or interest in the land. R.S., c. 333, s. 16.

ORDER FOR PARTITION

Order for partition

17 Where the defendant fails to appear or to deliver a defence, or if, after a trial, it appears that partition should be made, the Court or a judge shall make an order for the partition of the land, specifying the persons entitled to share in the partition ordered and the share to which each is respectively entitled. R.S., c. 333, s. 17.

COMMISSIONERS AND THEIR DUTIES

Commissioners

18 Where such order passes, unless it appears to the Court or judge that a sale of the land is necessary under the provisions of this Act, the Court or judge may appoint three disinterested persons as commissioners, to make partition and to set off to the parties their respective shares. R.S., c. 333, s. 18.

Oath

19 The commissioners, before proceeding to the execution of their duties, must be sworn before a justice of the peace faithfully and impartially to perform the same, a certificate of which oath must be made on the order for partition by the person who administered it. R.S., c. 333, s. 19.

Notice of right to be present

20 The commissioners shall give notice of the time and place appointed for making the partition to all persons interested therein who have appeared, or who are known and within the Province, that they may be present if they see fit. R.S., c. 333, s. 20.

Evidence and subpoena

21 (1) The commissioners may take evidence, and if it is desired by any of the parties interested in the partition to produce witnesses before the commissioners, such party may obtain subpoenas from the prothonotary for such witnesses, and disobedience of any such subpoena is deemed a contempt of court.

(2) The person served with a subpoena is entitled to be paid the same fees as for attendance at an ordinary trial. R.S., c. 333, s. 21.

Division of land

22 (1) The commissioners shall divide the land and allot the several shares thereof to the respective parties mentioned in the order, designating the several shares by sufficient monuments.

(2) The shares of any two or more parties may be allotted to them in common, upon their expressing their consent to that effect in writing, addressed to the commissioners. R.S., c. 333, s. 22.

Validity of report

23 The report of the commissioners is valid if at least two of the commissioners concur therein. R.S., c. 333, s. 23.

LAND INCAPABLE OF DIVISION

Set off of land

24 (1) Where the land of which partition is sought cannot be divided without prejudice to the owners, or where any specific part thereof is of greater value than the share of any party and cannot be divided without prejudice to the owners, the whole land, or the part so incapable of division, may be set off to any

one of the parties who will accept it, upon payment by that party to any one or more of the others of such compensation as the commissioners determine.

(2) The partition in such case must not be confirmed by the Court or judge until all the sums so awarded are paid to the parties entitled thereto, or secured to their satisfaction. R.S., c. 333, s. 24.

Alternate occupation

25 The commissioners, instead of setting off the land or a part thereof, in the manner provided in Section 24, may assign the exclusive occupancy and enjoyment of the whole or the part, as the case may be, to each of the parties alternately, for certain specified times, in proportion to their respective interests therein. R.S., c. 333, s. 25.

Liability of occupier

26 Where the whole, or any specific part of the land is assigned in the manner provided in Section 25, the person entitled for the time being to the exclusive occupancy is liable to the other parties for any injury to the premises occasioned by the person's misconduct, in like manner and to the like extent as a tenant for years under a common lease without express covenants would be liable to the tenant's landlord, and the other parties may have their remedy therefor against the person by action, either jointly or severally, at their election. R.S., c. 333, s. 26.

Remedy for trespass

27 While any land is so in the exclusive occupancy of any such party, the party is entitled to the same remedy against any person who trespasses upon or otherwise injures the land as if the party held the same under a lease for the term of the party's exclusive occupancy, and the party and all the other parties are also entitled to recover against the wrongdoer such other and further damages as they have sustained by the same trespass or injury, in like manner as if the land had been leased by them for such term, and all joint damages recovered by any such parties must be apportioned and divided among them, according to their respective rights, by the court in which the judgment is recovered. R.S., c. 333, s. 27.

SALE OF LAND

Sale of land

28 (1) Where

(a) the land, or any part thereof, cannot be divided without prejudice to the parties entitled; or

(b) any party is, by reason of infancy, incapacity or absence from the Province, prevented from accepting such land, or part thereof, incapable of division under this Act,

the Court or a judge may order that such land be sold after such notice and in the manner as the Court or judge directs, and that the net proceeds of the sale be divided among the parties entitled.

(2) Such order may be made instead of an order appointing commissioners for the division of the land, or may be made at any time subsequent to such an order.

(3) Every person interested, and every encumbrancer, must have at least two days notice of the application for the sale of such land, but if from infancy, incapacity or absence from the Province, or other cause, actual notice cannot be given, the Court or judge shall direct such notice to be given by service on a guardian, or by publication, or otherwise, as is considered best.

(4) Such sale may be made and the deed executed by the sheriff of the county in which the land lies, or by an auctioneer, or such other person as is mentioned in the order, or the land may be conveyed to the purchaser by a vesting order to be made by the Court or a judge, and the purchaser of the land acquires, by such deed or vesting order, all the interest and title of all persons interested in the said land, and of all such encumbrancers.

(5) Where the share of any person interested in such land, so ordered to be sold, is subject to dower or to encumbrances, appearing from the certificate of the registrar of deeds for the registration district in which the land lies, or where any person entitled to a share is an unknown person, an infant or person with an incapacity or is absent from the Province, and was not personally served, the share of any such person in the proceeds of the sale must be paid into court, or to such persons and according to such priorities, and in such amounts, as the Court or judge directs. R.S., c. 333, s. 28.

REPORT AND CONFIRMATION

Report of commissioners

29 The commissioners shall make a report of their proceedings under their hands and return the same, together with the order for partition, to the Court, and the report may be confirmed by the Court or a judge, whereupon the partition so made is final. R.S., c. 333, s. 29.

Powers of Court respecting report

30 The Court or a judge, for any reason, may vary or set aside the report or may remit the same to the commissioners, or may appoint other commissioners to divide the land. R.S., c. 333, s. 30.

Effect of confirmation of partition

31 The order confirming the partition is conclusive as to all rights, both of property and possession, of all parties to the action and privies, and except as provided hereinafter, all persons who are represented under the provisions of this Act. R.S., c. 333, s. 31.

Registration and confirmation of report

32 (1) A certified copy of the report of the commissioners must be registered in the registry of deeds for the registration district in which the land is situated.

(2) In case of a sale the report of the person making the sale is subject to confirmation, as in case of other sales by the Court or a judge. R.S., c. 333, s. 32.

OPENING OF PARTITION

Application for new partition

33 Where any person who was a part owner with the plaintiffs and for whom a share was assigned upon the partition, was described as an unknown person, and there was not personal service of, or appearance to, the originating notice or notice to the person, the person may, at any time within three years after the final judgment, apply to the Court for a new partition of the premises. R.S., c. 333, s. 33.

New order for partition

34 After hearing the parties interested, if it appears to the Court that the share assigned for the applicant was less than the applicant was entitled to, or that such share was not at the time of the partition equal in value to the applicant's proper share of the land, the Court may order a new partition thereof. R.S., c. 333, s. 34.

Method of new partition

35 In such new partition the commissioners are not required to make a new division of the whole land, but they may take from any one share or shares and add to any other or others so much as is, in their judgment, necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided, or if an equal partition of the land cannot be made without inconvenience to the owners, the commissioners may award compensation to be paid by one party to another to equalize the shares. R.S., c. 333, s. 35.

Compensation for improvements

36 Where, after the first partition, any improvement has been made on any part of the land which, by the new partition, is taken from the share of the person who made the improvements, that person is entitled to compensation therefor, to be estimated and awarded by the commissioners and to be paid by the person to whom such part of the land is assigned on the new partition. R.S., c. 333, s. 36.

EFFECT OF JUDGMENT FOR PARTITION IN CERTAIN CASES

Action for land by non-party after judgment

37 Where any person who was not made a party, or was not served, claims to hold in severalty the land, or any part thereof, the person is not concluded by the judgment for partition, but may bring the person's action for the land claimed by the person against any or all of the plaintiffs or defendants, or of the persons holding under them, as the case requires, within the same time in which the person might have brought it if no such judgment for partition had been given. R.S., c. 333, s. 37.

Action for assigned share by non-party after judgment

38 Where any person who was not made a party claims the share that was assigned to any supposed part owner in the judgment for partition, the person is concluded by the judgment so far as it respects the partition and the assignment of the shares, in like manner as if the person had been a party to that action, but the person is not prevented thereby from bringing the person's action for the share claimed by the person against the person to whom it was assigned. R.S., c. 333, s. 38.

Style of action under Section 38 and time limit

39 In the case of an action brought under Section 38, the action is brought by the person against the tenant in possession in like manner as if the plaintiff had originally claimed the specific piece of land demanded, instead of an undivided part of the whole land, and it may be brought within the same time in which it might have been brought if no judgment for partition had been given. R.S., c. 333, s. 39.

More than one claimant for same share of land

40 Where two or more persons appear as defendants claiming the same share of the land to be divided, it is not necessary to decide upon their respective claims, except only for the purpose of determining which of them is admitted to defend in the action, and if partition is made, the share so claimed is assigned to the party who is determined to be entitled to it, in an action to be thereafter brought between them. R.S., c. 333, s. 40.

Application of Section 40

41 Where in an action brought under Section 40 it is decided in the original action for partition, upon the reply of the plaintiffs, or otherwise, that either of the defendants is not entitled to the share that the defendant claims, the defendant is concluded by the judgment, so far as it respects the partition and the assignment of the shares, but the defendant is not prevented thereby from bringing the defendant's action for the share claimed by the defendant against the other claimant thereof in the manner provided in Section 40. R.S., c. 333, s. 41.

Action by non-party part owner after judgment

42 (1) Where any person who was not made a party, or was not served, claims any part of the land as a part owner with those who were parties to that action, or any of them, and if the part or share so claimed was not known or not allowed and left for the person in the partition, the person is concluded by the judgment so far as it respects the partition, but the person is not prevented thereby from bringing an action for the share or proportion claimed by the person against each of the persons who hold any part of the land under the judgment for partition.

(2) Where the plaintiff prevails in such case last mentioned, the plaintiff is not entitled to demand a new partition of the whole land, but the plaintiff shall recover against each of the persons holding under the judgment for partition the same proportion or share of the part held by the plaintiff that the plaintiff was entitled to out of the whole land before the partition thereof. R.S., c. 333, s. 42.

Claim by heir or devisee

43 Where, after the making of partition, it appears that any person for whom a share was left, or to whom a share was assigned, died before such partition was made, and the proper representatives of such person were not added as parties, the heir or devisee of such deceased person is not, by reason of such heir or devisee having been a party to the action, either as a plaintiff or as a defendant, barred from claiming the share that belonged to the deceased person, but the heir or devisee in such case has the same rights and the same remedies in all respects as if such heir or devisee had not been a party to the action and had no notice of the pendency thereof. R.S., c. 333, s. 43.

New partition resulting from eviction

44 Where any person to or for whom any share is assigned or left upon any judgment for partition, is evicted thereof, by any person who, at the time of the partition, had a title thereto paramount to the title of those among whom partition was made, the person so evicted is entitled to a new partition of the residue, in like manner as if the former partition had not been made. R.S., c. 333, s. 44.

Effect of partition on lien

45 Any person having a mortgage, attachment or other lien upon the share of any part owner, is concluded by the judgment so far as it respects the partition and the assignment of the shares, but the person's lien remains in full force upon the part that is assigned or left for such part owner. R.S., c. 333, s. 45.

DEATH OF PARTIES

Death of party

46 In the case of the death of any party in an action for partition, the action does not abate, but may be conducted and prosecuted to final judgment and the Court or judge may make such order to bring in the heirs or representatives of the deceased party, or other person to represent the deceased party, and make them parties to the action, as such Court or judge thinks proper under the rules of the Court. R.S., c. 333, s. 46.

COSTS

Costs

47 (1) The costs of the trial of any issues or the costs of any contested matter are in the discretion of the judge.

(2) All the other costs of the proceedings and the expenses and charges of the commissioners must be taxed in the usual manner, and must be paid by the parties in proportion to their respective shares or interests in the premises. R.S., c. 333, s. 47.

GENERAL PROVISIONS

Status of title held under partition

48 Every person holding any land under a partition made by virtue of this Act is considered as holding it under an apparently good title, and in case of eviction, the person is, as against the person evicting the person, entitled to compensation for any improvements made thereon. R.S., c. 333, s. 48.

Land in different counties

49 Where the land to be divided is situated in different counties, the whole of such land may be included in one action, and the Court or judge may appoint three commissioners in each county in which any part of such land lies, or may appoint three commissioners to divide all the land wheresoever situated. R.S., c. 333, s. 49.

CHAPTER P-4

**An Act Respecting
the Law of Partnership**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
PART I	
Rules of equity and common law.....	3
Nature of Partnership	
Definition of partnership.....	4
Rules to determine existence of partnership.....	5
Insolvent borrower or buyer of goodwill.....	6
“firm” defined.....	7
Relations of Partners to Persons Dealing with Them	
Acts of partner binding.....	8
Act or instrument in firm name binding.....	9
Pledge of credit for purpose unrelated to firm.....	10
Effect of agreement to restrict a partner.....	11
Liability of partner.....	12
Liability of firm.....	13
Liability for misapplied money or property.....	14
Liability of partner under Section 13 or 14.....	15
Liability for trust property.....	16
Fraudulent representation.....	17
Admission by partner as evidence.....	18
Notice to partner as notice to firm.....	19
Liability of incoming or retiring partner.....	20
Re-constitution revokes continuing guaranty.....	21
Relations of Partners to One Another	
Variation of mutual rights and duties.....	22
Partnership property.....	23
Property bought with partnership money.....	24
Land treated as personal property.....	25
Execution against partnership property.....	26
Rules to determine interests or duties of partner.....	27
Expulsion of partner.....	28
Notice to end partnership.....	29
Continuance of partnership.....	30
True accounts and information to partners.....	31
Partner to account for private benefit.....	32
Partner competing with firm.....	33
Rights of assignee.....	34
Dissolution of Partnership and Its Consequences	
Dissolution of partnership.....	35
Bankruptcy, death or insolvency or suffering share to be charged.....	36
Effect of event making business unlawful.....	37

Dissolution by court..... 38
 Change in constitution of firm..... 39
 Notification of dissolution..... 40
 Authority after dissolution for winding-up purposes..... 41
 Payment of debts and surplus..... 42
 Repayment of premium..... 43
 Rights of partner upon dissolution for fraud..... 44
 Settlement of accounts with estate or outgoing partner..... 45
 Debt due..... 46
 Rules for distribution on dissolution..... 47

PART II

Interpretation of Part..... 48
 Application of Part..... 49
 Effect on Part I..... 50
 Nova Scotia LLP..... 51
 Effect of registration as Nova Scotia LLP..... 52
 Notice of registration as Nova Scotia LLP..... 53
 Registered office of Nova Scotia LLP..... 54
 List of partners of Nova Scotia LLP..... 55
 Name of Nova Scotia LLP..... 56
 Liability of partner for partnership and other partners..... 57
 Personal liability..... 58
 Extra-provincial LLP..... 59
 Effective date of status as extra-provincial LLP..... 60
 Where not registered as extra-provincial LLP..... 61
 Notice of registration as extra-provincial LLP..... 62
 Registered office of extra-provincial LLP..... 63
 List of partners of extra-provincial LLP..... 64
 Name of extra-provincial LLP..... 65
 Law governing and liability of extra-provincial LLP and its partners..... 66
 Distribution of property of Nova Scotia LLP..... 67
 Liability respecting contravention of Section 67..... 68
 Successor partnership..... 69
 Dissolution of Nova Scotia LLP..... 70
 Regulations..... 71

Short title

1 This Act may be cited as the *Partnership Act*. R.S., c. 334, s. 1.

Interpretation

2 In this Act,
 “business” includes every trade, occupation or profession;
 “court” includes every court and judge having jurisdiction in a case.
 R.S., c. 334, s. 2.

PART I

Rules of equity and common law

3 The rules of equity and of common law applicable to partnership continue in force, except so far as they are inconsistent with the express provisions of this Act. R.S., c. 334, s. 3.

NATURE OF PARTNERSHIP

Definition of partnership

4 Partnership is the relation that subsists between persons carrying on a business in common, with view of profit, but the relationship between members of any incorporated company or association is not a partnership within the meaning of this Act. R.S., c. 334, s. 4.

Rules to determine existence of partnership

5 In determining whether a partnership does or does not exist, regard must be had to the following rules:

(a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which, or from the use of which, the returns are derived;

(c) the receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of the business, does not of itself make the person a partner in the business and, in particular,

(i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make the person a partner in the business or liable as such,

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such,

(iii) a person being the surviving spouse or a child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such,

(iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing and signed by or on behalf of all the parties thereto,

(v) a person receiving by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by the person of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such. R.S., c. 334, s. 5.

Insolvent borrower or buyer of goodwill

6 In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in Section 5, or of any buyer of goodwill in consideration of a share of the profits of the business, making an assignment for the benefit of creditors, being insolvent, entering into an arrangement to pay the person's creditors less than 100 cents on the dollar or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of the loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. R.S., c. 334, s. 6.

"firm" defined

7 Persons who have entered into partnership with one another are for the purposes of this Act called collectively a "firm", and the name under which their business is carried on is called the "firm name". R.S., c. 334, s. 7.

**RELATIONS OF PARTNERS TO
PERSONS DEALING WITH THEM****Acts of partner binding**

8 Every partner is an agent of the firm and the other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which the partner is a member bind the firm and the partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom the partner is dealing either knows that the partner has no authority or does not know or believe the partner to be a partner. R.S., c. 334, s. 8.

Act or instrument in firm name binding

9 An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not is binding on the firm and all the partners, provided that this Section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments. R.S., c. 334, s. 9.

Pledge of credit for purpose unrelated to firm

10 Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless that partner is in fact specially authorized by the other partners, but this Section does not affect any personal liability incurred by an individual partner. R.S., c. 334, s. 10.

Effect of agreement to restrict a partner

11 Where it has been agreed between the partners that any restriction is placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement. R.S., c. 334, s. 11.

Liability of partner

12 Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while the partner is a partner, and after the partner's death the partner's estate is also severally liable in due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of the partner's separate debts. R.S., c. 334, s. 12.

Liability of firm

13 Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of the partner's co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. R.S., c. 334, s. 13.

Liability for misapplied money or property

14 In the following cases, namely:

(a) where one partner acting within the scope of the partner's apparent authority receives money or property of a third person and misapplies it; and

(b) where a firm in the course of its business receives money or property of a third person and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss. R.S., c. 334, s. 14.

Liability of partner under Section 13 or 14

15 Every partner is liable jointly with the partner's co-partners and also severally, for everything for which the firm, while the partner is a partner thereof, becomes liable under either Section 13 or 14. R.S., c. 334, s. 15.

Liability for trust property

16 (1) Where a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein.

(2) This Section does not affect any liability incurred by any partner by reason of that partner having notice of a breach of trust.

(3) Nothing in this Section prevents trust money from being followed and recovered from the firm if still in its possession or under its control. R.S., c. 334, s. 16.

Fraudulent representation

17 Everyone who by words, spoken or written, or by conduct, purports to be or who knowingly suffers to be represented as a partner in a particular firm is liable as a partner to anyone who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made, provided that where, after a partner's death, the partnership business is continued in the old firm name, the con-

tinued use of that name or of the deceased partner's name as part thereof does not of itself make the partner's executor's or administrator's estate or effects liable for any partnership debts contracted after the partner's death. R.S., c. 334, s. 17.

Admission by partner as evidence

18 An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm. R.S., c. 334, s. 18.

Notice to partner as notice to firm

19 Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. R.S., c. 334, s. 19.

Liability of incoming or retiring partner

20 (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before the person became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before the partner's retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between the retiring partner and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. R.S., c. 334, s. 20.

Re-constitution revokes continuing guaranty

21 A continuing guaranty given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty was given. R.S., c. 334, s. 21.

RELATIONS OF PARTNERS TO ONE ANOTHER

Variation of mutual rights and duties

22 The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing. R.S., c. 334, s. 22.

Partnership property

23 (1) Subject to subsection (2), all property and rights and interest in property originally brought into the partnership stock or acquired whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be

held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) The legal estate or interest in any land that belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this Section.

(3) Where co-owners of an estate or interest in any land not being itself partnership property, are partners as to profits made by the use of that land and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase. R.S., c. 334, s. 23.

Property bought with partnership money

24 Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm. R.S., c. 334, s. 24.

Land treated as personal property

25 Where land or any interest therein has become partnership property, it must, unless the contrary intention appears, be treated as between the partners, including the representative of a deceased partner, and also as between the heirs of a deceased partner and the deceased partner's executors or administrators, as personal or movable and not as real estate. R.S., c. 334, s. 25.

Execution against partnership property

26 (1) No execution order shall, on or after May 17, 1916, issue against any partnership property except on a judgment against the firm.

(2) The Supreme Court of Nova Scotia or a judge thereof may, on the application by summons of any judgment creditor of a partner, make an order charging the partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits, whether already declared or accruing, and of any other money that may be coming to the partner in respect of the partnership, and direct all accounts and inquiries and give all other orders and directions that might have been directed or given if the charge had been made in favour of the judgment creditor by the partner or that the circumstances of the case require.

(3) The other partner or partners are at liberty at any time to redeem the interest charged or, in case of a sale being directed, to purchase the same.

(4) Every summons by a separate judgment creditor of a partner for an order charging the partner's interest in the partnership property and profits under this Section, and for such other orders as are hereby authorized to be made, must be served on the judgment debtor and on the judgment debtor's partners or

such of them as are within the jurisdiction, and such service is good service on all the partners, and all orders made on such summons must be similarly served.

(5) Every application that is made by any partner of the judgment debtor under this Section must be made by summons, and such summons must be served on the judgment creditor and on the judgment debtor, and on such of the other partners as shall not concur in the application, and as are within the jurisdiction, and such service is good service on all the partners, and all orders made on such summons must be similarly served. R.S., c. 334, s. 26; R.S., c. 240, s. 10; 1992, c. 16, s. 39.

Rules to determine interests or duties of partner

27 The interests of partners in the partnership property and their rights and duties in relation to the partnership are determined, subject to any agreement, express or implied, between the partners, by the following rules:

(a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;

(b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by that partner

(i) in the ordinary and proper conduct of the business of the firm, or

(ii) in or about anything necessarily done for the preservation of the business or property of the firm;

(c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which the partner has agreed to subscribe, is entitled to interest at the rate of five per cent per annum from the date of the payment or advance;

(d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by the partner;

(e) every partner may take part in the management of the partnership business;

(f) no partner shall be entitled to remuneration for acting in the partnership business;

(g) no person may be introduced as a partner without the consent of all existing partners;

(h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;

(i) the partnership books are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when the partner thinks fit, have access to and inspect and copy any of them. R.S., c. 334, s. 27.

Expulsion of partner

28 No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners. R.S., c. 334, s. 28.

Notice to end partnership

29 (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of the partner's intention to do so to all other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, is sufficient for this purpose. R.S., c. 334, s. 29.

Continuance of partnership

30 (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership. R.S., c. 334, s. 30.

True accounts and information to partners

31 Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or the partner's legal representatives. R.S., c. 334, s. 31.

Partner to account for private benefit

32 (1) Every partner must account to the firm for any benefit derived by the partner without the consent of the other partners from any transaction concerning the partnership, or from any use by the partner of the partnership property, name or business connection.

(2) This Section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. R.S., c. 334, s. 32.

Partner competing with firm

33 Where a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, the partner must account for and pay over to the firm all profits made by the partner in that business. R.S., c. 334, s. 33.

Rights of assignee

34 (1) An assignment by any partner of the partner's share in the partnership, either absolute or by way of mortgage or redeemable charge, does not,

as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to acquire any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between the assigning partner and the other partners and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. R.S., c. 334, s. 34.

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

Dissolution of partnership

35 (1) Subject to any agreement between the partners, a partnership is dissolved

- (a) if entered into for a fixed term, by the expiration of that term;
- (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;
- (c) if entered into for an undefined time, by any partner giving notice to the other or others of the partner's intention to dissolve the partnership.

(2) Where a partnership is dissolved under clause (1)(c), the partnership is dissolved on the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, on the date of the communication of the notice. R.S., c. 334, s. 35.

Bankruptcy, death or insolvency or suffering share to be charged

36 (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy or insolvency of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers the partner's share of the partnership property to be charged under this Act for the partner's separate debt. R.S., c. 334, s. 36.

Effect of event making business unlawful

37 A partnership is in every case dissolved by the happening of any event that makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry on in partnership. R.S., c. 334, s. 37.

Dissolution by court

38 On application by a partner, the court may adjudge a dissolution of the partnership in any of the following cases:

(a) when a partner is found to be an incompetent person, or is shown to the satisfaction of the court to be of permanently unsound mind, the application may be made on behalf of that partner by the partner's representative or other person having title to intervene, as well as by any other partner;

(b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing that partner's part of the partnership contract;

(c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;

(d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so acts in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on business in partnership with the partner;

(e) when the business of the partnership can only be carried on at a loss;

(f) whenever in any case circumstances have arisen that, in the opinion of the court, render it just and equitable that the partnership be dissolved. R.S., c. 334, s. 38; 2007, c. 17, s. 20; 2017, c. 4, s. 86.

Change in constitution of firm

39 (1) Where a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent members of the old firm as still being members of the firm until the person has notice of the change.

(2) An advertisement in the Royal Gazette is notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively. R.S., c. 334, s. 39.

Notification of dissolution

40 On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, that cannot be done without the concurrence of the partner or partners. R.S., c. 334, s. 40.

Authority after dissolution for winding-up purposes

41 After the dissolution of a partnership, the authority of each partner to bind the firm and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise, provided that the firm is in no case bound by the acts of

a partner who has become bankrupt, but this proviso does not affect the liability of any person who has, after the bankruptcy, represented or knowingly suffered to be represented as a partner of the bankrupt. R.S., c. 334, s. 41.

Payment of debts and surplus

42 On the dissolution of a partnership, every partner is entitled as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm, and for that purpose any partner or partner's representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm. R.S., c. 334, s. 42.

Repayment of premium

43 Where one partner has paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium. R.S., c. 334, s. 43.

Rights of partner upon dissolution for fraud

44 Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by the partner for the purchase of a share in the partnership and for any capital contributed by the partner;
- (b) to stand in the place of the creditors of the firm for any payments made by the partner in respect of the partnership liabilities; and
- (c) to be indemnified by the person guilty of the fraud or making the representation, against all the debts and liabilities of the firm. R.S., c. 334, s. 44.

Settlement of accounts with estate or outgoing partner

45 (1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or the outgoing partner's estate, then, in the absence of any agreement to the contrary, the outgoing partner or outgoing partner's estate is entitled, at the option of the outgoing partner or outgoing partner's representatives, to such share of the profits made since the dissolution as the court may find to be attributable to the use of the outgoing partner's share of the partnership

assets, or to interest at the rate of five per cent per annum on the amount of the outgoing partner's share of the partnership assets.

(2) Where, by the partnership contract, an option is given to the surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or the deceased partner's or outgoing partner's estate, as the case may be, is not entitled to any further or other share of profits, but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, that partner is liable to account under the foregoing provisions of this Section. R.S., c. 334, s. 45.

Debt due

46 Subject to any agreement between the partners, the amount due from the surviving or continuing partners to an outgoing partner or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death. R.S., c. 334, s. 46.

Rules for distribution on dissolution

47 In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(a) losses, including losses and deficiencies of capital, are paid first out of profits, next out of capital and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;

(b) the assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, are applied in the following manner and order:

(i) in paying the debts and liabilities of the firm to persons who are not partners therein,

(ii) in paying to each partner rateably what is due from the firm to the partner for advances as distinguished from capital,

(iii) in paying to each partner rateably what is due from the firm to the partner in respect of capital,

(iv) the ultimate residue, if any, must be divided among the partners in the proportion in which profits are divisible. R.S., c. 334, s. 47.

PART II

Interpretation of Part

48 In this Part,

“distribution” means, in relation to partnership property, a transfer of money or other partnership property by a partnership to a partner or an assignee of a partner's share in the partnership, whether as a share of profits, return of contributions to capital, repayment of advances or otherwise;

“extra-provincial LLP” means a partnership registered under Section 59 as an extra-provincial limited liability partnership;

“governing jurisdiction” means, in relation to a partnership, the jurisdiction whose law governs the interpretation of the partnership agreement by operation of law or through a provision in the partnership agreement or another document created by the partnership;

“liability insurance” means either or both of

(a) a policy of insurance that provides indemnity for professional liability claims; and

(b) another method, required under the regulations or by a professional governing body referred to in Section 51, of ensuring the availability of funds to pay professional liability claims against members of the profession;

“Nova Scotia LLP” means a partnership registered under Section 51 as a Nova Scotia limited liability partnership;

“partnership obligation” means any debt, obligation or liability of a partnership, other than debts, obligations or liabilities of partners as between themselves or as between themselves and the partnership;

“professional liability claim” means a claim against a partnership with respect to an act or omission of a partner occurring in the ordinary course of practising a profession in a Nova Scotia LLP or an extra-provincial LLP;

“Registrar” means the Registrar of Joint Stock Companies, and includes the Deputy Registrar of Joint Stock Companies. 2002, c. 37, s. 2; 2008, c. 64, s. 1.

Application of Part

49 This Part applies only to Nova Scotia LLPs and extra-provincial LLPs. 2002, c. 37, s. 2.

Effect on Part I

50 Part I is subject to this Part. 2002, c. 37, s. 2.

Nova Scotia LLP

51 (1) A partnership or two or more persons who have agreed to carry on business in a limited liability partnership may register as a Nova Scotia LLP under the *Partnerships and Business Names Registration Act* if

(a) they carry on business in the Province only for the purpose of practising a profession governed by an Act of the Legislature;

(b) the governing Act or a regulation under this Act permits the profession to be practised in a limited liability partnership; and

(c) the governing body of the profession or a regulation under this Act requires members who are partners in limited liability partnerships to maintain a minimum amount of liability insurance.

(2) The governing body of a profession that is permitted by the regulations to practise in limited liability partnerships is authorized to require members who are partners in such partnerships to maintain a minimum amount of liabil-

ity insurance, notwithstanding anything to the contrary or any lack of authority in the profession's governing Act.

(3) A limited partnership may not be registered as a limited liability partnership.

(4) The status of a partnership or group of persons as a Nova Scotia LLP takes effect on the day on which the Registrar issues a certificate of registration under the *Partnerships and Business Names Registration Act* and continues while the registration is in force or deemed to be in force under that Act. 2002, c. 37, s. 2.

Effect of registration as Nova Scotia LLP

52 Subject to any agreement between the partners, the registration of a partnership as a Nova Scotia LLP does not cause the dissolution of the partnership, and the Nova Scotia LLP continues as the same partnership that existed before the registration. 2002, c. 37, s. 2.

Notice of registration as Nova Scotia LLP

53 Without delay after being registered as a Nova Scotia LLP, a partnership shall send to all of its existing clients a notice advising of the registration and explaining in general terms the potential changes in liability of the partners that result from the registration. 2002, c. 37, s. 2.

Registered office of Nova Scotia LLP

54 (1) A Nova Scotia LLP shall at all times have a registered office in the Province.

(2) The registered office must be the business premises of the Nova Scotia LLP or of a person or firm that has agreed to act as the partnership's registered office.

(3) A Nova Scotia LLP shall ensure that its registered office is accessible to the public during normal business hours. 2002, c. 37, s. 2.

List of partners in Nova Scotia LLP

55 A Nova Scotia LLP shall keep at its registered office a list of the partners and shall, without delay, provide the following information without charge to any person who requests it:

(a) a list of the partners;

(b) a list of the persons who were partners in the Nova Scotia LLP on a date specified in the request. 2002, c. 37, s. 2.

Name of Nova Scotia LLP

56 (1) The name of a Nova Scotia LLP must end with the phrase "Limited Liability Partnership" or its abbreviation "LLP" or "L.L.P.", or with the phrase "société à responsabilité limitée" or its abbreviation "srl" or "s.r.l.".

(2) A Nova Scotia LLP shall not carry on business under a name other than its registered firm name. 2002, c. 37, s. 2.

Liability of partner for partnership and other partners

57 (1) Subject to subsections (2), (4) and (5), a partner in a Nova Scotia LLP is not individually liable, directly or indirectly, by means of indemnification, contribution, assessment or otherwise for

(a) debts, obligations or liabilities of the partnership or another partner that arise from the negligence, wrongful act or omission, malpractice or misconduct of

(i) another partner, or

(ii) an employee, agent or representative of the partnership,

occurring in the ordinary course of carrying on practice in a profession referred to in subsection 51(1) while the partnership is a Nova Scotia LLP; or

(b) any partnership obligation not referred to in clause (a).

(2) Subsection (1) does not operate to protect a partner from liability if

(a) the partner knew of the negligence, wrongful act or omission, malpractice or misconduct at the time it was committed and failed to take reasonable steps to prevent its commission; or

(b) the negligence, wrongful act or omission, malpractice or misconduct was committed by another partner or an employee, agent or representative of the partnership for whom the partner was responsible in a supervisory role.

(3) A partner in a Nova Scotia LLP is not a proper party to a proceeding by or against the partnership that claims relief in respect of negligence, wrongful acts or omissions, malpractice or misconduct described in subsection (1).

(4) The protection from liability given to a partner by subsection (1) does not protect the partner from claims against the partner's interest in the partnership property.

(5) The protection from liability given to a partner by subsection (1) does not protect the partner from liability for partnership obligations that arose before the partnership became a Nova Scotia LLP. 2002, c. 37, s. 2; 2008, c. 64, s. 2.

Personal liability

58 (1) Partners in a Nova Scotia LLP are personally liable for any partnership obligation for which they would be liable if the partnership were a corporation of which they were the directors.

(2) Where a corporation is a partner in a Nova Scotia LLP, the directors of the corporation are jointly and severally liable for any liability incurred by the corporation under subsection (1). 2002, c. 37, s. 2.

Extra-provincial LLP

59 A partnership formed under the laws of a jurisdiction outside the Province may register as an extra-provincial LLP under the *Partnerships and Business Names Registration Act* if it

(a) has the status of a limited liability partnership under the laws of a jurisdiction outside the Province; and

(b) consists of partners who practise a profession that partners in a Nova Scotia LLP may practise. 2002, c. 37, s. 2.

Effective date of status as extra-provincial LLP

60 The status of a partnership as an extra-provincial LLP takes effect on the day on which the Registrar issues a certificate of registration under the *Partnerships and Business Names Registration Act* and continues while the registration is in force or deemed to be in force under that Act. 2002, c. 37, s. 2.

Where not registered as extra-provincial LLP

61 A partnership that has the status of a limited liability partnership under the laws of a jurisdiction outside the Province shall be treated as an ordinary partnership with respect to rights and obligations that it acquires or incurs under Nova Scotia laws while carrying on business in the Province without being registered as an extra-provincial LLP under the *Partnerships and Business Names Registration Act*. 2002, c. 37, s. 2.

Notice of registration as extra-provincial LLP

62 (1) Without delay after being registered as an extra-provincial LLP, the partnership shall send all the existing clients of its Nova Scotia practice a notice advising of the registration and explaining in general terms the potential changes in liability of the partners that result from the registration.

(2) Where an extra-provincial LLP has sent a notice similar to the notice described in subsection (1) to all of its existing clients as a result of being registered as a limited liability partnership or an extra-jurisdictional limited liability partnership in another jurisdiction, the notice required by subsection (1) is only required to be sent to the partnership's existing clients in the Province. 2002, c. 37, s. 2.

Registered office of extra-provincial LLP

63 (1) An extra-provincial LLP shall at all times have a registered office in the Province.

(2) The registered office must be the business premises of the extra-provincial LLP or of a person or firm that has agreed to act as the partnership's registered office.

(3) An extra-provincial LLP shall ensure that its registered office is accessible to the public during normal business hours. 2002, c. 37, s. 2.

List of partners of extra-provincial LLP

64 An extra-provincial LLP shall keep at its registered office a list of the Nova Scotia partners and shall, without delay, provide the following information without charge to any person who requests it:

- (a) a list of the Nova Scotia partners;
- (b) a list of the persons who were Nova Scotia partners in the partnership on a date specified in the request, which must be after it was registered under the *Partnerships and Business Names Registration Act*, 2002, c. 37, s. 2.

Name of extra-provincial LLP

65 (1) The name of an extra-provincial LLP must contain the words and abbreviations required under the laws of its governing jurisdiction.

(2) An extra-provincial LLP shall not carry on business under a name other than its registered firm name. 2002, c. 37, s. 2.

Law governing and liability of extra-provincial LLP and its partners

66 (1) Except as provided in another Act or in subsections (2) to (4), the law of the governing jurisdiction of an extra-provincial LLP applies to

- (a) the organization and internal affairs of the partnership;
- and
- (b) the liability of the partners for debts, obligations and liabilities of or chargeable to the partnership.

(2) A Nova Scotia partner of an extra-provincial LLP has the same individual liability as a partner of a Nova Scotia LLP does for debts, obligations or liabilities arising from the partner's own negligence, wrongful act or omission, malpractice or misconduct.

(3) A Nova Scotia partner of an extra-provincial LLP has no greater protection against individual liability for debts, obligations or liabilities of the partnership or another partner described in subsection (4) than a partner of a Nova Scotia LLP would have against individual liability for similar debts, obligations or liabilities of the Nova Scotia LLP or another partner.

(4) The debts, obligations or liabilities referred to in subsection (3) are those arising from

- (a) the negligence, wrongful act or omission, malpractice or misconduct of another partner or an employee, agent or representative of the partnership about which the partner knew at the time of its commission and in respect of which the partner failed to take reasonable steps to prevent its commission; or
- (b) the negligence, wrongful act or omission, malpractice or misconduct of another partner or an employee, agent or representative of the partnership for whom the partner was responsible in a supervisory role.

(5) For the purpose of this Section, the governing jurisdiction for an extra-provincial LLP is the jurisdiction under the laws of which the partnership was formed. 2002, c. 37, s. 2.

Distribution of property of Nova Scotia LLP

67 (1) A Nova Scotia LLP shall not make a distribution of partnership property in connection with the winding up of its affairs unless all partnership obligations have been paid or satisfactory provision for their payment has been made.

(2) In circumstances other than in connection with the winding up of its affairs, a Nova Scotia LLP shall not make a distribution of partnership property if there are reasonable grounds to believe that after the distribution

(a) the partnership would be unable to pay its partnership obligations as they come due; or

(b) the value of the partnership property would be less than the partnership obligations.

(3) Subsections (1) and (2) do not prohibit a payment made as reasonable compensation for current services provided by a partner to the Nova Scotia LLP, to the extent that the payment would be reasonable if paid to an employee who was not a partner as compensation for similar services.

(4) A Nova Scotia LLP may base its determination of whether a distribution is prohibited by subsection (2)

(a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;

(b) on a fair valuation; or

(c) on another method that is reasonable in the circumstances. 2002, c. 37, s. 2.

Liability respecting contravention of Section 67

68 (1) A partner in a Nova Scotia LLP who receives a distribution contrary to Section 67 is liable to the partnership for

(a) the value of the property received by the partner; or

(b) the amount necessary to discharge partnership obligations that existed at the time of the distribution,

whichever is less.

(2) Any partners in a Nova Scotia LLP who authorize a distribution contrary to Section 67 are jointly and severally liable to the partnership for any amount for which a recipient is liable under subsection (1), to the extent that the amount is not recovered from the recipient.

(3) Proceedings to enforce a liability under this Section may be brought by the Nova Scotia LLP, any partner in the partnership or any person to

whom the partnership was obligated at the time of the distribution to which the liability relates.

(4) No proceedings to enforce a liability under this Section may be commenced later than two years after the date of the distribution to which the liability relates. 2002, c. 37, s. 2.

Successor partnership

69 (1) For the purpose of this Part, a new partnership is the successor partnership of an original partnership where

- (a) at a particular time, the original partnership is registered as a Nova Scotia LLP;
- (b) immediately after that time, a new partnership with different partners is carrying on the business of the original partnership;
- (c) one or more of the partners in the original partnership are members of the new partnership; and
- (d) there is an express or implied agreement between the partners in the original partnership and new partnership that the new partnership will assume all partnership obligations of the original partnership.

(2) A successor partnership is deemed to be the same partnership as the original partnership for the purpose of this Part and, without limiting the generality of the foregoing, is subject to all the partnership obligations of the original partnership. 2002, c. 37, s. 2.

Dissolution of Nova Scotia LLP

70 (1) When a Nova Scotia LLP dissolves and its affairs are to be wound up, the partnership maintains its status as a Nova Scotia LLP while its affairs are being wound up.

(2) A Nova Scotia LLP is deemed, for the purpose of this Section and subsection 67(1), to have dissolved and to be winding up its affairs if

- (a) the partnership ceases to carry on business; or
- (b) there is any change in the membership of the partnership and there is not a successor partnership within the meaning of Section 69.

(3) When a Nova Scotia LLP has dissolved and its affairs are being wound up, the Supreme Court of Nova Scotia may, on the application of any interested person, make any order with respect to the partnership that could be made with respect to a corporation under Section 43 of the *Companies Winding Up Act*. 2002, c. 37, s. 2.

Regulations

- 71** (1) The Governor in Council may make regulations
- (a) authorizing a profession that meets the requirements of clauses 51(1)(a) and (c) to be practised in limited liability partnerships;
 - (b) respecting the minimum amount of liability insurance that limited liability partnerships practising particular professions must maintain;
 - (c) respecting the content of notices required to be sent under Section 53 or 62;
 - (d) defining any word or expression used but not defined in this Act;
 - (e) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) The Governor in Council shall not make a regulation under clause (1)(b) in relation to a profession unless
- (a) the member of the Executive Council charged by the Governor in Council with the administration of this Act considers that the minimum amount of liability insurance required by the profession's governing body does not provide sufficient protection for clients of limited liability partnerships;
 - (b) the member of the Executive Council requests the governing body in writing to increase the minimum amount within a specified time; and
 - (c) the governing body does not increase the minimum amount.
- (3) A regulation made under clause (1)(b) takes precedence over a rule, bylaw or other requirement of a professional governing body respecting the minimum amount of liability insurance required for limited liability partnerships.
- (4) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2002, c. 37, s. 2.
-

CHAPTER P-5

**Partnerships and Business
Names Registration Act**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Sole proprietorship or partnership in reciprocating province	3
Certificate of registration required.....	4
Issue of certificate and restrictions on name.....	5
Declaration.....	6
Signing of declaration where partner absent.....	7
Signing of declaration where partners non-resident	8
Declaration and certificate of registration for LLP.....	9
Prohibition upon cancellation or revocation of certificate of registration of LLP.....	10
Registration and limited liability of limited partnership.....	11
Change in membership, name or member’s residence	12
Dissolution	13
Controverting allegation in declaration.....	14
Declarant deemed partner	15
Liability where partner undeclared	16
Liability where partnership undeclared.....	17
Names of partners required on bills and letters.....	18
Revocation of certificate of registration.....	19
Revocation of certificate of registration of LLP	20
Annual registration fee.....	21
Resident agent	22
Penalties	23
Condition for right of action by partnership	24
Certain activity not a carrying out of partnership	25
Recovery of penalty	26
Fees part of General Revenue Fund.....	27
Swearing of oath	28
Variation of form.....	29
Regulations.....	30

Short title

1 This Act may be cited as the *Partnerships and Business Names Registration Act*. R.S., c. 335, s. 1.

Interpretation

2 In this Act,
“extra-provincial LLP” has the same meaning as in the *Partnership Act*;
“Nova Scotia LLP” has the same meaning as in the *Partnership Act*;
“partnership” means a partnership, whatsoever its purposes or objects may be, except a partnership whose sole purpose or object is farming or fishing and except persons who solely as tenants in common own or operate

grist or sawmills, and includes a person who is engaged in business or otherwise for the purpose of gain and is not associated in partnership with any other person, but uses as the person's style in connection therewith some name or designation other than the person's own name or who, in such style, uses the person's own name with the addition of "and company" or some words or phrase indicating a plurality of persons;

"Registrar" means the Registrar of Joint Stock Companies, and includes the Deputy Registrar of Joint Stock Companies. R.S., c. 335, s. 2; 2002, c. 37, s. 3.

Sole proprietorship or partnership in reciprocating province

3 (1) This Act, other than Section 18, does not apply to a sole proprietorship where the sole proprietorship is registered pursuant to the laws of another province of Canada designated by the Governor in Council and the proprietor is ordinarily resident in that province of registration.

(2) This Act, other than Section 18, does not apply to a partnership, other than a sole proprietorship or an extra-provincial LLP, where the partnership is registered pursuant to the laws of another province of Canada designated by the Governor in Council and the partnership was formed in that province of registration.

(3) The Governor in Council may designate a province of Canada for the purpose of this Section where that province provides the equivalent exemption from registration to a partnership registered pursuant to this Act as provided by this Section.

(4) The exercise by the Governor in Council of the authority contained in subsection (3) is a regulation within the meaning of the *Regulations Act*. 1993, c. 34, s. 1; 1999, c. 4, s. 27; 2002, c. 37, s. 4.

Certificate of registration required

4 (1) No person shall as partner carry out in whole or in part in the Province any of the purposes or objects of the partnership or do any act, matter or thing as a partner, unless and until the partnership holds a certificate, called a certificate of registration, issued by the Registrar as hereinafter provided and unless the certificate of registration is in force.

(2) No person shall as an agent, clerk or servant of a partnership, knowing that the partnership does not hold a certificate of registration that is in force, carry out in whole or in part in the Province any purpose or object of the partnership or do any act, matter or thing in the Province as an agent, clerk or servant of the partnership. R.S., c. 335, s. 3.

Issue of certificate and restrictions on name

5 (1) The Registrar shall, unless it is otherwise in this Act provided, issue a certificate of registration to a partnership when the declaration hereinafter mentioned is filed.

(2) No partnership may be registered under a name identical with that of any other subsisting partnership or company incorporated or unincorporated or so nearly resembling the same as to be calculated to deceive except in a case

where such subsisting partnership or company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires, provided that this subsection shall not apply to a partnership that carries on business under the name or names of one or more of the partners.

(3) No partnership may be registered under a name that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of any member of the Royal Family or connection with the Government or any department thereof.

(4) The Registrar may refuse to register any partnership under a name that the Registrar considers to be objectionable.

(5) Where any partnership, through inadvertence or otherwise, is or has been registered by a name

(a) identical with that of any other subsisting company or partnership, incorporated or unincorporated, or that the Registrar considers so nearly to resemble the same as to be calculated to deceive, or that, without the consent of the Governor in Council, contains any words prohibited under subsection (3); or

(b) that the Registrar considers to be otherwise objectionable by reason of this Section or otherwise,

the first mentioned partnership must, upon the direction of the Registrar, change its name and, if any partnership fails to change its name within two months after being so directed, the Registrar may change its name to any name the Registrar considers to be unobjectionable, and upon the change being made, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case.

(6) Where any partner of a partnership feels aggrieved by the partnership having been directed by the Registrar to change its name, or by the Registrar having changed its name, the partner may apply to a judge of the Supreme Court of Nova Scotia and the judge, if satisfied that it is just to do so, may order that the name of the partnership not be changed, or that its former name be restored to the register, as the case may be, and the judge may, by the order, give such directions and make such provisions as seem just for placing the partnership and all persons in the same position, as nearly as may be, as if such direction had never been given or as if the name of the partnership had never been changed, or as the case may be, and when the former name of a partnership is so restored to the register, the Registrar shall issue a certificate of registration altered to meet the circumstances of the case. R.S., c. 335, s. 4; 2008, c. 65, s. 1.

Declaration

6 Before a certificate of registration is issued to a partnership, other than a Nova Scotia LLP or an extra-provincial LLP, under this Act there must be filed with the Registrar a declaration in writing, in accordance with the forms prescribed by the regulations, signed by the several members of such partnership. R.S., c. 335, s. 5; 1999, c. 4, s. 28; 2002, c. 37, s. 5.

Signing of declaration where partner absent

7 Where at the time of making the declaration required under Section 6 any member of the partnership is absent from the Province, the declaration must be signed by the members present, in their own names, and also in the name of any such absent member, under a special authority to that effect, and such special authority must be annexed to the declaration and filed therewith, provided that the Registrar may, before such authority is filed, issue a conditional certificate of registration to such partnership, which conditional certificate shall remain in force for a period not exceeding six months from the date of issue of such conditional certificate, further provided, that if such authority is filed with the Registrar at any time before the expiration of such six months period then such conditional certificate is thereupon cancelled and a new certificate of registration issued. R.S., c. 335, s. 6; 2002, c. 37, s. 6.

Signing of declaration where partners non-resident

8 Where the partners are resident out of the Province, and the partnership is represented in the Province by an attorney, agent or other representative, the declaration required under Section 6 may be signed by the attorney, agent or other representative, under special authority of the persons so associated, and the execution of such special authority must be verified on oath before a notary public and certified by the notary public, and such special authority must be annexed to the declaration and filed therewith and in such case the form of the declaration must be modified accordingly, provided, that the Registrar may, before such authority is filed, issue a conditional certificate of registration to such partnership, which conditional certificate remains in force for a period not exceeding six months from the date of issue of such conditional certificate, further provided, that if such authority is filed with the Registrar at any time before the expiration of such six months period, then such conditional certificate is thereupon cancelled and a new certificate of registration issued. R.S., c. 335, s. 7; 2002, c. 37, s. 7.

Declaration and certificate of registration for LLP

9 (1) A declaration to register as a Nova Scotia LLP must be in a form acceptable to the Registrar and must include

- (a) the name of the partnership;
- (b) a description of the profession the partners practise;
- (c) the name and civic address in the Province of the recognized agent required under Section 22;
- (d) the address of the registered office of the partnership in the Province;
- (e) a statement, from a person who is authorized by the governing body of the profession to provide it, certifying that
 - (i) the partnership and the partners meet all the applicable eligibility requirements for practice as a limited liability partnership that are imposed under the Act that regulates the profession, and
 - (ii) the partners have liability insurance in the form and amount that the governing body requires, as provided for in Section 51 of the *Partnership Act* or in regulations under that Act; and

(f) any other information required by the regulations under this Act.

(2) A declaration to register as an extra-provincial LLP must be in a form acceptable to the Registrar and must include

- (a) the name of the partnership;
- (b) a description of the profession the partners practise;
- (c) the name and civic address in the Province of the recognized agent required under Section 22;
- (d) the name of the governing jurisdiction of the partnership, as defined in Part II of the *Partnership Act*;
- (e) the address of the registered office of the partnership in the Province;
- (f) evidence satisfactory to the Registrar of the partnership's status as a limited liability partnership under the laws of the governing jurisdiction;
- (g) a statement, from a person who is authorized by the governing body of the profession to provide it, certifying that
 - (i) the partnership and the partners meet all the applicable eligibility requirements for practice as a limited liability partnership that are imposed under the Act that regulates the profession, and
 - (ii) the Nova Scotia partners have liability insurance in the same form and amount that the governing body requires of partners in a Nova Scotia LLP under Section 51 of the *Partnership Act* or in regulations under that Act; and
- (h) any other information required by the regulations under this Act.

(3) Where the Registrar has received a declaration and is satisfied that the Nova Scotia LLP or extra-provincial LLP meets the requirements of this Act and the regulations, the Registrar shall issue a certificate of registration to the limited liability partnership.

(4) The revocation of the certificate of registration of a Nova Scotia LLP affects only its registration as a limited liability partnership and does not dissolve the partnership.

(5) A Nova Scotia LLP shall, within 30 days after any change in the information mentioned in clauses (1)(a) to (f), file with the Registrar a declaration in a form acceptable to the Registrar stating the change and the effective date of the change.

(6) An extra-provincial LLP shall, within 30 days after any change in the information mentioned in clauses (2)(a) to (h), file with the Registrar a declaration in a form acceptable to the Registrar stating the change and the effective date of the change.

(7) Where the name of a limited liability partnership is changed, the Registrar may issue another certificate of registration reflecting the change.

(8) The registration of a Nova Scotia LLP or an extra-provincial LLP is not adversely affected by a change in the partners. 2002, c. 37, s. 8.

Prohibition on cancellation or revocation of certificate of registration of LLP

10 (1) No partner or partnership shall continue to hold the partnership out as being a Nova Scotia LLP or an extra-provincial LLP after the cancellation or revocation of its certificate of registration.

(2) No person shall purport to carry on business as a Nova Scotia LLP or an extra-provincial LLP, or as a partner in such a partnership, unless the partnership is registered in the Province as such.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000. 2002, c. 37, s. 8.

Registration and limited liability of limited partnership

11 (1) Any partnership registered as a limited partnership in accordance with the laws of the jurisdiction in which the partnership is formed may be registered under this Act upon the filing with the Registrar of

(a) the declaration by this Act prescribed, modified according to the circumstances;

(b) a copy of the partnership agreement; and

(c) a certificate of registration of the partnership in the jurisdiction in which the partnership was formed.

(2) Upon registration of such partnership under this Act, any partner whose liability is limited by the partnership agreement and by the law of the jurisdiction in which such partnership was formed is, while such liability remains so limited, entitled to the same or the like limitation of liability in the Province. R.S., c. 335, s. 8; 2000, c. 4, s. 29.

Change in membership, name or member's residence

12 (1) Whenever any change takes place in the membership of a partnership, a new declaration must be filed, stating such change and signed by all the members of the partnership as it is constituted after such change and, where the name of the partnership is changed, another certificate of registration must be issued accordingly.

(2) Sections 7 and 8 shall apply to a new declaration made pursuant to subsection (1).

(3) Whenever any change or alteration takes place in the name or style of a partnership or in the place of residence of any member of the partnership, a statement must be filed stating the change or alteration and signed by one or more members or by an attorney, agent or other person representing the partnership and another certificate of registration may be issued to accord with the change or alteration.

(4) This Section does not apply to a limited liability partnership. R.S., c. 335, s. 9; 2002, c. 37, s. 9.

Dissolution

13 Upon the dissolution of a partnership, any or all of the persons who composed the partnership may sign a declaration stating such dissolution and such declaration may be in the form or to the effect prescribed by the regulations. R.S., c. 335, s. 10.

Controverting allegation in declaration

14 (1) No allegation contained in any declaration made under this Act may be controverted by any person, who, either personally or by the person's specially authorized attorney, agent or representative, signed such declaration.

(2) Except as against the other members of the partnership in any such declaration mentioned, no allegation contained in any declaration made under this Act may be controverted by any person who was a member of such partnership at the time the declaration was made, but who has not signed the same. R.S., c. 335, s. 11.

Declarant deemed partner

15 Every person who has made and filed a declaration under Section 6 or 12 is deemed to continue as a member of the partnership as in the declaration stated, until the filing of a new declaration or a declaration of dissolution as in this Act provided. R.S., c. 335, s. 12.

Liability where partner undeclared

16 Nothing in this Act contained exempts from liability any person who, being a partner, fails to declare the same as already provided, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or such partners may be sued alone, and if judgment is recovered against them, any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which such judgment was obtained, nor is anything in this Act to be construed to affect the rights of any partners with regard to each other, except that no such declaration as aforesaid may be controverted by any signer thereof. R.S., c. 335, s. 13.

Liability where partnership undeclared

17 (1) Where any persons are associated in partnership and no declaration is filed under this Act with regard to such partnership, any action that might be brought against all the members of the partnership may also be brought against any one or more of the partners as such, without naming such others in the originating notice, under the name and style of their said partnership and if judgment is recovered against a partner or partners, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment was obtained.

(2) Any judgment obtained against any member of such existing partnership for a partnership debt or liability may be enforced by process against all and every partnership stock, property and effects in the same manner and to the same extent as if such judgment had been obtained against such partnership.

(3) Where any such action is founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action. R.S., c. 335, s. 14.

Names of partners required on bills and letters

18 In all cases of partnership the name or names of the persons composing the partnership must be distinctly written or printed on all the billheads and letterheads used by the partnership. R.S., c. 335, s. 15.

Revocation of certificate of registration

19 (1) Where any partnership holding a certificate of registration fails to comply with any of the requirements of this Act or if it executes and files with the Registrar a declaration of dissolution or if it requests that its certificate of registration be revoked, the Registrar may revoke the certificate of registration and shall then cause notice of such revocation to be published in the Royal Gazette.

(2) Where a certificate of registration is so revoked, the Registrar may withhold the issue of another certificate of registration with respect to such partnership until it complies with all or any of the requirements of this Act with respect to which it is in default and until it pays to the Registrar for such certificate of registration a fee the amount of which is determined in the same way as that hereinafter provided with respect to annual registration fees. R.S., c. 335, s. 16.

Revocation of certificate of registration of LLP

20 (1) Without limiting the generality of subsection 19(1), the Registrar may revoke the certificate of registration of a Nova Scotia LLP or an extra-provincial LLP if

(a) the partnership files with the Registrar a request in a form acceptable to the Registrar that the certificate of registration be revoked; or

(b) the Registrar receives a notice

(i) from a person who is authorized by the governing body of the applicable profession in the Province to provide the notice, stating that

(A) the partnership or one or more of the partners no longer meets all the applicable eligibility requirements for practice as a limited liability partnership that are imposed under the Act regulating the profession, or

(B) one or more of the partners no longer has liability insurance in the form and amount that the governing body requires, as provided for in Section 51 of the *Partnership Act* or in regulations under that Act, or

(ii) from the regulatory official or body in an extra-provincial LLP's governing jurisdiction, stating that

(A) the partnership no longer has the status of a limited liability partnership in that jurisdiction, or

(B) one or more of the partners no longer has liability insurance in the form and amount that the governing body requires, as referred to in subclause 9(2)(g)(ii).

(2) Before revoking the certificate of registration of a Nova Scotia LLP or an extra-provincial LLP under subsection 19(1) or clause (1)(b), the Registrar shall

(a) give the limited liability partnership at least 30 days notice of the intended revocation; and

(b) publish notice of the intended revocation in the manner set out in the regulations.

(3) The Registrar shall not revoke the certificate of registration if the Nova Scotia LLP or extra-provincial LLP remedies the default before the expiration of the period mentioned in the notice referred to in clause (2)(a).

(4) Revocation of the certificate of registration of a Nova Scotia LLP affects only its registration as a limited liability partnership and does not dissolve the partnership. 2002, c. 37, s. 10.

Annual registration fee

21 (1) Every partnership holding a certificate of registration shall, in each year in the month in which the anniversary of its first registration occurs, pay to the Registrar a fee called an “annual registration fee” as set by the Governor in Council.

(2) The exercise of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

(3) Where any such partnership makes default in paying any annual registration fee that is due and payable by it as aforesaid, each member of the partnership is liable to a penalty not exceeding \$100. R.S., c. 335, s. 17; 1993, c. 34, s. 2.

Resident agent

22 (1) Every partnership holding a certificate of registration shall appoint and have a recognized agent resident within the Province service upon whom of any writ, summons, process, notice or other document is deemed to be sufficient service upon the partnership and each member thereof.

(2) Where any partnership fails to appoint and have such agent, each member thereof is liable to a penalty not exceeding \$100.

(3) A statement showing the name and address of such agent, and a statement showing any change of such agent, or of the agent’s address, must be filed with the Registrar, and until such statement is so filed, a partnership is deemed not to have complied with this Section with respect to appointing and having such agent.

(4) Where a partnership has no such agent, or the agent cannot be found or the agent is absent, any writ, summons, process, notice or other document

may be served on any partner or on any employee of the partnership, or in case there is no such employee or a partner cannot be found or is absent, may be posted in a conspicuous place on any land or building owned or occupied by the partnership, and such service or posting is deemed to be sufficient service upon the partnership and each member thereof.

(5) This Section does not apply to a person who, being a resident of the Province, is not associated in partnership with any other person and who uses as the person's style in connection with the person's business a name or designation other than the person's own name or who in such style uses the person's own name with the addition of "and company" or some word or phrase indicating a plurality of persons.

(6) Notwithstanding subsection (5), a person referred to in subsection (5) shall file with the Registrar such information as is prescribed by the regulations. R.S., c. 335, s. 18; 1990, c. 15, s. 81.

Penalties

23 (1) Where any person, as a partner, carries out in whole or in part in the Province, any of the purposes or objects of the partnership or does any act, matter or thing as a partner, whilst the partnership does not hold a certificate of registration that is in force, such person is liable to a penalty of \$50 for every day on which the person so carries out in the Province any of the purposes or objects of the partnership.

(2) Where any person, as an agent, clerk or servant of a partnership, carries out in whole or in part in the Province any purpose or object of the partnership or does any act, matter or thing in the Province as an agent, clerk or servant of the partnership, such person is liable to a penalty of \$50 for every day on which the person so carries out in the Province any purpose or object of the partnership or does any act, matter or thing in the Province as an agent, clerk or servant of the partnership unless the person proves that the person had no knowledge that the partnership did not hold a certificate of registration that was in force. R.S., c. 335, s. 19.

Condition for right of action by partnership

24 Unless and until a partnership holds a certificate of registration that is in force, the partnership or the members thereof are not capable of bringing or maintaining any action, suit or other proceeding in any court in the Province with respect to any contract made in whole or in part in the Province in connection with any of the purposes or objects of the partnership carried out in the Province whilst it did not hold a certificate of registration that was in force provided that in the event of a certificate of registration having been cancelled owing to the dissolution of the partnership, the members of such partnership are capable of bringing and maintaining an action, suit or other proceeding in any court in the Province with respect to any contract at any time made by the partnership in the same manner and as effective to all intents and purposes as if this Act had not been passed. R.S., c. 335, s. 20.

Certain activity not a carrying out of partnership

25 (1) It is not deemed a carrying out in whole or in part of any of the purposes or objects of a partnership within the meaning of this Act, if a partnership merely takes orders for or buys or sells goods, wares or merchandise by travellers or by correspondence, but has no traveller, agent or representative resident in the Prov-

ince or no office or warehouse in the Province to carry out in whole or in part any of the purposes or objects of the partnership.

(2) The onus of proving that a partnership has no such traveller, agent or representative resident in the Province, and no such office or warehouse in the Province, and has not carried out in whole or in part in the Province any of the purposes or objects of the partnership within the meaning of this Act, and holds a certificate of registration that is in force, is in any prosecution or other proceeding for an offence against this Act upon the defendant. R.S., c. 335, s. 21.

Recovery of penalty

26 (1) The penalties imposed by this Act are recoverable only by action at the suit of or brought with the written consent of the Attorney General or upon summary conviction with the like consent.

(2) Any pecuniary penalty prescribed for the violation of this Act when recovered, belongs to the Province and must be paid to the Minister of Finance and Treasury Board. R.S., c. 335, s. 22.

Fees part of General Revenue Fund

27 All fees paid to the Registrar in pursuance of this Act form part of the General Revenue Fund. R.S., c. 335, s. 23.

Swearing of oath

28 (1) All oaths to be taken and all declarations to be declared to under this Act may be sworn and declared to before any notary public, commissioner or barrister of the Supreme Court of Nova Scotia, justice of the peace or other officer authorized by law to take affidavits and declarations.

(2) This Section is to be read and construed and applies as if it had been enacted on July 1, 1921. R.S., c. 335, s. 24.

Variation of form

29 A form prescribed pursuant to subsection 30(1) may be varied by the Registrar.

Regulations

- 30 (1) The Governor in Council may make regulations
- (a) respecting the imposition of terms on the registration of a Nova Scotia LLP or an extra-provincial LLP, including authorizing the Registrar to impose terms;
 - (b) prescribing information that is required to be provided to the Registrar under this Act;
 - (c) respecting the making of declarations under this Act;
 - (d) respecting the manner of publication of notices of intended revocation of the certificate of registration of a Nova Scotia LLP or an extra-provincial LLP;

- (e) defining any word or expression used but not defined in this Act;
- (f) prescribing forms for the purpose of this Act;
- (g) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The forms contained in the Schedules to Chapter 335 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Act.

(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*. 1990, c. 15, s. 81; 2002, c. 37, s. 11.

CHAPTER P-6

**An Act to Reduce Administrative Barriers
to the Provision of Healthcare**

Table of Contents

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

	Section
Short title.....	1
Purpose.....	2
Interpretation.....	3
Act prevails.....	4
Waiver of requirements.....	5
No charge or fee.....	6
Expanded scope of practice.....	7
Regulations.....	8

Short title

1 This Act may be cited as the *Patient Access to Care Act*. 2023, c. 3, s. 1.

Purpose

2 The purpose of this Act is to improve patient access to care by further opening the Province to out-of-province health professionals, ensuring all health professionals can work to the full extent of their training and continuing the reduction of administrative burdens in healthcare, including incenting companies to reduce their administrative demands on health professionals. 2023, c. 3, s. 2.

Interpretation

3 In this Act,

“authority” means any college, board, committee, registrar or other person or body responsible for making decisions respecting the registration, licensing or renewal of registration or licensing of a regulated health profession;

“expanded scope of practice area” means an area of practice for a particular regulated health profession that is not provided for in the enactment listed in the definition of “regulated health profession” for that profession but that is within a practitioner’s professional competence;

“practitioner” means a person who practises a regulated health profession;

“regulated health profession” means a health profession regulated under

- (a) the *Audiologists and Speech-Language Pathologists Act*;
- (b) the *Chiropractic Act*;

- (c) the *Counselling Therapists Act*;
- (d) the *Dental Act*;
- (e) the *Dental Hygienists Act*;
- (f) the *Dental Technicians Act*;
- (g) the *Denturists Act*;
- (h) the *Dietitians Act*;
- (i) the *Dispensing Opticians Act*;
- (j) the *Medical Act*;
- (k) the *Medical Imaging and Radiation Therapy Professionals Act*;
- (l) the *Medical Laboratory Technology Act*;
- (m) the *Midwifery Act*;
- (n) the *Nursing Act*;
- (o) the *Occupational Therapists Act*;
- (p) the *Optometry Act*;
- (q) the *Paramedics Act*;
- (r) the *Pharmacy Act*;
- (s) the *Physiotherapy Act*;
- (t) the *Psychologists Act*; or
- (u) the *Respiratory Therapists Act*. 2023, c. 3, s. 3.

Act prevails

4 In the event of a conflict between this Act and any other enactment, this Act prevails. 2023, c. 3, s. 4.

Waiver of requirements

5 (1) Where an authority receives an application from a practitioner licensed in another province of Canada, the authority shall waive any requirement for registration, licensing or renewal of registration or licensing, in accordance with the *Fair Registration Practices Act*, the *Canadian Free Trade Agreement Implementation Act* or any agreement entered into between the Government and the government of that other province of Canada.

(2) An authority shall waive any requirement for registration, licensing or renewal of registration or licensing for any applicant who is registered or licensed and who is in good standing in any jurisdiction prescribed by the regulations.

(3) Where an applicant is eligible for a waiver under subsection (1) or (2), an authority shall issue a licence and any other approval issued by that authority required to practise in the Province within five business days following receipt by the authority of a completed application.

(4) An authority may waive any requirement for registration, licensing or renewal of registration or licensing if the authority determines it is in the public interest to do so. 2023, c. 3, s. 5.

No charge or fee

6 An authority may not charge any fee respecting an application for registration or licensing if the applicant is currently registered and licensed in the same profession in another province of Canada or any other jurisdiction prescribed by the regulations. 2023, c. 3, s. 6.

Expanded scope of practice

7 A practitioner may practise in an expanded scope of practice area within the practitioner's profession if permitted by the regulations. 2023, c. 3, s. 7.

Regulations

8 (1) Where in the opinion of the Governor in Council it is in the public interest, the Governor in Council may make regulations

(a) respecting expanded scope of practice areas, including setting out areas of practice that are to be included in an expanded scope of practice for a regulated health profession;

(b) permitting practitioners to practise in expanded scope of practice areas;

(c) permitting an authority to prescribe requirements for practice in an expanded scope of practice area, including requirements for qualifications, experience or examination;

(d) prescribing jurisdictions for the purpose of subsection 5(2) and Section 6;

(e) respecting requests from any company, employer, association, organization or person who is not a healthcare provider or patient that require a practitioner to complete forms and setting fees payable by the requesting company, employer, association, organization or person for the completion of those forms;

(f) expanding the scope of any regulated health profession to include additional healthcare professionals who are not within the scope of another regulated health profession;

(g) defining any term used but not defined in this Act;

(h) further defining any term defined in this Act;

(i) 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) A regulation made under this Act may apply to all regulated health professions, to a class of regulated health professions or to a particular regulated health profession and there may be different regulations for different regulated health professions or classes of regulated health professions.

(3) The Governor in Council shall consult with any relevant regulated health profession before making a regulation under subsection (1).

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2023, c. 3, s. 8.

CHAPTER P-7

**An Act to Improve Patient Safety
and Health Systems Accountability**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Supervision of Act.....	3
Reporting in accordance with protocols.....	4
Regulations.....	5

Short title

1 This Act may be cited as the *Patient Safety Act*. 2012, c. 13, s. 1.

Interpretation

2 In this Act, “health authority” has the same meaning as in the *Health Authorities Act*. 2014, c. 32, s. 148.

Supervision of Act

3 The Minister of Health and Wellness is responsible for the general supervision and management of this Act. 2012, c. 13, s. 3.

Reporting in accordance with protocols

4 (1) A health authority shall compile and report hand-hygiene adherence rates in accordance with a protocol established by the regulations.

(2) A health authority shall compile and report other patient-safety indicators prescribed by the regulations in accordance with protocols established by the regulations. 2012, c. 13, s. 4; 2014, c. 32, s. 149.

Regulations

5 (1) The Governor in Council may make regulations

- (a)** establishing a protocol for health authorities with respect to hand-hygiene adherence, including requirements for health authorities to compile and report hand-hygiene adherence rates;
- (b)** prescribing other patient-safety indicators for the purpose of this Act;
- (c)** establishing protocols for health authorities with respect to other patient-safety indicators, including requirements for health authorities to compile and report with respect to those indicators;

(d) governing the form and manner of reporting for the purpose of this Act;

(e) adopting or incorporating by reference, in whole or in part or with modifications, a written standard, protocol, rule, regulation, guideline, code or document as it reads on a date prescribed by the regulations or as it is amended from time to time;

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

(g) 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*. 2012, c. 13, s. 5; 2014, c. 32, s. 150.

CHAPTER P-8

**An Act Relating to the Disposal
of Articles Abandoned by Patients
in Hospitals and Other Institutions**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Lien.....	3
Notice to patient or next of kin and Public Trustee.....	4
If address of patient unknown.....	5
Failure to claim property.....	6

Short title

1 This Act may be cited as the *Patients Abandoned Property Act*. R.S., c. 336, s. 1.

Interpretation

2 In this Act,

“institution” means a hospital to which the *Hospitals Act* applies, a municipal home, a psychiatric facility under the *Involuntary Psychiatric Treatment Act*, a nursing home licensed under the *Homes for Special Care Act*, a residential care facility licensed under the *Homes for Special Care Act* or an institution for the care or treatment of ill, infirm or aged persons that is operated or supported by the Province or by a regional municipality, town or municipality of a county or district;

“patient” includes a person who was cared for or treated in an institution;

“personal property” includes money, securities for money, records, papers and documents;

“superintendent” includes the person in charge of an institution. R.S., c. 336, s. 2; 2005, c. 42, s. 88.

Lien

3 (1) Where a patient ceases to be a patient or dies in an institution and leaves personal property in the institution, the operator of the institution has a lien on the property for any amount owing to the operator by the patient for services rendered to the patient.

(2) If the property left in the institution is not claimed by the patient or if the patient is deceased, not claimed by the patient’s personal represent-

ative or a person claiming through the patient, then the superintendent shall deliver the property of the patient to the Public Trustee. R.S., c. 336, s. 3.

Notice to patient or next of kin and Public Trustee

4 (1) Before dealing with or disposing of the property of a patient under this Act, the superintendent of the institution shall by registered post or personal service give to the patient or the patient's next of kin at the address shown on the records of the institution or to the personal representative of the patient notice that the superintendent proposes to deal with or dispose of the property pursuant to this Act unless within one month after the posting or service of the notice some person establishes the person's right to the property.

(2) A notice given under this Section must contain the name of the patient, a description of the property, the amount, if any, owing to the operator of the institution and such other information as the superintendent considers advisable.

(3) Where the superintendent gives a notice as required by subsection (1), a copy of that notice must be given to the Public Trustee as if the Public Trustee were the patient or the next of kin. R.S., c. 336, s. 4.

If address of patient unknown

5 Where the whereabouts of the patient, the patient's next of kin and the patient's personal representative are unknown to the superintendent and after all reasonable inquiries it is found that subsection 4(1) cannot be complied with, the superintendent, without effecting service of the notice required by that subsection, shall deliver the property of the patient to the Public Trustee to be dealt with by the Public Trustee in accordance with the provisions of the *Public Trustee Act*. R.S., c. 336, s. 5.

Failure to claim property

6 Where no person establishes a right to the property of the patient within one month after the posting or service of the notice referred to in subsection 4(1) then the superintendent shall deliver the property to the Public Trustee to be dealt with by the Public Trustee in accordance with the *Public Trustee Act* and for the purpose of that Act the patient is deemed to be a missing person. R.S., c. 336, s. 6.

CHAPTER P-9

**An Act Respecting
Pawning of Certain Articles**

Table of Contents

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

	Section
Short title.....	1
Prohibited activity.....	2
Penalty.....	3

Short title

1 This Act may be cited as the *Pawning of Service Emblems Act*. R.S., c. 347, s. 1.

Prohibited activity

2 No person shall take in pawn from any other person any naval or military medal, badge, decoration or order. R.S., c. 347, s. 2.

Penalty

3 Any person violating this Act is liable to a penalty of not more than \$50 and not less than \$20. R.S., c. 347, s. 3.

CHAPTER P-10

**An Act Respecting the Payment
of Money into and out of Court**

Table of Contents

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

	Section
Short title.....	1
Deposit of money paid into court.....	2
Payment out of court to person entitled	3
Payment out of court to Minister of Finance and Treasury Board.....	4

Short title

1 This Act may be cited as the *Payment into Court Act*. R.S., c. 338, s. 1.

Deposit of money paid into court

2 (1) When money is paid into court under an order of the Supreme Court of Nova Scotia or under an order of a judge of the court, or by virtue of any statute, municipal ordinance, resolution or bylaw, or otherwise, the prothonotary shall deposit the same, to bear interest, in a chartered bank having an office in the city or town where the office of such prothonotary is situate.

(2) Where a prothonotary makes a deposit under subsection (1), the prothonotary shall

(a) make it in a trust account and maintain a record of the cause or matter to which the deposit relates; or

(b) make the deposit in a separate account relating to the cause or matter and file a deposit receipt with the documents in the cause or matter. R.S., c. 338, s. 2; 2005, c. 8, s. 17.

Payment out of court to person entitled

3 When money in court that has been paid in as aforesaid is paid out to the person or persons entitled thereto, the bank interest accrued thereon must also be paid out by the prothonotary to such person or persons, subject to a deduction by the prothonotary of 6.32% on the bank interest as compensation for handling and investing the money paid into court. R.S., c. 338, s. 4; 2004, c. 3, s. 29; 2007, c. 9, s. 33; 2011, c. 8, s. 18; 2013, c. 3, s. 11; 2015, c. 6, s. 41.

Payment out of court to Minister of Finance and Treasury Board

4 Notwithstanding any Act of the Legislature or any order or rule of any court, whenever money has been paid into court and has remained in court for a period of five years, the money, with accrued interest, must be paid to the Minister of Finance and Treasury Board and may be used for the purposes of the Province,

except that the Minister of Finance and Treasury Board shall account for the money and pay out the money as if it were held by the court. 2005, c. 8, s. 18.

CHAPTER P-11

**An Act to Create a Peggy’s Cove
Preservation Area and to Establish
a Peggy’s Cove Commission**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Peggy’s Cove Preservation Area.....	3
Peggy’s Cove Commission.....	4
Personnel.....	5
Annual estimate.....	6
Purpose and bylaws.....	7
Approval of bylaw.....	8
Notice of proposed bylaw or amendment.....	9
Accompanying documents.....	10
Filing of bylaw.....	11
Appeal from refusal of building permit.....	12
Bylaw deemed made when filed.....	13
Offence and penalty.....	14
Right of action.....	15
Certified copy as evidence.....	16
Conflict.....	17

Short title

1 This Act may be cited as the *Peggy’s Cove Commission Act*. R.S., c. 339, s. 1.

Interpretation

2 In this Act, unless the context otherwise requires,
“Area” means the Peggy’s Cove Preservation Area;
“Commission” means the Peggy’s Cove Commission;
“Minister” means the Minister of Economic Development. R.S., c. 339, s. 2; 1994-95, c. 14, s. 1.

Peggy’s Cove Preservation Area

3 (1) The Governor in Council may designate an area in the Halifax Regional Municipality that includes Peggy’s Cove as the Peggy’s Cove Preservation Area, and while the designation is in effect the provisions relating to the erection, use, occupancy, construction, alteration, repair, destruction or demolition of buildings contained in a bylaw, municipal planning strategy or a land-use bylaw or in the *Municipal Government Act* or any other Act do not apply to the Area.

(2) A copy of the order designating the Area must be published in the Royal Gazette.

(3) The Minister, with the approval of the Governor in Council, may purchase, expropriate or otherwise acquire land within the Area.

(4) Any land that the Minister considers necessary to acquire within the Area is deemed to be land required for a public purpose within the meaning of the *Expropriation Act*. R.S., c. 339, s. 3.

Peggy's Cove Commission

- 4 (1) The Peggy's Cove Commission consists of
- (a) the municipal councillor for the polling district that includes Peggy's Cove;
 - (b) one representative of the Department of Economic Development;
 - (c) the Provincial Director of Planning for the Province;
- and
- (d) not more than four additional members appointed by the Governor in Council, three of whom are residents of the Area.

(2) Each member of the Commission appointed by the Governor in Council holds office for such term as is prescribed by the member's appointment.

(3) A member of the Commission who is a member by virtue of the member's position or office ceases to be a member when the member ceases to hold that position or office.

(4) The Governor in Council may designate one member of the Commission to be the Chair and one member to be the Vice-chair.

(5) The remuneration, if any, of the members of the Commission shall be determined by the Governor in Council.

(6) For administrative purposes, the Commission is deemed to be part of the Department of Economic Development. R.S., c. 339, s. 4; 1994-95, c. 14, s. 2.

Personnel

5 All or any employees required by the Commission to perform its functions must be appointed in accordance with the *Civil Service Act*. R.S., c. 339, s. 5.

Annual estimate

6 In January of each year the Commission shall submit to the Minister estimates of its expenditures for the next fiscal year. R.S., c. 339, s. 6.

Purpose and bylaws

7 (1) The purpose of the Commission is to preserve the unique scenic beauty, character and atmosphere of the Area for the enjoyment of both residents and visitors.

(2) The Commission may make bylaws, the provisions of which may be shown in plan form,

(a) designating districts of the Area within which it is lawful to erect, construct, alter, reconstruct, repair or maintain designated types of buildings or to carry on designated businesses, trades or callings;

(b) designating districts of the Area within which it is unlawful to erect, construct, alter, reconstruct, repair or maintain designated types of buildings or to carry on designated businesses, trades or callings;

(c) designating the purposes for which buildings may not be used, occupied, erected, constructed, altered, reconstructed or repaired, or land used, or designating the class of use which only is permitted;

(d) controlling the architectural design, character or appearance of any or all buildings proposed to be erected within the Area;

(e) regulating the erection, construction, alteration or repair of buildings within the Area, including the location, foundation, material to be used, construction of chimneys, sewage, plumbing, heating, roofing, windows and doors and all other matters and things necessary, expedient or desirable to guard against fire, to provide for the safety and health of the occupants and of the public generally and to improve the general appearance of the Area, and prohibiting the erection, construction, alteration or repair of buildings contrary to the said bylaws and providing for the demolition or removal of the buildings that may be erected, constructed, altered or repaired contrary to the said bylaws;

(f) regulating and licensing camps, parks, tracts or areas of land, and any facilities maintained, offered or used for camping or trailers, including all buildings used or intended to be used as part of the equipment thereof;

(g) providing for and authorizing the appointment of a building inspector and requiring any person to obtain a permit from the building inspector before erecting, constructing, altering or repairing any building, or changing the use or occupancy thereof, within the Area;

(h) in respect of any other matter or thing considered necessary by the Commission to the carrying out of its purpose. R.S., c. 339, s. 7; 1994-95, c. 14, s. 3.

Approval of bylaw

8 (1) Every bylaw made by the Commission under the authority of this Act, or the amendment or repeal of a bylaw, is subject to the approval of the Minister, and when so approved has the force of law.

(2) Notwithstanding the approval of a bylaw as aforesaid, the Minister may subsequently revoke approval of the same or a part thereof, and after

such revocation such bylaw or the part in respect of which approval is revoked, as the case may be, is deemed to be repealed.

(3) Two copies of every bylaw made by the Commission under the provisions of this Act, or the amendment or repeal of a bylaw, must be transmitted to the Minister. R.S., c. 339, s. 8.

Notice of proposed bylaw or amendment

9 (1) The Commission, before making, amending or repealing a bylaw, shall give notice of its intention to do so by advertisement inserted at least once a week for two successive weeks in a newspaper circulating in the Area, the first of such notices to be published at least three clear weeks before the date fixed for the hearing of objections.

(2) The notice must state

(a) a place where, and the hours during which, the bylaw may be inspected by any interested person; and

(b) the time and place set for hearing by the Commission of objections to the bylaw.

(3) The Commission shall make suitable provision for inspection of the proposed bylaw by interested persons and shall, before making, amending, or repealing the bylaw, consider all objections thereto made at such hearing. R.S., c. 339, s. 9.

Accompanying documents

10 The application to the Minister for approval of a bylaw, or the amendment or repeal of a bylaw, must be accompanied by

(a) proof of compliance with the requirements of Section 9; and

(b) a report of all objections to the bylaw submitted to the Commission by interested persons. R.S., c. 339, s. 10.

Filing of bylaw

11 A bylaw made by the Commission and approved by the Minister must be filed in the office of the Registrar of Deeds for the Registration District of the County of Halifax. R.S., c. 339, s. 11.

Appeal from refusal of building permit

12 (1) Any person dissatisfied with the refusal of the building inspector to issue a permit may appeal to the Commission, and the Commission may confirm the refusal of the building inspector or may order the building inspector to issue a permit.

(2) The building inspector, if so ordered by the Commission, shall issue a permit. R.S., c. 339, s. 12.

Bylaw deemed made when filed

13 (1) For the purposes of this Section, a bylaw is deemed to be made by the Commission when it is filed in the office of the Registrar of Deeds pursuant to Section 11.

(2) Any building lawfully under construction at the time when a bylaw is made by the Commission is, for the purpose of that bylaw, deemed to be a building existing at the time of the making of the bylaw.

(3) The lawful use of premises existing at the date of the making of the bylaw by the Commission, although such use does not conform to the provisions of the bylaw, may be continued, but, if such non-conforming use is discontinued, any future use of those premises must be in conformity with the provisions of the bylaw.

(4) The lawful use of a building existing at the time of the making of a bylaw by the Commission, although such use does not conform to the provisions of the bylaw, may be extended throughout the building, but no structural alterations except those required by statute or bylaw may be made therein while such use continues.

(5) Where no structural alterations are made in a building of a non-conforming use, such use may be changed to a use of similar character, with the consent of the Commission.

(6) A change of tenants or occupants of any premises or building does not affect the use of the premises or building within the meaning of this Section.

(7) If any building, that is by this Act deemed to be a building existing at the time of the making of a bylaw of the Commission, is damaged or destroyed by fire or other causes to an extent of more than 50% of the value of the building above its foundations and if at the time of its damage or destruction the use thereof is not in conformity with the provisions of the bylaw, the non-conforming use must not be continued in respect of the building upon its repair, rebuilding or reconstruction without the approval of the Commission. R.S., c. 339, s. 13.

Offence and penalty

14 Every person who violates a provision of the bylaws is guilty of an offence against this Act and liable upon summary conviction to a penalty of not more than \$50, and in default of payment to imprisonment for a term of not more than 25 days. R.S., c. 339, s. 14.

Right of action

15 (1) In the event of any contravention of or failure to comply with the provisions of this Act or a bylaw made pursuant to this Act, the Commission may bring, in the Supreme Court of Nova Scotia, an action or other legal proceeding in respect thereof for any or all of the remedies provided by this Section.

(2) The Court or a judge thereof may hear and determine the same at any time, and in addition to any other remedy or relief, may

(a) make orders, restraining the continuance or repetition of such contravention or failure and the new or further contravention or failure in respect of the same land, building or structure;

(b) make orders directing the removal or destruction of the building or structure, or the part thereof, that is in contravention of or fails to comply with the bylaws and authorizing the Commission or its agents, if any such order is not complied with, to enter upon the land and premises with necessary workers and equipment and to remove and destroy the building or structure or part thereof at the expense of the owner;

(c) make such further order as to the recovery of the expense of any such removal and destruction, and to enforce the bylaw, and as to costs as the Court or a judge considers proper,

and any such order may be interlocutory, interim or final.

(3) In the event of a new or continuing offence by the same person against the bylaw after such action or other legal proceeding has been commenced, it is not necessary to bring any other action or proceeding but the action or proceeding already begun and any pleading therein may be amended from time to time and at any time before final judgment so as to include such new or continuing offences, and the Court or judge shall hear, deal with and determine the whole matter of such violations.

(4) Where the owner of any building or structure in respect of which any such contravention or failure to comply is taking place or has taken place cannot be found, the Commission may post or cause to be posted upon such building or structure a notice of such contravention or failure to comply and of the intention to take action or proceedings in respect thereof and after the expiration of 10 days from the first day of such posting an action or proceeding in respect thereof may be had and taken *ex parte* and the last person appearing in the records of the office of the Registrar of Deeds for the Registration District of the County of Halifax, as the owner thereof, may be named as the defendant. R.S., c. 339, s. 15.

Certified copy as evidence

16 The production in any court of a bylaw made under the provisions of this Act purporting to be certified under the hand of the Chair or Vice-chair of the Commission to be a true copy of a bylaw made by the Commission and approved by the Minister, without proof of the official character of the said Chair or the said Vice-chair, as the case may be, must be received in evidence and is sufficient evidence of such bylaw. R.S., c. 339, s. 16.

Conflict

17 In the event of conflict between this Act, or a bylaw made pursuant to this Act, and any other Act or bylaw, this Act or the bylaw made pursuant to it prevails. R.S., c. 339, s. 17.

CHAPTER P-12

An Act Respecting Pension Benefits

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Deemed province of employment.....	3
Application of Act	
Application to pension plans.....	4
More advantageous plans.....	5
Designated multi-jurisdictional pension plans.....	6
Administration of Act	
Supervision of Act and regulations.....	7
Powers of Minister.....	8
Agreements with designated jurisdictions.....	9
Status of agreement.....	10
Superintendent and other personnel.....	11
Experts.....	12
Duties of Superintendent.....	13
Delegation by Superintendent.....	14
Surveys, research and information.....	15
Registration and Administration of Pension Plans	
Requirement for certificate or acknowledgement.....	16
Where registration refused or revoked.....	17
Who may administer.....	18
Application for registration.....	19
Content of pension plan documents.....	20
Accrual, computation and allocation formula.....	21
Application for registration of amendment.....	22
Effective date of amendment.....	23
Amendment void.....	24
Acknowledgement of application.....	25
Certificate of registration.....	26
Notice of registration.....	27
Refusal and revocation of registration.....	28
Amendment of existing plans.....	29
Administration of plan and fund.....	30
Annual returns.....	31
Reciprocal transfer agreement.....	32
Care, diligence, knowledge and skill required.....	33
Payment of administrative fees and expenses.....	34
Information from employer.....	35
Advisory committee.....	36
Record Keeping and Disclosure of Information	
Duty to retain records.....	37
Information for member.....	38
Notice of pension plan amendments.....	39
Annual statement.....	40
Information upon ceasing to be a member.....	41
Persons entitled to information.....	42

Inspection of filed documents.....	43
Authority to use electronic transmission	44
Membership	
Eligibility for membership.....	45
Continuation as member of the plan	46
Drop in earnings or hours of employment.....	47
Order to accept employee	48
Separate pension plan	49
Retirement and Vesting	
Normal retirement age	50
Phased retirement option	51
Deferred pension for part service	52
Deferred pension.....	53
Termination of membership.....	54
Benefits	
Minimum commuted value.....	55
Defined contribution benefits	56
Target benefits.....	57
Ancillary benefits.....	58
Optional benefits.....	59
Early retirement option	60
Transfer.....	61
Transfer from pooled registered pension plan	62
Transfer to purchase annuity.....	63
Where administrator not deemed to have been discharged	64
Joint and survivor pension	65
Information for administrator	66
Waiver of entitlement.....	67
Remarriage, etc.	68
Pre-retirement death benefit	69
Waiver of entitlement by spouse.....	70
Variation of payment to person with disability.....	71
Payment of commuted value if benefit small	72
Payments into registered retirement savings arrangement	73
No discrimination on basis of sex.....	74
C.P.P./Q.P.P./old age security offsets.....	75
Pension Entitlement on Breakdown of Spousal Relationship	
Division of pension or pension benefit.....	76
Contributions	
Funding	77
Contribution holidays	78
Reserve account for defined benefit plan	79
Letters of credit.....	80
Payment of contributions when due	81
Duty to pension fund trustees	82
Trust property	83
Accrual.....	84
Proceedings for payment	85
Bond.....	86
Transmission of agreement.....	87
Investment of pension fund	88
Overpayments, etc., by employer	89
Locking In	
Refunds	90
Void transactions.....	91

Exemption from execution, seizure or attachment.....	92
Enforcement of maintenance order	93
Prohibition on commutation and surrender	94
Winding Up	
Wind-up of plan.....	95
Order to wind up.....	96
Wind-up report	97
Notice of entitlement on wind-up.....	98
Determination of amount of benefits on wind-up	99
Pension rights of member on wind-up	100
Election.....	101
Employer's payments on wind-up.....	102
Liability on wind-up, jointly sponsored pension plans	103
Application of Act after wind-up.....	104
Reduction of benefits.....	105
Surplus	
Eligible annuity recipient	106
Consent of Superintendent to pay surplus	107
Entitlement to surplus.....	108
Conditions for consent.....	109
Asset Transfers Between Pension Plans	
Prohibition on asset transfers	110
Requirements, etc., for all asset transfers	111
Transfer upon sale of business	112
Transfers upon change of trade unions, multi-employer pension plan	113
Establishment of successor pension plan	114
Insolvency and Bankruptcy	
Authority to approve agreements regarding insolvency, etc.	115
Orders	
Order of Superintendent	116
Order as result of report.....	117
Hearing by Labour Board.....	118
Notices of, and Appeals from, Intended Decisions and Orders	
Notice of intention regarding registration	119
Appeal to Supreme Court.....	120
General	
Order to provide information to Superintendent	121
Immunity	122
Examination by Auditor General.....	123
Annual report to Minister	124
Agency.....	125
Deemed registration	126
Extension of time limit	127
Examinations, investigations and inquiries	128
Payment for reports	129
Obstruction	130
Inspection order	131
Offence	132
Penalty	133
Evidence	134
Registering order	135
Injunction.....	136
Power to restrain.....	137

Service	138
Time limit for action	139
Fees	140
Forms	141
Conflict	142
Regulations	143
Application of former Act and regulations	144

WHEREAS the Government of Nova Scotia wishes to promote the development of an environment in which pension promises will be fulfilled;

AND WHEREAS greater transparency of information about pension plans will assist members, former members and retired members in making informed decisions about their pension plans;

AND WHEREAS the Government of Nova Scotia intends to promote and facilitate the implementation and continuation of pension plans:

Short title

1 This Act may be cited as the *Pension Benefits Act*. 2011, c. 41, s. 1.

Interpretation

2 In this Act,

“additional voluntary contribution” means a contribution to a pension fund by a member beyond any amount that the member is required to contribute, but does not include an optional contribution or a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund;

“administrator” means the person that administers a pension plan;

“assets” means, in relation to an employer, assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

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

“bridging benefit” means a periodic payment provided under a pension plan to a retired member of the pension plan for a temporary period of time for the purpose of supplementing the retired member’s pension benefit until the retired member is eligible to receive benefits under the *Old Age Security Act* (Canada) or is either eligible for or commences to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*;

“certified copy” means a copy certified to be a true copy;

“collective agreement” has the same meaning as in the *Trade Union Act*;

“commuted value” means the value, calculated in the prescribed manner and as of a fixed date, of a pension, a deferred pension, a pension benefit or an ancillary benefit;

“continuous” means, in relation to employment, membership or service, continuous without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of layoff from employment;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement age under the pension plan;

“defined benefit” means a pension benefit other than a defined contribution benefit or a target benefit;

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis, but does not include an optional benefit;

“designated jurisdiction” means any jurisdiction in Canada, including Canada itself, that is prescribed as a jurisdiction in which there is in force legislation substantially similar to this Act;

“designated multi-jurisdictional pension plan” means a pension plan to which this Act applies and to which the pension benefits legislation of one or more designated jurisdictions also applies;

“effective date” means June 1, 2015;

“employee” means an individual employed to do work or provide a service, who is in receipt of or entitled to remuneration for the work or service;

“employer” means, in relation to a member, former member or retired member of a pension plan, the person from whom or the organization from which the member, former member or retired member receives or received remuneration to which the pension plan relates;

“file” means file with the Superintendent;

“former Act” means Chapter 340 of the Revised Statutes, 1989, the *Pension Benefits Act*;

“former member” means an individual who has either terminated employment that relates to a pension plan or has terminated membership in a pension plan and

(a) is entitled to a deferred pension payable from the pension fund; or

(b) is entitled to receive any other payment from the pension fund,

but does not include a retired member of a pension plan or an individual who was a member and who has transferred an amount under Section 61 in connection with the pension plan;

“going concern unfunded liability” means, with respect to a pension plan, a going concern unfunded liability as determined in accordance with the prescribed requirements;

“insurance company” means a corporation authorized to undertake life insurance in Canada;

“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and that person’s spouse and thereafter during the life of the survivor of them;

“jointly sponsored pension plan” means a pension plan that has the following characteristics and includes such other pension plans as may be prescribed:

- (a) it provides defined benefits;
- (b) the defined benefits are contributory benefits;
- (c) members are required, by virtue of the documents that create and support the plan, to make contributions in respect of any going concern unfunded liability and solvency deficiency of the plan; and
- (d) the plan satisfies such additional criteria as may be prescribed;

“member” means, in respect of a pension plan, a member of the pension plan but does not include a former member or retired member of the pension plan;

“Minister” means the Minister of Finance and Treasury Board;

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal bylaw to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan if

- (a) all the employers who contribute, or on whose behalf contributions are made, to the pension fund are affiliates of each other, within the meaning of the *Companies Act*; or
- (b) the regulations specify that the plan is not a multi-employer pension plan;

“normal cost” means, with respect to a pension plan, the normal cost as determined in accordance with the regulations;

“normal retirement age” means the date or age specified in the pension plan as the normal retirement age of members;

“optional benefit” means a benefit that is prescribed for the purpose of Section 59 as an optional benefit;

“optional contribution” means a contribution to the pension fund that is made to obtain an optional benefit under the pension plan and that is made by a member beyond any amount that the member is required to make;

“original pension plan” means, except in Section 112, a pension plan from which assets are transferred and includes the pension fund for that pension plan;

“partial wind-up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;

“participating employer” means, in relation to a jointly sponsored pension plan or a multi-employer pension plan, an employer required to make contributions to the pension fund;

“pension” means a pension benefit that is in payment;

“pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member or former member during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan or to which, any other person is entitled upon the death of a member or former member, and includes contractually provided escalation adjustments;

“pension committee” means a committee that is an administrator;

“pension fund” means the fund maintained to provide benefits under or related to a pension plan;

“pension plan” means a plan organized and administered to provide pensions for employees, but does not include

(a) an employees’ profit-sharing plan or a deferred profit-sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada);

(b) a plan to provide a retiring allowance as defined in subsection 248(1) of the *Income Tax Act* (Canada);

(c) a plan under which all pension benefits are provided by contributions made by members;

(d) a pooled registered pension plan; or

(e) any other prescribed type of plan;

“personal representative” has the same meaning as in the *Probate Act*;

“pooled registered pension plan” means a pooled registered pension plan within the meaning of the *Pooled Registered Pension Plans Act*;

“prescribed” means prescribed by the regulations;

“qualification date” means, in respect of the Province, January 1, 1977, and, in respect of a designated jurisdiction, the date on which, under the law of the designated jurisdiction, a pension plan must be registered by the proper authority in the designated jurisdiction;

“reciprocal transfer agreement” means an agreement related to two or more pension plans that provides for the transfer of money or credits for employment or both in respect of individual members;

“registered retirement savings arrangement” means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada) or a registered retirement income fund established in accordance with that Act;

“registration” means registration pursuant to this Act;

“reserve account” means a separate account established pursuant to subsection 79(1) within a pension fund if the pension plan contains a defined benefit provision;

“retired member” means an individual who has either terminated employment that relates to a pension plan or has terminated membership in a pension plan and satisfies one or more of the following criteria:

- (a) the individual is receiving a pension payable from the pension fund;
- (b) the individual is entitled to begin to receive a pension from the pension fund by virtue of having reached the normal retirement age under the pension plan, even though the individual has not yet elected to receive the pension;
- (c) the individual has elected, under subsection 60(1), to receive an early retirement pension; or
- (d) the individual has elected, under the terms of the pension plan, to begin payment of a pension payable from the pension fund, whether or not receipt of the first payment of the pension is deferred until a later date,

but does not include an individual who was a member and who has transferred an amount under Section 61 in connection with the pension plan;

“solvency deficiency” means, with respect to a pension plan, a solvency deficiency as determined in accordance with the prescribed requirements;

“solvency liabilities” means, with respect to a pension plan, solvency liabilities as determined in accordance with the regulations;

“spouse” means either of two persons who

- (a) are married to each other;
- (b) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity;
- (c) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, where they have ceased to cohabit, have cohabited within the 12-month period immediately preceding the date of entitlement;
- (d) are domestic partners within the meaning of Section 57 of the *Vital Statistics Act*; or
- (e) not being married to each other, are cohabiting in a conjugal relationship with each other, and have done so continuously for at least
 - (i) three years, if either of them is married, or
 - (ii) one year, if neither of them is married;

“successor pension plan” means, except in Section 112, a pension plan to which assets are transferred and includes the pension fund for that pension plan;

“Superintendent” means the Superintendent of Pensions;

“surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

“target benefit” means a pension benefit that is a target benefit as determined under Section 57;

“termination”, in relation to employment, includes retirement and death;

“trade union” has the same meaning as in the *Trade Union Act*;

“wind-up” means the termination of a pension plan in whole or in part and the distribution of the assets of the pension fund following plan termination;

“Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan*. 2011, c. 41, s. 2; 2013, c. 25, s. 1; 2014, c. 37, s. 24; 2015, c. 6, s. 42; 2015, c. 48, s. 3; 2018, c. 4, s. 14; 2019, c. 21, s. 1.

Deemed province of employment

3 (1) For the purpose of this Act, a person is deemed to be employed in the province of Canada in which the establishment of the employer is located and to which the person is required to report for work.

(2) A person who is not required to report for work at an establishment of the employer is deemed to be employed in the province of Canada in which is located the establishment of the employer from which the person’s remuneration is paid. 2011, c. 41, s. 3.

APPLICATION OF ACT

Application to pension plans

4 This Act applies to every pension plan that is provided for persons employed in the Province. 2011, c. 41, s. 4.

More advantageous plans

5 This Act and the regulations are not to be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations. 2011, c. 41, s. 5.

Designated multi-jurisdictional pension plans

6 (1) This Section applies with respect to a designated multi-jurisdictional pension plan if there is an agreement under Section 9 between the Crown and any designated jurisdiction whose pension benefits legislation applies to the pension plan.

(2) The administrator of the designated multi-jurisdictional pension plan shall comply with the requirements in the agreement that apply with respect to the pension plan and with any requirements imposed under the authority of the agreement.

(3) Without limiting the generality of Section 10, the agreement governs the manner and extent to which this Act and the regulations apply with respect to the designated multi-jurisdictional pension plan.

(4) An employer or person required to make contributions to a designated multi-jurisdictional pension plan on the employer's behalf shall comply with the requirements in the agreement that apply with respect to the pension plan and with any requirements imposed under the authority of the agreement.

(5) The amount of the pension benefits, deferred pension, pension or ancillary benefits or any other amount payable under a designated multi-jurisdictional pension plan in relation to a member, former member or retired member is determined in accordance with such requirements as may be contained in the agreement.

(6) This Section applies notwithstanding any documents that create and support a designated multi-jurisdictional pension plan and the pension fund.

(7) This Section applies notwithstanding any trust that may exist in favour of any person. 2011, c. 41, s. 6.

ADMINISTRATION OF ACT

Supervision of Act and regulations

7 The Minister has the general supervision and management of this Act and the regulations. 2011, c. 41, s. 7.

Powers of Minister

8 (1) Subject to the approval of the Governor in Council, the Minister may

(a) enter into agreements with another province of Canada or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;

(b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Minister as the Minister may require;

(c) delegate to or accept delegation from a pension supervisory authority or a designated jurisdiction of such functions and powers pursuant to this Act as the Minister may determine.

(2) Without limiting the generality of subsection (1), an agreement may provide for

(a) the delegation of any powers and duties of the Superintendent under this Act and the regulations to a pension supervisory authority or the government of a designated jurisdiction;

(b) the delegation to the Superintendent of any powers and duties of a pension supervisory authority or the government of a designated jurisdiction under pension benefits legislation.

(3) The Superintendent may accept a delegation described in clause (2)(b). 2011, c. 41, s. 8.

Agreements with designated jurisdictions

9 (1) With the approval of the Governor in Council, the Minister may enter into one or more agreements on behalf of the Crown in right of the Province with a representative of a designated jurisdiction concerning the pension benefits legislation that governs designated multi-jurisdictional pension plans in the Province and in the designated jurisdiction.

(2) An agreement may provide for the application of this Act and the regulations to designated multi-jurisdictional pension plans, the application of the pension benefits legislation of a designated jurisdiction to those plans, the application of the agreement itself to those plans and the supervision and regulation of those plans.

(3) Without limiting the generality of subsection (2), an agreement in relation to a designated multi-jurisdictional pension plan may provide

(a) for the establishment of a mechanism for determining whether the Superintendent, or a person who has supervisory or regulatory powers under the pension benefits legislation of another designated jurisdiction, has the principal regulatory jurisdiction for the pension plan;

(b) that this Act and the regulations, or any part thereof, does not apply with respect to the pension plan in specified circumstances;

(c) for the establishment of additional requirements that apply with respect to the pension plan in specified circumstances;

(d) that a requirement of this Act or a regulation is deemed to be satisfied in respect of the pension plan if a corresponding requirement of the principal regulatory jurisdiction is satisfied or in such other circumstances as may be specified.

(4) For greater certainty, an agreement may provide

(a) where, under a designated multi-jurisdictional pension plan, a member or former member has service in the Province and in a designated jurisdiction, for the establishment of requirements for determining the amount of the pension benefits, deferred pension, pension or ancillary benefits or any other amount payable under the pension plan in relation to the member or former member that differ from the requirements that would otherwise apply in the absence of the agreement, which requirements may result in an increase or a decrease in the amount to which the person would otherwise be entitled;

(b) that an employer, or a person or entity required to make contributions to the pension plan on the employer's behalf, shall make contributions in addition to those required under this Act and the regulations and may specify the times and manner in which the contributions are to be made;

(c) for the allocation of the assets of the pension plan between jurisdictions at the times and in the manner specified.

(5) Without limiting the generality of subsection (2), an agreement may provide for

(a) matters respecting the administration and enforcement of this Act and the regulations and of the pension benefits legislation of the designated jurisdiction;

(b) the reciprocal application and enforcement of pension benefits legislation and the reciprocal registration, audit and inspection of the designated multi-jurisdictional pension plans;

(c) the delegation of any powers or duties of the Superintendent under this Act and the regulations to a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction;

(d) the delegation to the Superintendent of any powers or duties of a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction; and

(e) the reciprocal exchange of information between the Superintendent and a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction if the information is necessary for the purpose of

(i) complying with, implementing or enforcing the agreement, or

(ii) the administration and enforcement of this Act and the regulations and the pension benefits legislation of the designated jurisdiction.

(6) An agreement or an amendment to an agreement with a designated jurisdiction does not come into effect in the Province until a date that is specified by the regulations.

(7) An agreement with a designated jurisdiction ceases to have effect in the Province on a date that is specified by the regulations.

(8) The Minister shall publish notice of each agreement and notice of any amendments to the agreement in the Royal Gazette, together with specification as to the means by which the agreement or amendments to the agreement may be viewed. 2011, c. 41, s. 9.

Status of agreement

10 (1) An agreement under Section 9 is enforceable with respect to a designated multi-jurisdictional pension plan as if the agreement formed part of this Act and, in case of a conflict between the agreement and this Act or the regulations, the agreement prevails.

(2) An agreement under Section 9 is not enforceable until notice of the agreement is published in the Royal Gazette in accordance with subsection 9(8).

(3) An agreement under Section 9 is not a regulation within the meaning of the *Regulations Act*. 2011, c. 41, s. 10.

Superintendent and other personnel

11 (1) A Superintendent of Pensions, who is the chief administrative officer, and such officers and employees as are necessary to enable the Superintendent to perform the duties of the Superintendent must be appointed in accordance with the *Civil Service Act*.

(2) The Superintendent, in exercising and performing the Superintendent's functions, duties and powers pursuant to this Act and the regulations, shall act in accordance with the directions of the Minister. 2011, c. 41, s. 11.

Experts

12 The Minister may engage the services of counsel, actuaries, accountants and other experts to

(a) advise the Superintendent in respect of such matters as the Minister considers necessary for the efficient carrying out of the Superintendent's duties and functions pursuant to this Act; and

(b) carry out the functions and for the purpose set out in Section 128 of this Act. 2011, c. 41, s. 12.

Duties of Superintendent

13 The Superintendent shall

(a) promote the establishment, extension and improvement of pension plans throughout the Province;

(b) make recommendations to the Minister in respect of pension plans throughout the Province;

(c) supervise all persons who establish or administer a pension plan within the meaning of this Act and all employers or other persons who on an employer's behalf are required to contribute to any such pension plan; and

(d) perform such functions and discharge such duties as are assigned by the Governor in Council or the Minister. 2011, c. 41, s. 13.

Delegation by Superintendent

14 The Superintendent may delegate in writing any of the Superintendent's powers or duties under this Act, the regulations or an agreement made pursuant to Section 9 to any person, subject to any limitations or conditions set out in the delegation, and all acts done and decisions made under the delegation are as valid and effective as if done or made by the Superintendent. 2011, c. 41, s. 14.

Surveys, research and information

15 (1) The Superintendent may conduct surveys and research programs and compile statistical information related to pensions and pension plans.

(2) The Superintendent may request an employer, an administrator or a member of a pension plan to provide information necessary to compile the

statistical information and such person shall comply with the request within a reasonable period of time.

(3) Information that is filed or collected by or submitted to the Superintendent in relation to a pension or a pension plan must be kept confidential by the Superintendent and must not be disclosed to any other person except to

(a) a person referred to in any of clauses 42(1)(a) to (k) and in accordance with Sections 42 and 43;

(b) the authorized representative of

(i) another province of Canada,

(ii) the Government of Canada,

(iii) a Canadian association of pension supervisory authorities, or

(iv) a pension supervisory authority or the government of a designated jurisdiction,

in accordance with Section 8 or 9; or

(c) a person or entity who is otherwise entitled to receive the information under this Act. 2011, c. 41, s. 15; 2019, c. 21, s. 2; 2021, c. 6, s. 30.

REGISTRATION AND ADMINISTRATION OF PENSION PLANS

Requirement for certificate or acknowledgement

16 No person shall administer a pension plan, except during the first 90 days after the establishment of the plan, unless a certificate of registration or an acknowledgement of application for registration of the pension plan has been issued by the Superintendent. 2011, c. 41, s. 16.

Where registration refused or revoked

17 Where registration of a pension plan has been refused or revoked by the Superintendent, no person shall administer the plan except for the purpose of wind-up. 2011, c. 41, s. 17.

Who may administer

18 (1) A pension plan must be administered by a person or entity described in subsection (3).

(2) No person or entity other than a person or entity described in subsection (3) may administer a pension plan.

(3) In clause (4)(b), “employer” includes

(a) an affiliate, within the meaning of the *Companies Act*, of the employer; and

(b) such other persons or entities, or classes of persons or entities, as may be prescribed.

(4) A pension plan is not eligible for registration unless it is administered by an administrator who is

(a) the employer or, where there is more than one employer, one or more of the employers;

(b) a pension committee composed of one or more representatives of

(i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and

(ii) members;

(c) a pension committee composed of representatives of members;

(d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;

(e) where the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one half are representatives of members of the multi-employer pension plan and a majority of such representatives of the members are Canadian citizens or permanent residents of Canada;

(f) a person appointed as administrator by the Superintendent;

(g) a corporation, board, agency or commission made responsible by an enactment for the administration of the pension plan;

(h) the Superintendent; or

(i) such other person or entity as may be prescribed.

(5) A pension committee, or a board of trustees, that is the administrator of a pension plan may include one or more representatives of retired members.

(6) The Superintendent may, in prescribed circumstances, appoint an administrator for a pension plan and may terminate the appointment if the Superintendent considers the termination reasonable in the circumstances.

(7) The Superintendent may, in prescribed circumstances, act as administrator of a pension plan. 2011, c. 41, s. 18.

Application for registration

19 (1) In this Section, “document” includes a collective agreement.

(2) The administrator of a pension plan shall apply to the Superintendent, within the prescribed period, for registration of the pension plan.

(3) An application for registration may be made by paying the prescribed fee and filing

(a) a completed application in the form approved by the Superintendent; and

(b) all prescribed documents.

(4) The regulations may provide that the requirement to file a particular prescribed document does not apply in specified circumstances or for prescribed classes of pension plans. 2011, c. 41, s. 19.

Content of pension plan documents

20 (1) The documents that create and support a pension plan must contain information as prescribed.

(2) The regulations may provide that the requirement to include prescribed information referred to in subsection (1) in the documents that create and support a pension plan does not apply in specified circumstances or for prescribed classes of pension plans.

(3) The documents that create and support a jointly sponsored pension plan may authorize a prescribed person or entity to establish or maintain a separate jointly sponsored pension plan for persons employed in less than full-time continuous employment. 2011, c. 41, s. 20.

Accrual, computation and allocation formula

21 (1) A pension plan must provide for the accrual of pension benefits in a gradual and uniform manner.

(2) A pension plan must not provide that the formula for computation of the employer's contributions to the pension fund or the pension benefit provided under the pension plan is variable at the discretion of the employer.

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits must not provide that the formula governing allocation of contributions to the pension fund and profits among members of the plan is variable at the discretion of the employer.

(4) Notwithstanding subsections (1) to (3), the Superintendent may register a pension plan that does not comply with subsection (1), (2) or (3), and the Superintendent may permit the continued registration of such a plan, if the Superintendent considers that registration is justified in the circumstances of the pension plan and the members. 2011, c. 41, s. 21.

Application for registration of amendment

22 (1) The administrator of a pension plan shall apply to the Superintendent, within the prescribed period of time after the date on which the pension plan is amended, for registration of the amendment to the pension plan or the prescribed plan documents, along with any other required information.

(2) An application for registration of an amendment may be made by paying the prescribed fee to the Superintendent and filing

- (a) a certified copy of the amending document;
- (b) certified copies of any prescribed documents; and
- (c) any prescribed information.

(3) The regulations may provide that the requirement to file a particular document or information described in subsection (2) does not apply in specified circumstances or for prescribed classes of pension plans.

(4) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund. 2011, c. 41, s. 22.

Effective date of amendment

23 (1) An amendment to a pension plan is not effective until an application for registration of the amendment is made in accordance with this Act and the regulations.

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered. 2011, c. 41, s. 23.

Amendment void

24 (1) An amendment to a pension plan is void if the amendment purports to reduce

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member, former member or retired member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

(2) An amendment to a pension plan is void if the amendment purports to increase an amount described in clause (1)(a), (b) or (c) and the increase would reduce the transfer ratio or the going concern funded ratio of the pension plan, determined in accordance with the regulations, below the prescribed level.

(3) Subsection (2) does not apply if an amendment is required as a result of a judicial decision or in such other circumstances as may be prescribed.

(4) Subsection (1) does not apply to

- (a) a multi-employer pension plan established pursuant to a collective agreement or a trust agreement;
- (b) a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement;

(c) an amendment in respect of a pension plan that provides only target benefits or in respect of that part of a pension plan that provides target benefits;

(d) an amendment that relates to a transfer of assets authorized by Section 112, 113 or 114; or

(e) an amendment that is necessary under the *Income Tax Act* (Canada) or any applicable pension legislation.

(5) Subsections (2) and (3) and clause (4)(c) come into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 24.

Acknowledgement of application

25 The Superintendent shall issue an acknowledgement of application for registration of a pension plan within 30 days after receiving an application for registration that complies with this Act and the regulations. 2011, c. 41, s. 25.

Certificate of registration

26 The Superintendent shall issue a certificate of registration for each pension plan registered pursuant to this Act. 2011, c. 41, s. 26.

Notice of registration

27 The Superintendent shall issue a notice of registration for each amendment to a pension plan registered pursuant to this Act. 2011, c. 41, s. 27.

Refusal and revocation of registration

28 (1) The Superintendent may

(a) refuse to register a pension plan that does not comply with this Act and the regulations;

(b) revoke the registration of a pension plan that does not comply with this Act and the regulations;

(c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;

(d) refuse to register an amendment or a part of an amendment to a pension plan if the amendment or part of the amendment is void or if the pension plan with the amendment or the part of the amendment would cease to comply with this Act and the regulations;

(e) revoke the registration of an amendment or a part of an amendment that does not comply with this Act and the regulations.

(2) The authority of the Superintendent pursuant to subsection (1) is subject to the right to a hearing pursuant to Section 119.

(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.

(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.

(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations. 2011, c. 41, s. 28.

Amendment of existing plans

29 (1) Every employer who maintains a pension plan on the effective date shall amend the pension plan to conform with this Act and the regulations within three years after that date.

(2) Where a pension plan is governed by a collective agreement or an arbitration award made pursuant to the *Trade Union Act* that requires a provision contrary to this Act or the regulations and that is in effect on the effective date, the parties to the collective agreement or arbitration award shall amend the pension plan to conform to this Act and the regulations not later than

- (a) the date that is three years after the effective date; or
- (b) where the collective agreement or arbitration award expires on or after the effective date, and before or on the date that is three years after the effective date, upon such expiry.

(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made pursuant to the *Trade Union Act* that requires a provision contrary to this Act or the regulations and that is the subject of an application for registration submitted on or after the effective date if the pension plan would have been eligible for registration pursuant to the former Act. 2011, c. 41, s. 29.

Administration of plan and fund

30 (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.

(3) The administrator shall ensure that the pension plan and the pension fund are administered in accordance with

- (a) the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration, whichever is issued later; and
- (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void pursuant to this Act.

(4) The administrator may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment.

(5) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations. 2011, c. 41, s. 30.

Annual returns

31 (1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the form approved by the Superintendent and shall pay the prescribed filing fee.

(2) The administrator shall file additional reports at the times and containing the information prescribed together with any filing fees that may be prescribed. 2011, c. 41, s. 31.

Reciprocal transfer agreement

32 (1) The administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan.

(2) The reciprocal agreement must satisfy such requirements as may be prescribed.

(3) The administrator shall not transfer money or credits for employment under a reciprocal transfer agreement unless it complies with subsection (2). 2011, c. 41, s. 32.

Care, diligence, knowledge and skill required

33 (1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

(2) The administrator of a pension plan shall use in the administration of the pension plan, and in the administration and investment of the pension fund, all relevant knowledge and skill that the administrator possesses or, by reason of profession, business or calling, ought to possess.

(3) The administrator or, where the administrator is a pension committee or a board of trustees, a member of the committee or board shall not knowingly permit the administrator's or member's interest to conflict with the administrator's or member's duties and powers in respect of the pension fund.

(4) Where it is reasonable and prudent in the circumstances to do so, an administrator may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

(5) No person other than a prescribed person may be a trustee of a pension fund.

(6) An administrator who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

(7) An employee or agent of an administrator is also subject to the standards that apply to the administrator pursuant to subsections (1) to (3).

(8) The administrator is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits and a refund of contributions.

(9) Subsections (2) and (8) apply with necessary changes to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act for the administration of a pension plan. 2011, c. 41, s. 33.

Payment of administrative fees and expenses

34 (1) The administrator of a pension plan is entitled to be paid from the pension fund the administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund.

(2) Notwithstanding subsection (1), the administrator is not entitled to be paid from the pension fund any fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund, if payment to the administrator is prohibited, or payment of the fees and expenses is otherwise provided for under

- (a) the documents that create and support the pension plan or the pension fund; or
- (b) this Act or the regulations.

(3) Subsections (1) and (2) apply with necessary changes to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act for the administration of a pension plan.

(4) The administrator of a pension plan may pay from the pension fund to an agent of the administrator, to the employer or to any other person who provides services relating to the administration of the pension plan or the administration and investment of the pension fund the reasonable fees and expenses of the agent, employer or other person.

(5) Notwithstanding subsection (4), the administrator is not permitted to pay from the pension fund to an agent, employer or other person described in subsection (4) the fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund, if payment to the agent, employer or other person is prohibited, or payment of the fees and expenses is otherwise provided for under

- (a) the documents that create and support the pension plan or the pension fund; or

(b) this Act or the regulations.

(6) Where the Superintendent appoints an administrator under subsection 18(6), the appointed administrator is entitled to be paid, from the pension fund, the appointed administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund.

(7) Where the Superintendent acts as administrator under subsection 18(7), the Superintendent is entitled to be paid, from the pension fund, the Superintendent's reasonable expenses relating to the administration of the pension plan and the administration and investment of the pension fund. 2011, c. 41, s. 34.

Information from employer

35 An employer shall provide to the administrator of a pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations. 2011, c. 41, s. 35.

Advisory committee

36 (1) The members and retired members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee in accordance with such conditions and subject to such restrictions as may be prescribed.

(2) Where members are represented by a trade union, the trade union may act on their behalf for the purpose of establishing an advisory committee.

(3) The following rules govern the composition of the advisory committee:

(a) each class of employees that is represented in the pension plan is entitled to appoint at least one representative on the advisory committee;

(b) where there is only one class of employees that is represented in the pension plan, that class is entitled to appoint at least two representatives on the committee; and

(c) the retired members of the pension plan are entitled to appoint at least two representatives on the committee.

(4) One or more former members of the pension plan may be appointed as representatives on the advisory committee.

(5) An advisory committee shall

(a) monitor the administration of the pension plan;

(b) make recommendations to the administrator respecting the administration of the pension plan; and

(c) promote awareness and understanding of the pension plan.

(6) Upon receiving written notice from members, a trade union acting on their behalf or retired members of their intent to establish an advisory committee and, where such conditions as may be prescribed are satisfied, the administrator, in order to help them to establish the committee, shall

- (a) distribute the notice and such other information as may be prescribed to the members and retired members; and
- (b) provide such other assistance as may be prescribed.

(7) Once the advisory committee has been established, the administrator shall

- (a) meet with the committee in accordance with any requirements that may be prescribed;
- (b) provide such assistance to the committee as may be prescribed to help the committee carry out its purpose; and
- (c) give the committee or its representative such information as is under the administrator's control and is required by the committee or the representative for the purpose of the committee.

(8) An advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without that person's prior consent.

(9) Subsection (1) does not apply

- (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan;
- (b) in respect of a multi-employer pension plan established pursuant to a collective agreement; or
- (c) in respect of a jointly sponsored pension plan.

(10) Such costs associated with the advisory committee as may be prescribed are payable out of the pension fund, subject to the prescribed restrictions. 2011, c. 41, s. 36.

RECORD KEEPING AND DISCLOSURE OF INFORMATION

Duty to retain records

37 The administrator of a pension plan shall retain the prescribed records concerning the pension plan and the pension fund in the prescribed manner and for the prescribed period of time. 2011, c. 41, s. 37.

Information for member

38 (1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member

- (a) an explanation of the provisions of the plan that apply to that person;
 - (b) an explanation of that person's rights and obligations in respect of the pension plan; and
 - (c) any other prescribed information.
- (2) The administrator shall provide the information mentioned in subsection (1) to
- (a) each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;
 - (b) a person who is likely to become eligible to become a member, within the prescribed period of time before the date on which that person is likely to become eligible; and
 - (c) each person who becomes eligible to become a member upon becoming employed by the employer, within the prescribed period of time after the date on which that person becomes so employed.
- (3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection. 2011, c. 41, s. 38.

Notice of pension plan amendments

- 39 (1) Before the administrator of a pension plan applies for registration of an amendment to the pension plan, the administrator shall give a notice to the members, former members and retired members and the notice must contain the prescribed information.
- (2) The administrator shall also give a notice to a trade union that represents members and the notice must contain the prescribed information.
- (3) The notice must be given within the prescribed period.
- (4) In such circumstances as may be prescribed and notwithstanding subsection (1), the administrator may give the notice required by subsection (1) to the members, former members and retired members after the amendment to the pension plan is filed.
- (5) This Section does not apply with respect to an amendment that relates to a transfer of assets authorized by Section 110, 112, 113 or 114. 2011, c. 41, s. 39.

Annual statement

- 40 (1) The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits.

(2) When required by the regulations, the administrator of a pension plan shall transmit to each former member and retired member a written statement containing the prescribed information about the pension plan or about the pension benefits and any ancillary benefits of the former member or retired member. 2011, c. 41, s. 40.

Information upon ceasing to be a member

41 (1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.

(2) Subsection (1) applies in respect of a multi-employer pension plan if a member ceases to be a member, but does not apply if a member terminates employment with an employer but continues to be a member. 2011, c. 41, s. 41.

Persons entitled to information

42 (1) On written request, the administrator of a pension plan shall make available the prescribed records in respect of the pension plan and the pension fund for inspection without charge by

- (a) a member;
- (b) a former member;
- (c) a retired member;
- (d) the spouse of a member, former member or retired member;
- (e) any other person entitled to pension benefits under the pension plan;
- (f) a former spouse of a member, former member or retired member but only in such circumstances and for such purpose as may be prescribed;
- (g) an agent authorized in writing by a person referred to in clauses (a) to (f) or (h) to (j);
- (h) a representative of a trade union that represents members;
- (i) an employer;
- (j) a person required to make contributions under the pension plan on behalf of an employer; or
- (k) any other prescribed person.

(2) The administrator shall make the prescribed records available

- (a) for a member, at the premises of the employer where the member is employed;
- (b) for a former member or retired member, at the premises where the former member or retired member was employed; and

(c) for a member, former member or retired member or any other person, at such other location as may be agreed upon by the administrator and the member, former member or retired member or other person making the request.

(3) A person described in clauses (1)(a) to (e) or that person's agent is entitled to make an inspection under subsection (1) not more than once in a calendar year.

(4) The administrator shall permit the person making the inspection to make extracts from, or to copy, the prescribed records and, upon request, the administrator shall give the person a copy of any of the prescribed records upon payment of the applicable fee to the administrator.

(5) Where the administrator receives a written request from a person described in subsection (1) and receives payment of the applicable fee, the administrator shall provide prescribed records by mail or electronically to the person in such circumstances as may be prescribed.

(6) A person described in clauses (1)(a) to (e) or that person's agent is entitled to make a request under subsection (5) for a particular prescribed record not more than once in a calendar year.

(7) The applicable fee referred to in subsection (4) or (5) must not exceed such amount as may be prescribed. 2011, c. 41, s. 42.

Inspection of filed documents

43 (1) The persons mentioned in subsection 42(1) and the administrator are entitled to inspect the filed documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund.

(2) The inspection mentioned in subsection (1) must take place

(a) at a suitable time and location arranged by the administrator; or

(b) where the administrator is unable to arrange a suitable time and location for the inspection, at the office of the Superintendent during regular business hours.

(3) The persons mentioned in subsection 42(1) and the administrator are entitled to copies of the documents mentioned in subsection (1) upon payment of the prescribed fees.

(4) Where the Superintendent receives a written request from the administrator or from a person described in subsection 42(1) and receives payment of the applicable fee, the Superintendent shall provide the prescribed records by mail or electronically to the administrator or other person in such circumstances as may be prescribed. 2011, c. 41, s. 43.

Authority to use electronic transmission

44 (1) The administrator of a pension plan may use electronic means that comply with the *Electronic Commerce Act* to send notices, statements and other records to members, former members, retired members and other persons entitled to benefits under the pension plan if the administrator has the person's permission to do so.

(2) Subsection (1) does not apply in such circumstances as may be prescribed. 2011, c. 41, s. 44.

MEMBERSHIP**Eligibility for membership**

45 (1) Every employee of a prescribed class of employees for whom a pension plan is established is eligible to be a member.

(2) An employee in a prescribed class of employees for whom a pension plan is maintained is entitled to become a member upon application at any time after completing 24 months, or such lesser time as the plan provides, of continuous full-time employment.

(3) A pension plan may require not more than 24 months of less than full-time continuous employment with the employer with the lesser of

(a) earnings of not less than 35% of the Year's Maximum Pensionable Earnings; or

(b) 700 hours of employment with the employer,

in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership.

(4) A multi-employer pension plan may require not more than the lesser of

(a) earnings of not less than 35% of the Year's Maximum Pensionable Earnings with one or more participating employers; or

(b) 700 hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan.

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. 2011, c. 41, s. 45.

Continuation as member of the plan

46 An employee who is a member of a pension plan continues as a member of that plan while the employee's employment, in respect of which the pension plan is maintained, continues. 2011, c. 41, s. 46.

Drop in earnings or hours of employment

47 A member who is employed continuously on a less than full-time basis does not cease to be a member by reason only that the member has earnings of less than 35% of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than 700 hours in a calendar year. 2011, c. 41, s. 47.

Order to accept employee

48 (1) Where there is a dispute as to whether an employee is a member of a prescribed class of employees for whom a pension plan is established or maintained, the Superintendent may, subject to Section 119, by order require the administrator to accept the employee as a member.

(2) The Superintendent may make the order under subsection (1) if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the prescribed class. 2011, c. 41, s. 48.

Separate pension plan

49 (1) An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment.

(2) Where the documents that create and support a jointly sponsored pension plan so authorize, a prescribed person or entity may establish a separate jointly sponsored pension plan for employees employed in less than full-time continuous employment if the separate plan provides pension benefits and other benefits reasonably equivalent to those provided under the jointly sponsored pension plan maintained for employees of the same class employed in full-time continuous employment. 2011, c. 41, s. 49.

RETIREMENT AND VESTING

Normal retirement age

50 (1) The normal retirement age under a pension plan submitted for registration on or after January 1, 1988, must not be later than one year after the attainment of 65 years of age.

(2) Every pension plan registered or submitted for registration before January 1, 1988, is deemed to specify a normal retirement age in respect of pension benefits that accrue on or after January 1, 1988, that is not later than one year after the attainment of 65 years of age, unless the pension plan specifies an earlier normal retirement age.

(3) Where a member continues employment and membership in the pension plan after reaching the normal retirement age under the plan, the member is entitled, on termination of employment, to payment of

(a) the pension benefits to which the member would have been entitled upon terminating employment at the normal retirement age; and

(b) any additional pension benefits accrued under the pension plan that result from the member's employment after the normal retirement age.

(4) A member who continues employment after the normal retirement age, and who is not receiving a pension under the pension plan, has the right to continue membership in the pension plan and has the right to continue to accrue pension benefits under the pension plan subject to any terms of the pension plan

(a) fixing a maximum number of years of employment or membership that can be taken into account for the purpose of determining a pension benefit; or

(b) fixing a maximum amount of the pension benefit. 2011, c. 41, s. 50.

Phased retirement option

51 (1) A pension plan that provides defined benefits may provide a phased retirement option for eligible members in the circumstances described in this Section, and the option provided under the pension plan must comply with this Act and the regulations.

(2) A member whose pension benefit is a defined benefit may apply to the administrator to participate in the phased retirement option if

(a) the member is at least 60 years of age or is at least 55 years of age and entitled to an unreduced pension under the pension plan;

(b) the member has not yet reached the normal retirement age;

(c) the member and the member's employer have entered into a written agreement governing the employment arrangements relating to the phased retirement option for the member and governing payments under the phased retirement option;

(d) the agreement provides for a reduction in the member's regular hours of work when payments under the phased retirement option begin, and the reduction satisfies such requirements as may be prescribed; and

(e) the agreement complies with the requirements of the pension plan.

(3) The administrator shall approve an application that satisfies the requirements of this Section and the regulations and shall do so within such period as may be prescribed.

(4) Where the administrator approves the application, the member participates in the phased retirement option for the period specified by the agreement, and that period cannot begin before the date on which the administrator approves the agreement and it cannot end after the member's normal retirement age.

(5) During the period mentioned in subsection (4), the member continues to accrue pension benefits under the pension plan in the prescribed manner and all contributions must continue to be made as required under the pension plan.

(6) During the period mentioned in subsection (4), the member is entitled to periodic payments under the pension plan that are equal to a portion of the pension payments to which the member would be entitled as a retired member, and the portion is specified in the agreement and must not exceed 60% of the pension payments to which the member would be entitled as a retired member.

(7) For the purpose of this Act, the periodic payments do not constitute a pension.

(8) A member is not entitled to be paid any other amounts under the pension plan during that period.

(9) Subsection (8) does not prevent the refund of additional voluntary contributions and interest thereon to the member.

(10) Where the member ceases to be a member during that period, the member ceases to participate in the phased retirement option and the period referred to in subsections (4), (5) and (6) is deemed to have ended.

(11) A pension plan must not make payments under a phased retirement option if the pension plan is being wound up or while the pension plan does not satisfy prescribed funding requirements.

(12) Where a member asks the administrator for information concerning the phased retirement option, if any, provided under a pension plan, the administrator shall provide information to the member within such period as may be prescribed. 2011, c. 41, s. 51.

Deferred pension for part service

52 (1) A member of a pension plan who terminates employment with the employer on or after June 1, 2015, and before reaching the normal retirement age under the pension plan is entitled to the benefit described in subsection (2) in connection with the member's employment, if any, before January 1, 1988.

(2) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on December 31, 1987, in respect of employment before January 1, 1988, in the Province or in a designated jurisdiction,

(a) under the terms of the pension plan, with respect to employment on or after the qualification date;

(b) by an amendment to the pension plan made on or after the qualification date; and

(c) by the creation of a new pension plan on or after the qualification date.

(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions. 2011, c. 41, s. 52.

Deferred pension

53 (1) A member of a pension plan who is a member on or after June 1, 2015, and who terminates employment with the employer before reaching

the normal retirement age is entitled to the benefit described in subsection (2) in connection with the member's employment after December 31, 1987.

(2) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in the Province or in a designated jurisdiction,

(a) under the pension plan in respect of employment by the employer after the later of December 31, 1987, or the qualification date;

(b) under any amendment made to the pension plan after December 31, 1987; and

(c) under any new pension plan established after December 31, 1987, for members.

(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions. 2011, c. 41, s. 53.

Termination of membership

54 (1) A person who is

(a) a member of a multi-employer pension plan;

(b) a member of a pension plan who is employed by the employer on a less than full-time basis; or

(c) a member of a pension plan who has been laid off from employment by the employer,

is entitled to terminate membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for 24 consecutive months or for such shorter period of time as is specified in the pension plan.

(2) Where the person elects to terminate the person's membership in the pension plan, the membership is terminated when the person delivers written notice of the person's election to the administrator of the pension plan or at the end of the period described in subsection (1), whichever is later.

(3) For the purpose of determining benefits pursuant to this Act, a person who terminates membership in a pension plan is deemed to have terminated employment.

(4) Subsections (1) and (3) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans.

(5) For the purpose of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan is deemed not to have terminated employment until the member terminates membership in the pension plan.

(6) Where a member of a multi-employer pension plan is represented by a trade union that, in accordance with the *Trade Union Act*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate membership in the first plan.

(7) Subsection (6) does not apply if there is a reciprocal agreement respecting the two pension plans. 2011, c. 41, s. 54.

BENEFITS

Minimum commuted value

55 (1) Where the commuted value of a deferred pension accrued by a former member or a pension accrued by a retired member in respect of employment before January 1, 1988, is less than the value of the contributions that the former member or retired member, as the case may be, was required to make under the pension plan before that date plus interest credited to the contributions, the former member or retired member is entitled to have the commuted value of the deferred pension or pension increased so that the commuted value is equal to the value of the contributions and the interest.

(2) An increase in the value of the pension or deferred pension in respect of employment before January 1, 1988, resulting from an amendment to the pension plan made on or after January 1, 1988, may be included in calculating the commuted value of the deferred pension for the purpose of subsection (1).

(3) Contributions made on or after January 1, 1988, by a member under a pension plan and the interest on the contributions must not be used to provide more than 50% of the commuted value of the pension or deferred pension in respect of the contributory benefits accrued after that date to which the member is entitled under the pension plan on termination of membership or employment.

(4) A former member or retired member who is entitled to a deferred pension or pension is entitled upon termination of employment or membership to a lump sum payment from the pension fund of the amount by which the contributions of the former member or retired member, as the case may be, made under the pension plan on or after January 1, 1988, plus the interest on the contributions, exceed one half of the commuted value of the deferred pension or pension in respect of the contributory benefits accrued after January 1, 1988.

(5) A person entitled to a lump sum payment under subsection (4) may require the administrator to pay the lump sum into a registered retirement savings arrangement by delivering a direction to the administrator within the prescribed period.

(6) Section 73 applies with respect to the payment into the registered retirement savings arrangement referred to in subsection (5).

(7) Where a former member transfers an amount under subsection 61(1) in connection with the former member's deferred pension under a pension plan that provides target benefits and, where the transferred amount was reduced under subsection 61(3),

(a) the lump sum payment to which the former member is entitled under subsection (4) must be reduced in the prescribed manner; and

(b) subsection (3) does not apply with respect to the reduced lump sum payment.

(8) The following may be excluded when determining that part of the commuted value of a pension or deferred pension to which subsections (3) and (4) apply:

(a) defined contribution benefits;

(b) benefits that result from additional voluntary contributions;

(c) in the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions;

(d) benefits that result from voluntary contributions for past service as defined in the regulations;

(e) optional benefits; and

(f) any other benefits prescribed for the purpose of this subsection.

(9) The following may be included by the administrator in calculating a member's contributory benefit for the purpose of subsection (3):

(a) ancillary benefits related to employment on or after January 1, 1988;

(b) increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after January 1, 1988, but that are not included in calculating commuted value under subsection (2); and

(c) pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after January 1, 1988.

(10) Subsection (7) comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 55; 2013, c. 25, s. 2.

Defined contribution benefits

56 A pension plan that provides defined contribution benefits may authorize payment of the pensions or pension benefits to be made in any manner authorized by the *Income Tax Act* (Canada) and to be made in accordance with such requirements and subject to such restrictions as may be prescribed. 2011, c. 41, s. 56.

Target benefits

57 (1) The pension benefits provided by a pension plan are target benefits if all of the following criteria are satisfied:

- (a) the pension benefits are not defined contribution benefits;
- (b) the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in one or more collective agreements;
- (c) the administrator is authorized, by the documents that create and support the pension plan and pension fund, to reduce benefits, deferred pensions or pensions accrued under the plan, both while the plan is ongoing and upon wind-up;
- (d) the reduction referred to in clause (c) is not prohibited by the terms of any applicable collective agreement or by the pension legislation of a designated jurisdiction;
- (e) the pension benefits satisfy such other criteria as may be prescribed; and
- (f) the pension plan satisfies such other criteria as may be prescribed.

(2) Notwithstanding subsection (1), the pension benefits provided by a pension plan are not target benefits if the administrator's authority to reduce benefits, deferred pensions or pensions accrued under the plan is restricted in a manner or to an extent that is prohibited by the regulations for target benefits.

(3) Ancillary benefits provided by a pension plan that provides target benefits are also target benefits.

(4) For a designated multi-jurisdictional pension plan, the pension benefits are target benefits in such circumstances as may be prescribed even though, in a designated jurisdiction, the administrator's authority to reduce benefits, deferred pensions or pensions for members, former members and retired members in that jurisdiction is prohibited or restricted under the pension legislation of that jurisdiction.

(5) This Section comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 57.

Ancillary benefits

58 (1) A pension plan may provide the following ancillary benefits:

- (a) disability benefits;
- (b) pre-retirement death benefits in excess of those provided in Section 69;
- (c) bridging benefits;
- (d) supplemental benefits, other than bridging benefits, payable for a temporary period of time;

(e) early retirement options and benefits in excess of those provided by Section 60;

(f) postponed retirement options and benefits in excess of those referred to in subsection 50(4); and

(g) any other prescribed benefit.

(2) An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit must be included in calculating the member's pension benefit or the commuted value of the pension benefit.

(3) For the purpose of subsection (2) and clause 24(1)(c), where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member, former member or retired member has met all other eligibility requirements, the employer is deemed to have consented.

(4) For the purpose of subsection (2) and clause 24(1)(c), where the consent of the administrator is an eligibility requirement for entitlement to receive an ancillary benefit under a jointly sponsored pension plan and a member, former member or retired member has met all other eligibility requirements, the administrator is deemed to have consented.

(5) Subsection (2) applies with respect to ancillary benefits under a pension plan that provides target benefits, except in such circumstances as may be prescribed.

(6) Subsection (2) applies with respect to ancillary benefits that are optional benefits, except in such circumstances as may be prescribed.

(7) Subsection (5) comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 58.

Optional benefits

59 (1) A pension plan that provides defined benefits may provide as optional benefits such benefits as may be prescribed.

(2) Optional contributions may be made by a member for optional benefits under the pension plan and, where the pension plan so permits, the member may choose or vary the amount of the optional contributions to be made.

(3) The optional contributions made by a member must be applied, in accordance with the terms of the pension plan, to provide only optional benefits upon the termination of employment or membership.

(4) A pension plan that provides optional benefits must satisfy such requirements as may be prescribed about the manner of determining the amount of the optional contributions for the optional benefits.

(5) The conversion of optional contributions into optional benefits is subject to such requirements as may be prescribed.

(6) Such provisions of the Act and regulations as may be prescribed do not apply with respect to optional benefits and optional contributions. 2011, c. 41, s. 59.

Early retirement option

60 (1) A former member of a pension plan is entitled to elect to receive an early retirement pension under the pension plan if the former member has terminated employment and is within 10 years of reaching the normal retirement age.

(2) A member who is within 10 years of attaining the normal retirement age and who would be entitled to a deferred pension on termination of employment is entitled upon termination of the employment or on the wind-up of the pension plan to receive an early retirement pension under the pension plan.

(3) The commuted value of a member's early retirement pension must not be less than the commuted value of the member's pension benefit payable at the normal retirement age under the pension plan.

(4) The commuted value of a former member's early retirement pension must not be less than the commuted value of the former member's deferred pension benefit payable at the normal retirement age under the pension plan.

(5) The member or former member is entitled to require the commencement of payment of the early retirement pension at any time within the 10-year period mentioned in subsection (1) or (2).

(6) An election pursuant to subsection (1) or (2) must be made in writing, signed by the member or former member, and delivered to the administrator of the pension plan. 2011, c. 41, s. 60.

Transfer

61 (1) A former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member's deferred pension

- (a) to the pension fund related to another pension plan, if
 - (i) the other pension plan is a pension plan registered under this Act, a pension plan established or governed by a statute in a designated jurisdiction, a pension plan registered in a designated jurisdiction or a pension plan prescribed for the purpose of this Section, and
 - (ii) the administrator of the other pension plan agrees to accept the payment;
- (b) into a pooled registered pension plan;
- (c) into a prescribed retirement savings arrangement; or
- (d) where the pension plan so permits, for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.

(2) The entitlement pursuant to subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

(3) Where a pension plan that provides target benefits does not require contributions to be made in respect of any solvency deficiency that relates to the target benefits, the amount that a former member is entitled to require the administrator to pay under subsection (1) that relates to target benefits may be reduced in the prescribed manner and in the prescribed circumstances.

(4) Subsection (1) does not apply to a former member who is entitled to immediate payment of a pension under the pension plan or under Section 60, unless the pension plan provides such an entitlement.

(5) A former member may exercise the former member's entitlement pursuant to subsection (1) by delivering a direction to the administrator within the prescribed period of time.

(6) Subject to compliance with the requirements of this Section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

(7) The administrator shall not make payment pursuant to

(a) clause (1)(c) unless the retirement savings arrangement meets the prescribed requirements; or

(b) clause (1)(d) unless the contract to purchase the deferred life annuity meets the prescribed requirements.

(8) Where the amount of the commuted value of the former member's deferred pension to be paid into a prescribed retirement savings arrangement pursuant to clause (1)(c) is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada), the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the former member.

(9) Where the amount of the commuted value of the former member's deferred pension that is used to purchase a life annuity pursuant to clause (1)(d) is greater than the amount permitted under the *Income Tax Act* (Canada) for such a purchase, the administrator shall pay to the former member as a lump sum the portion of the commuted value that exceeds the amount permitted under the *Income Tax Act* (Canada) for the purchase of the life annuity.

(10) Where a payment pursuant to subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent.

(11) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

(12) Where a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent may, subject to Section 119, by order require any

person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

(13) Subject to Section 119, an order for payment pursuant to subsection (12), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

(14) The administrator is discharged on making the payment or transfer in accordance with the direction of the former member if the payment or transfer complies with this Act and the regulations.

(15) This Section applies, with necessary changes, to a retired member who is entitled to begin to receive a pension from the pension fund by virtue of having reached the normal retirement age under the pension plan but who has not yet elected to receive the pension, if the pension plan so permits.

(16) Subsection (3) comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 61; 2014, c. 37, s. 25; 2015, c. 48, s. 3; 2017, c. 6, s. 23.

Transfer from pooled registered pension plan

62 Funds may be paid into a prescribed retirement savings arrangement from a pooled registered pension plan account in accordance with a transfer authorized by Section 14 of the *Pooled Registered Pension Plans Act*. 2014, c. 37, s. 25A; 2015, c. 48, s. 3.

Transfer to purchase annuity

63 (1) Subject to this Section and the prescribed requirements, where a defined benefit pension plan has not been wound up in whole, the administrator may transfer assets from the defined benefit portion of the plan to an insurance company for the purchase of an annuity in the form of a deferred pension or a pension, as the case may be, and any ancillary benefits or other benefits required or authorized by this Act, for any of the following persons:

(a) a former member or a retired member within the meaning of clause (b) of the definition of “retired member” in Section 2 who does not intend to elect, or has not within the prescribed period elected to transfer an amount equal to the commuted value of that individual’s deferred pension or pension, as the case may be, in accordance with Section 61;

(b) a retired member within the meaning of clause (a), (c) or (d) of the definition of “retired member” in Section 2; and

(c) a person, other than a retired member, who is receiving a pension under the defined benefit provision of the pension plan.

(2) The administrator shall give notice of the intended purchase of an annuity pursuant to subsection (1) to the persons referred to in subsection (1), in accordance with the prescribed requirements.

(3) When an annuity is purchased under subsection (1), the administrator shall ensure that the annuity provides

(a) in respect of a former member or a retired member described in clause (1)(a), the former member or retired member with the same deferred pension, ancillary benefits or other benefits as the former member or retired member would have received from the pension plan had the transfer not been made;

(b) in respect of a retired member described in clause (1)(b), payments to the retired member in the same amount and form as the pension, ancillary benefits or other benefits that the retired member would have received from the pension plan had the transfer not been made; and

(c) in respect of a person, other than a retired member, who is receiving a pension, payments to the person in the same amount and form as the pension, ancillary benefits or other benefits that the person would have received from the pension plan had the transfer not been made.

(4) When purchasing an annuity under subsection (1), the administrator must be satisfied that

(a) the insurance company is authorized to sell annuities;

(b) the contract for the purchase of a deferred pension or a pension and any ancillary benefits meets the prescribed requirements; and

(c) the purchase meets all other prescribed requirements, conditions and limitations.

(5) An administrator is discharged on filing a certificate that meets the prescribed requirements and is prepared and signed by an actuary certifying that the administrator has complied with this Section and the prescribed requirements related to the purchase or purchases of

(a) in the case of a former member or a retired member described in clause (1)(a), a deferred pension and any ancillary benefits;

(b) in the case of a retired member described in clause (1)(b), a pension and any ancillary benefits; and

(c) in the case of a person other than a retired member, who is receiving a pension, a pension and any ancillary benefits.

(6) Subject to subsection (7), when an administrator is discharged in accordance with subsection (5), a former member, a retired member or another person who is receiving a pension and for whom the purchase was made under this Section is no longer a former member, a retired member or another person receiving a pension for the purpose of this Act.

(7) A person who receives a deferred pension or a pension in accordance with subsections (1) and (3) is entitled, for three years from the date of the purchase of the annuity, to participate in the allocation of surplus of the pension plan, in accordance with Sections 107 to 109 and the prescribed requirements, in the event of the pension plan's wind-up. 2019, c. 21, s. 3.

Where administrator not deemed to have been discharged

64 (1) Subject to subsection (3) and notwithstanding the filing of a certificate pursuant to subsection 63(5), where it is discovered after the filing of the certificate that the purchase referenced in the certificate did not comply with the requirements of this Section, the administrator is deemed, as of the filing of the certificate, not to have been discharged.

(2) The administrator who is deemed under subsection (1) not to have been discharged must immediately notify the former member, the retired member or the person, other than a retired member, who is receiving a pension that the administrator did not comply with the requirements and is not discharged under subsection 63(5).

(3) An administrator who is deemed under subsection (1) not to have been discharged may subsequently be discharged upon complying with the requirements of Section 63 and upon filing a new certificate pursuant to subsection 63(5).

(4) The Superintendent may, subject to Section 119, by order require the insurance company from whom the annuity was purchased under subsection 63(1), to repay an amount not greater than the amount of the payment together with interest thereon if the purchase does not comply with the requirements of Section 63.

(5) Subject to Section 119, an order made pursuant to subsection (4), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court. 2019, c. 21, s. 3.

Joint and survivor pension

65 (1) Every pension paid under a pension plan to a retired member who has a spouse on the date that the payment of the first instalment of the pension is due is a joint and survivor pension.

(2) The commuted value of a joint and survivor pension pursuant to subsection (1) must not be less than the commuted value of the pension that would be payable under the pension plan to the retired member.

(3) Upon the death of the retired member, the amount of the pension payable to the surviving spouse of the retired member must not be less than 60% of the pension paid to the retired member during their joint lives.

(4) Subsections (1) to (3) do not apply in respect of

(a) a pension benefit if payment of the pension has commenced before January 1, 1988; or

(b) a retired member who is living separate and apart from the spouse of the retired member on the date that payment of the first instalment of the pension is due, with no reasonable prospect of the resumption of cohabitation, if,

(i) the spouse has delivered a written waiver to the administrator in the form and manner set out in Section 67

with respect to the pension benefit before the date that payment of the first instalment of the pension is due,

(ii) the terms of a written agreement respecting the division of the pension or the pension benefit, entered into before the date that payment of the first instalment of the pension is due, disentitle or do not expressly or impliedly entitle the spouse to receive an amount under the pension, or

(iii) the terms of a court order, issued prior to the date that payment of the first instalment of the pension is due, disentitle or do not expressly or impliedly entitle the spouse to receive an amount under the pension.

(5) Where

(a) before January 1, 1988, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under Chapter 14 of the Acts of 1975;

(b) payments have not commenced under the annuity on January 1, 1988; and

(c) the recipient of the payments has a spouse on the date payments commence,

the annuity must be paid as a joint and survivor pension in accordance with the requirements of this Section and the insurance company shall make payments accordingly.

(6) For the purpose of subsection (5), the insurance company is deemed to be the administrator under Sections 66 and 67.

(7) A pension plan may provide for payment, upon the death of a retired member, of the commuted value of the joint and survivor benefit to a person who is entitled to the joint and survivor benefit if, at the date of death,

(a) the annual benefit payable is not more than four per cent of the Year's Maximum Pensionable Earnings; or

(b) the commuted value of the benefit is less than 20% of the Year's Maximum Pensionable Earnings.

(8) The person to whom the payment under subsection (7) is to be made may require the administrator to pay the commuted value into a registered retirement savings arrangement and the person may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(9) Section 73 applies with respect to the payment into the registered retirement savings arrangement. 2011, c. 41, s. 63; 2013, c. 25, s. 3; 2015, c. 6, s. 43; 2018, c. 4, s. 15.

Information for administrator

66 (1) Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit.

(2) The person entitled to the payment shall provide the information to the administrator.

(3) In the absence of actual notice to the contrary, the administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2) or, where the person does not provide the information, in accordance with the latest information in the records of the administrator. 2011, c. 41, s. 64.

Waiver of entitlement

67 (1) The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company, a written waiver in the form approved by the Superintendent, or a certified copy of a written agreement that provides for the division of a pension benefit and contains the waiver.

(2) The waiver is not effective unless

(a) for a written waiver in the form approved by the Superintendent, the form is dated and signed within the 12 months preceding the commencement of payment of the pension benefit and it is delivered to the administrator or insurance company within that 12-month period; or

(b) for a certified copy of a written agreement mentioned in subsection (1), the certified copy is delivered to the administrator or insurance company within the 12 months preceding commencement of payment of the pension benefit.

(3) Persons who have delivered a waiver pursuant to subsection (1) may jointly cancel the waiver by delivering a written and signed notice of cancellation to the administrator or the insurance company, as the case may be, before commencement of payment of the pension benefit. 2011, c. 41, s. 65.

Remarriage, etc.

68 (1) The spouse of a deceased former member or retired member of a pension plan who is receiving a pension under the pension plan is not disentitled to payment of the pension by reason only of becoming the spouse of another person after the death of the former member or retired member.

(2) Subsection (1) applies in respect of pensions that are being paid on January 1, 1988, or that commence to be paid on or after January 1, 1988. 2011, c. 41, s. 66.

Pre-retirement death benefit

69 (1) Where a member of a pension plan who is entitled under the pension plan to a deferred pension described in Section 53 dies before payment of the first instalment is due or where a former member or retired member dies before payment of the first instalment of the deferred pension or pension of the former member or retired member is due, the spouse of the member, former member or retired member on the date of death is entitled to

- (a) receive a lump sum payment equal to the commuted value of the deferred pension;
 - (b) require the administrator to pay an amount equal to the commuted value of the deferred pension into a registered retirement savings arrangement; or
 - (c) receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension.
- (2)** Where a member continues in employment after the normal retirement age under the pension plan and dies before payment of pension benefits referred to in Section 53 begins, the person who is the spouse of the member on the date of death is entitled to
- (a) receive a lump sum payment equal to the commuted value of the pension benefits;
 - (b) require the administrator to pay an amount equal to the commuted value of the pension benefits into a registered retirement savings arrangement; or
 - (c) receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the pension benefits.
- (3)** Subsections (1) and (2) do not apply if the member, former member or retired member and the spouse of the member, former member or retired member are living separate and apart on the date of death, there is no reasonable prospect of the resumption of cohabitation and
- (a) the spouse of the member, former member or retired member has delivered a written waiver to the administrator in accordance with subsection 70(1) with respect to the deferred pension or pension benefits before the death of the member, former member or retired member;
 - (b) the terms of a written agreement respecting the division of the deferred pension or the pension benefit disentitle or do not expressly or impliedly entitle the spouse of the member, former member or retired member to receive an amount under the deferred pension or pension benefits; or
 - (c) the terms of a court order disentitle or do not expressly or impliedly entitle the spouse of the member, former member or retired member to receive an amount under the deferred pension or pension benefits.
- (4)** A spouse may exercise the spouse's entitlement under subsection (1) or (2) by delivering a direction to the administrator within the prescribed period and, where the spouse does not do so, the spouse is deemed to have elected to receive an immediate pension.
- (5)** For the purpose of this Section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed must be calculated as if the member's employment were terminated immediately before the member's death.

(6) A member, former member or retired member described in subsection (1) may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if the member, former member or retired member

(a) does not have a spouse on the date of death; or

(b) is living separate and apart from the spouse of the member, former member or retired member on the date of death, there is no reasonable prospect of the resumption of cohabitation and one or more of the circumstances set out in clauses (3)(a) to (c) exist.

(7) The personal representative of a member, former member or retired member described in subsection (1) is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member, former member or retired member if the member, former member or retired member has not designated a beneficiary under subsection (6) and

(a) does not have a spouse on the date of death; or

(b) is living separate and apart from a spouse on the date of death, there is no reasonable prospect of the resumption of cohabitation and one or more of the circumstances set out in clauses (3)(a) to (c) exist.

(8) Where the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member, former member or retired member upon the death of the member, former member or retired member,

(a) the commuted value of the payments in respect of employment after December 31, 1987, may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7); and

(b) the commuted value of the payments in respect of employment before January 1, 1988, may be deducted from the entitlement under subsection (9) of a beneficiary designated under subsection (6) or of a personal representative under subsection (7).

(9) A spouse who has an entitlement under subsection (1) or (2), or a designated beneficiary who has an entitlement under subsection (6) or a personal representative who has an entitlement under subsection (7), is entitled to a lump sum payment from the pension fund equal to the amount of any contributions that the member or former member was required to make under the pension plan in respect of employment before January 1, 1988, plus interest credited to the contributions.

(10) A spouse entitled to a lump sum payment under subsection (9) may require the administrator to pay the lump sum into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(11) Section 73 applies with respect to any payment into a registered retirement savings arrangement.

(12) The entitlements under this Section are subject to the prescribed limitations in respect of the transfer of funds from pension funds.

(13) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment.

(14) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person.

(15) A pension plan may provide for reduction of an amount to which a person is entitled under this Section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following:

- (a) the reduction must be calculated in the prescribed manner; and
- (b) the reduction must not exceed the prescribed limits.

(16) Payment in accordance with this Section replaces the entitlement of a member, former member or retired member in respect of a deferred pension mentioned in Section 53.

(17) An entitlement to a benefit under this Section is subject to any right to or interest in the benefit set out in a court order or a written agreement that provides for the division of a deferred pension or pension benefit. 2011, c. 41, s. 67; 2013, c. 25, s. 4; 2018, c. 4, s. 16.

Waiver of entitlement by spouse

70 (1) The spouse of a member, former member or retired member may waive the spouse's entitlement under subsection 69(1) or (2) by delivering a written waiver, in the form approved by the Superintendent, to the administrator of the pension plan.

(2) A spouse who has delivered a waiver may cancel it by delivering a written and signed notice of cancellation to the administrator before the date of death of the member, former member or retired member.

(3) Where a waiver is in effect on the date of death of the member, former member or retired member, subsections 69(6) and (7) apply as if the member, former member or retired member does not have a spouse on the date of death. 2011, c. 41, s. 68.

Variation of payment to person with disability

71 (1) A pension plan may permit variation in the terms of payment of a pension benefit or deferred pension by reason of the mental or physical disability of a member or former member that is likely to shorten considerably the life expectancy of the member or former member.

(2) Where the prescribed conditions are satisfied, a pension plan is deemed to permit variation in terms of payment of a pension or deferred pension in prescribed circumstances of shortened life expectancy. 2011, c. 41, s. 69.

Payment of commuted value if benefit small

72 (1) A pension plan may provide for payment to a former member or retired member of the commuted value of a benefit if the annual benefit payable at the normal retirement age is not more than four per cent of the Year's Maximum Pensionable Earnings in the year that the former member or retired member terminated employment or if the commuted value of a benefit is less than 20% of the Year's Maximum Pensionable Earnings in the year that the former member or retired member terminated employment.

(2) A pension plan registered before January 1, 1988, may provide that upon termination of employment a person entitled to a deferred pension pursuant to Section 52 is entitled to payment of an amount not greater than 25% of the commuted value of the deferred pension.

(3) A person entitled to a payment described in subsection (1) or (2) may require the administrator to pay the applicable amount into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(4) Section 73 applies with respect to the payment into the registered retirement savings arrangement. 2011, c. 41, s. 70.

Payments into registered retirement savings arrangement

73 (1) When a person delivers a direction to the administrator of a pension plan in accordance with subsection 55(5), 65(8), 69(4), 69(10), 72(3) or 90(7) to pay an amount into a registered retirement savings arrangement, the administrator shall make the payment in accordance with the direction and shall do so within the prescribed period.

(2) Where the amount to be paid into the registered retirement savings arrangement is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the person who gave the administrator the direction.

(3) The administrator is discharged on making the payment in accordance with the person's direction if the payment complies with this Act and the regulations. 2011, c. 41, s. 71.

No discrimination on basis of sex

74 (1) The sex of a member, former member, retired member or other beneficiary under a pension plan must not be taken into account in

(a) determining the amount of contributions required to be made by a member;

(b) determining the pension benefits, deferred pension or pension or the commuted value of pension benefits, deferred pension or pension to which a member, former member, retired member or other beneficiary is or may become entitled;

(c) the provision of eligibility conditions for membership;

or

- (d) the provision of ancillary benefits.
- (2) In order to comply with subsection (1), the administrator may
 - (a) use annuity factors that do not differentiate as to sex;
 - (b) provide for employer contributions that vary according to the sex of the employee; and
 - (c) use any prescribed method of calculation or valuation.
- (3) This Section applies in respect of contributions, benefits and conditions in relation to
 - (a) employment on or after January 1, 1988;
 - (b) employment before January 1, 1988, in so far as it is dealt with in an amendment made to the pension plan on or after that day; and
 - (c) employment before January 1, 1988, in so far as it is dealt with in a pension plan established on or after that day. 2011, c. 41, s. 72.

C.P.P./Q.P.P./old age security offsets

75 (1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) must not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

(2) The amount of a reduction in a pension benefit required under a pension plan in relation to the payments mentioned in subsection (1) may not be increased by reason of an increase in the amount of any of the other payments after the date the member's employment or membership in the plan is terminated.

(3) A pension plan for registration of which application is made on or after January 1, 1988, may not permit the reduction of a pension or a deferred pension based on a person's entitlement under the *Old Age Security Act* (Canada).

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered pursuant to Chapter 14 of the Acts of 1975 that permitted such a reduction.

(5) A pension plan may not permit the reduction of a pension or deferred pension based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after January 1, 1988.

(6) Where a pension plan provides for the reduction of a bridging benefit because a person receives or is eligible to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan* before the person reaches 65 years of age, the reduction may only be made in the prescribed circumstances.

(7) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the *Canada Pension Plan*, the *Quebec*

Pension Plan or the *Old Age Security Act* (Canada), the variation must be applied in the prescribed manner. 2011, c. 41, s. 73.

PENSION ENTITLEMENT ON BREAKDOWN OF SPOUSAL RELATIONSHIP

Division of pension or pension benefit

76 (1) In this Section, “spouse” includes a former spouse.

(2) Where a member, former member or retired member is entitled to a pension benefit, deferred pension or pension and the member, former member or retired member and that person’s spouse have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation, the pension benefit, deferred pension or pension earned during the marriage or cohabitation may be divided in accordance with the regulations between the member, former member or retired member and that person’s spouse by an order of the Supreme Court of Nova Scotia, by a written agreement that provides for the division of a pension benefit, deferred pension or pension, or in such other manner as is prescribed.

(3) Notwithstanding subsection (2), the spouse of the member, former member or retired member must not receive more than one half of the pension benefit, deferred pension or pension earned during the marriage or cohabitation. 2011, c. 41, s. 74; 2013, c. 25, s. 6.

CONTRIBUTIONS

Funding

77 (1) A pension plan must provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations.

(2) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, shall make the contributions to

(a) the pension fund; or

(b) where pension benefits under the pension plan are paid by an insurance company, the insurance company that is the administrator,

in the prescribed manner, at the prescribed times and in accordance with the prescribed requirements for funding.

(3) Where a pension plan provides contributory benefits, the members shall make the contributions required under the plan in the prescribed manner and at the prescribed times.

(4) Where a pension plan is a jointly sponsored pension plan, the members shall make the contributions required under the plan, including contributions in respect of any going concern unfunded liability and any solvency deficiency, in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times. 2011, c. 41, s. 75.

Contribution holidays

78 (1) Notwithstanding subsection 77(2), an employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, may reduce or suspend, in the prescribed manner, contributions for the normal cost of the pension plan if

- (a) the pension plan has a surplus;
- (b) the documents that create and support the pension plan or pension fund do not prohibit the reduction or suspension; and
- (c) such other requirements as may be prescribed are satisfied.

(2) Notwithstanding subsections 77(3) and (4), the contributions that members are required to make for the normal cost of the pension plan may be reduced or suspended in the prescribed manner if

- (a) the pension plan has a surplus;
- (b) the documents that create and support the pension plan or pension fund do not prohibit the reduction or suspension; and
- (c) such other requirements as may be prescribed are satisfied. 2011, c. 41, s. 76.

Reserve account for defined benefit portion

79 (1) Where a pension plan text document contains a defined benefit provision the administrator may establish a reserve account for the defined benefit portion of the pension plan.

(2) Contributions to a reserve account are limited to payments made in respect of a solvency deficiency or other prescribed contributions.

(3) Notwithstanding subsection (2), assets may not be transferred from an account in a pension fund to the fund's reserve account.

(4) Notwithstanding the provisions of the pension plan text document, the administrator may, on the full wind-up of the pension plan, withdraw surplus from the plan's reserve account if

- (a) the prescribed conditions for the withdrawal of surplus from the reserve account are satisfied, including any prerequisite conditions for the making of the withdrawal application;
- (b) the administrator has applied to the Superintendent in accordance with the prescribed requirements requesting the Superintendent's consent for the withdrawal of surplus from the reserve account; and
- (c) the Superintendent has consented in accordance with the prescribed requirements to the withdrawal of surplus from the reserve account and the consent has not been revoked. 2019, c. 21, s. 4.

Letters of credit

80 (1) Notwithstanding subsection 77(2), where a prescribed employer is required to make payments into the pension fund with respect to a solvency defi-

ciency the employer may provide a letter of credit to a prescribed person or entity instead of making payments into the pension fund with respect to the solvency deficiency, if the requirements of this Section are satisfied.

(2) The letter of credit must satisfy such requirements as may be prescribed.

(3) The employer shall provide the letter of credit to the prescribed person or entity within such period after it is issued as may be prescribed and the employer shall give a copy of the letter of credit to the administrator within the same period.

(4) The administrator shall notify the Superintendent in the prescribed manner and within the prescribed period that a letter of credit has been provided and, upon request, the administrator shall give the Superintendent such information about the letter of credit as the Superintendent may specify.

(5) The prescribed person or entity holds the letter of credit in trust for the pension plan.

(6) In such circumstances as may be prescribed, the prescribed person or entity shall demand payment of the amount of the letter of credit into the pension fund by the issuer of the letter of credit.

(7) The fees or expenses associated with obtaining, holding, amending or cancelling a letter of credit are not payable from the pension fund.

(8) Subject to Section 34, the fees and expenses associated with enforcing a letter of credit are payable from the pension fund.

(9) This Section does not apply with respect to multi-employer pension plans. 2011, c. 41, s. 77; 2019, c. 21, s. 5.

Payment of contributions when due

81 (1) The administrator of a pension plan and the agent, if any, of the administrator who is responsible for receiving contributions under the pension plan shall ensure that all contributions are paid when due.

(2) Where a contribution is not paid when due, the administrator and the agent, if any, shall notify the Superintendent in the prescribed manner and within the prescribed period. 2011, c. 41, s. 78.

Duty to pension fund trustees

82 (1) The administrator shall give the persons who are prescribed for the purpose of subsection 33(5) a summary of the contributions required to be made in respect of the pension plan, and shall do so in the prescribed manner and within the prescribed period.

(2) Subsection (1) does not apply if the administrator is also the trustee of the pension fund.

(3) A person who is entitled to receive a summary shall notify the Superintendent in the prescribed manner and within the prescribed period if the person is not given the summary in accordance with subsection (1).

(4) A person who is entitled to receive a summary shall notify the Superintendent in the prescribed manner and within the prescribed period if a contribution is not paid when due. 2011, c. 41, s. 79.

Trust property

83 (1) Where an employer receives money from an employee pursuant to an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer is deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

(2) For the purpose of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to an employee is deemed to be money received by the employer from the employee.

(3) An employer who is required to pay contributions to a pension fund is deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund is deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind-up but not yet due under the plan or the regulations.

(5) The administrator has a lien and charge on the assets of the employer in an amount equal to the amounts required to be held in trust pursuant to subsections (1), (3) and (4).

(6) The lien referred to in subsection (5) is not a charge against a parcel registered pursuant to the *Land Registration Act* until a certificate evidencing the lien has been recorded in the judgment roll.

(7) The administrator may record a notice of the lien referred to in subsection (5) in the parcel register of any property owned by a person for whom or on account of whom the amounts are required to be held in trust pursuant to subsections (1), (3) and (4) to which the lien applies and shall thereupon serve that person with a copy of the lien and recording particulars.

(8) Upon satisfaction of the lien, including payment of the fees for recording the lien and the release, the administrator shall record a release of the lien in the parcel registers in which notice of the lien was recorded.

(9) Money held in trust pursuant to subsection (1), (3) or (4) must be kept separate and apart from other money or property of the employer.

(10) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that is deemed to be held in trust pursuant to subsections (1), (3) and (4) is deemed to be separate and form no part of the estate

in liquidation, assignment or bankruptcy, regardless of whether that amount has been kept separate and apart from the employer's own money or from the assets of the estate.

(11) Subsections (1) to (9) apply with necessary changes in respect of money to be paid to

- (a) an insurance company that guarantees pension benefits under a pension plan; and
- (b) an administrator or other person who receives money from an employer pursuant to a multi-employer pension plan. 2011, c. 41, s. 80.

Accrual

84 (1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

(2) Interest on contributions must be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements. 2011, c. 41, s. 81.

Proceedings for payment

85 The administrator of a pension plan may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations. 2011, c. 41, s. 82.

Bond

86 The administrator of a multi-employer pension plan may require a person who received contributions to the pension fund, or who administers or invests the pension fund, to be bonded in an amount required by the administrator or in the prescribed amount. 2011, c. 41, s. 83.

Transmission of agreement

87 An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan. 2011, c. 41, s. 84.

Investment of pension fund

88 Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and the regulations. 2011, c. 41, s. 85.

Overpayments, etc., by employer

- 89 (1)** This Section applies if an employer
- (a) pays an amount in respect of a pension plan that should have been paid out of the pension fund; or
 - (b) makes an overpayment into the pension fund.

(2) The administrator of the pension plan shall not make or authorize a payment from the pension fund to reimburse the employer for a payment described in subsection (1) unless the Superintendent consents in advance to the payment from the pension fund to the employer.

(3) The employer or, in the case of a jointly sponsored pension plan or multi-employer pension plan, the administrator may apply to the Superintendent for consent to the payment from the pension fund to reimburse the employer for a payment described in subsection (1).

(4) The application must be made before the later of

(a) 24 months after the date on which the employer made the payment described in subsection (1); and

(b) six months after the date on which the administrator, acting reasonably, becomes aware of the payment described in subsection (1).

(5) Subject to Section 119, the Superintendent may consent to the payment from the pension fund to the employer if the application is made before the deadline described in subsection (4). 2011, c. 41, s. 86.

LOCKING IN

Refunds

90 (1) Except as authorized in this Section, no member, former member or retired member is entitled to a refund from a pension fund of contributions made in respect of employment in the Province or a designated jurisdiction on or after the qualification date.

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member, former member or retired member or a payment pursuant to subsection 55(4).

(3) Subsection (1) does not prevent the refund of an optional contribution and interest thereon to a former member or retired member.

(4) Subsection (1) does not apply to

(a) prevent the commutation of a pension benefit pursuant to subsection 72(1);

(b) prevent a payment pursuant to subsection 72(2); or

(c) such other circumstances as are prescribed.

(5) Notwithstanding subsection (1), on application by the administrator, contributions may be refunded to a member, former member or retired member with the consent of the Superintendent.

(6) On application by the administrator, the Superintendent may consent to a refund pursuant to subsection (5) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.

(7) A person entitled to a payment under subsection (2) or (5) may require the administrator to pay the applicable amount into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(8) Section 73 applies with respect to the payment into the registered retirement savings arrangement. 2011, c. 41, s. 87.

Void transactions

91 (1) Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan is void.

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with Section 61 or 63 or subsection 69(1) or 99(2), is void.

(3) Subsections (1) and (2) do not apply to prevent the assignment, in accordance with Section 76, of an interest in money payable under a pension plan or money payable as a result of a purchase or transfer pursuant to Section 61 or 63 or subsection 69(1) or 99(2). 2011, c. 41, s. 88.

Exemption from execution, seizure or attachment

92 (1) Money payable under a pension plan is exempt from execution, seizure or attachment.

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity pursuant to Section 61, 63, 69 or 76 or subsection 99(2) is exempt from execution, seizure or attachment.

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with Section 61, 63, 69 or 76, or subsection 99(2) is exempt from execution, seizure or attachment.

(4) The entitlement of a person, in the person's discretion, to withdraw money from a locked-in retirement account as defined in the regulations must not be considered when determining, for the purpose of any other Act, the income or assets available to the person. 2011, c. 41, s. 89.

Enforcement of maintenance order

93 (1) Notwithstanding any enactment, for the purpose of enforcement of a maintenance order as defined in the *Maintenance Enforcement Act*,

(a) money payable under a pension plan to a retired member or a person as a result of a division under Section 76 or payable from a prescribed retirement savings arrangement or life annuity that results from a purchase or transfer under Section 61, 63, 69 or 76 or subsection 99(2) is subject to a garnishment pursuant to the *Maintenance Enforcement Act* and the prescribed requirements under that Act respecting garnishment;

(b) variable benefits payable to a member under the member's pooled registered pension plan account or to a person with an

entitlement under a pooled registered pension plan as a result of a division pursuant to Section 76 are subject to a garnishment pursuant to the *Maintenance Enforcement Act* and the prescribed requirements under that Act respecting garnishment;

(c) a deferred pension or pension benefit of a former member or of a person that results from a division under Section 76 or a deferred life annuity or prescribed retirement savings arrangement of a person that results from a purchase or transfer pursuant to Sections 61, 63, 69 or 76 or subsection 99(2) is subject to attachment by the Director of Maintenance Enforcement in accordance with the *Maintenance Enforcement Act* and the prescribed requirements under that Act respecting attachment of a pension entitlement; and

(d) funds payable to a member under the member's pooled registered pension plan account or to a person with an entitlement under a pooled registered pension plan as a result of a division pursuant to Section 16 of the *Pooled Registered Pension Plans Act* are subject to attachment by the Director of Maintenance Enforcement in accordance with the *Maintenance Enforcement Act* and the prescribed requirements under that Act respecting attachment of a pooled registered pension plan account.

(2) Where an amount has been attached by the Director of Maintenance Enforcement as described in clause (1)(c), the administrator shall deduct from the commuted value of the deferred pension, pension benefit or the deferred life annuity or from the money transferred to a prescribed retirement savings arrangement

(a) the cost of complying with the attachment calculated in the prescribed manner;

(b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and

(c) the lesser of

(i) the amount attached, and

(ii) the remainder of the commuted value of the deferred pension, pension benefit or deferred life annuity or the remainder of the money transferred to a prescribed retirement savings arrangement.

(1)(c) or (d), (3) Where an amount has been attached as described in clause

(a) the person whose entitlement has been attached has no further claim or entitlement to any pension or benefit respecting the amount attached;

(b) the entitlement of a person after the person's entitlement has been attached is calculated on the basis of the commuted value of the person's deferred pension, pension benefit or deferred life annuity after the deduction of the amounts referred to in subsection (2) or the entitlement is the remainder of the money in the prescribed retirement savings arrangement after the deduction of the amounts referred to in subsection (2); and

(c) neither the administrator nor the plan is liable to any person by reason of having made payment pursuant to an attachment referred to in clause (1)(c) or (d). 2011, c. 41, s. 90; 2014, c. 37, s. 26.

Prohibition on commutation and surrender

94 (1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer pursuant to Section 61, 63, 69 or 76 or subsection 99(2) to which a person is entitled must not be commuted or surrendered, in whole or in part, during the person's life.

(2) A transaction that purports to commute or surrender, in whole or in part, such a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement is void.

(3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension pursuant to Section 71 or to a commutation of a benefit pursuant to Section 72.

(4) Subsections (1) and (2) do not apply to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement in such circumstances or in such amounts as may be prescribed, subject to such conditions and restrictions as may be prescribed. 2011, c. 41, s. 91; 2021, c. 16, s. 2.

WINDING UP

Wind-up of plan

95 (1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

(2) Notwithstanding subsection (1), where a jointly sponsored pension plan is also a multi-employer pension plan, the administrator may wind up the plan, in whole or in part, unless the documents that create and support the plan authorize another person or entity to do so, in which case the authorized person or entity may wind up the plan, in whole or in part.

(3) Notwithstanding subsection (1), where a jointly sponsored pension plan is not a multi-employer pension plan, the administrator or another person or entity may wind up the plan, in whole or in part, if the documents that create and support the plan authorize the administrator, person or entity to do so.

(4) The employer, administrator or other person or entity shall give written notice of an intended wind-up of the pension plan to

- (a) the Superintendent;
- (b) each member who is affected;
- (c) each former member who is affected;
- (d) each retired member who is affected;
- (e) each trade union that represents affected members or that, on the date of the wind-up, represented members, former members or retired members affected by the wind-up;

- (f) the advisory committee of the pension plan; and
- (g) any other person entitled to a payment from the pension fund who is affected.

(5) Where the intended wind-up is a partial wind-up of the pension plan, the administrator, employer or other person or entity is not required to give written notice to members, former members, retired members or other persons entitled to payment from the pension fund if those persons will not be affected by the partial wind-up.

(6) The notice of the intended wind-up must contain such information as may be prescribed.

(7) The Superintendent may require the administrator to give specified additional information and documents to the persons entitled to notice of the intended wind-up, and to do so within a specified period.

(8) The effective date of the wind-up must not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits or, in any other case, on the date notice is given to members.

(9) Subject to Section 119, the Superintendent may, by order, change the effective date of the wind-up if the Superintendent is of the opinion that there are reasonable grounds for the change. 2011, c. 41, s. 92.

Order to wind up

96 (1) The Superintendent may, by order, require the wind-up of a pension plan if

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
- (d) a significant number of the members cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;
- (f) all or a significant part of the employer's business or all or a significant part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person or entity who acquires the business or assets, or a part thereof, does not provide a pension plan for the members of the employer's pension plan who become employees of the person or entity;
- (g) in the case of a multi-employer pension plan,

- (i) there is a significant reduction in the number of members, or
- (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (h) any prescribed event or prescribed circumstance occurs.

(2) In an order pursuant to subsection (1), the Superintendent shall specify the effective date of the wind-up.

(3) The administrator, employer or other person or entity shall give notice of the order to the persons and entities listed in clauses 95(4)(b) to (g) and shall include in the notice such information about the wind-up as the order may specify.

(4) The administrator, employer or other person or entity shall file with the Superintendent a copy of the notice given under subsection (3).

(5) A reduction or suspension of contributions under Section 78 does not constitute a cessation or suspension of employer contributions for the purpose of clause (1)(a) or subclause (1)(g)(ii). 2011, c. 41, s. 93.

Wind-up report

97 (1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind-up report that sets out

- (a) the assets and liabilities of the pension plan;
- (b) the benefits to be provided under the pension plan to members, former members, retired members and other persons;
- (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- (d) such information as is prescribed.

(2) No payment may be made out of the pension fund in respect of which notice of the intended wind-up has been given by the administrator under Section 95 or 96 until the Superintendent has approved the wind-up report.

(3) Subsection (2) does not apply to prevent the continued payment of a pension or other benefit if the payment commenced before the giving of the notice of the intended wind-up or to prevent any other payment that is prescribed or that is approved by the Superintendent.

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind-up report approved by the Superintendent.

(5) The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members, former members, retired members and other persons entitled to benefits under the pension plan.

(6) On the partial wind-up of a pension plan, members, former members, retired members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up. 2011, c. 41, s. 94.

Notice of entitlement on wind-up

98 (1) Within the prescribed period of time, the administrator of a pension plan that is to be wound up, in whole or in part, shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the pension plan, the options available to the person and such other information as may be prescribed.

(2) Where a person to whom notice is given pursuant to subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or is deemed to have elected to receive

(a) immediate payment of a pension benefit, if the person is eligible to receive the immediate payment; or

(b) a pension beginning at the earliest date mentioned in clause 100(1)(b), if the person is ineligible to receive the immediate payment.

(3) Where the notice under subsection (1) is given in respect of a pension plan for which an election under Section 101 is in effect and the person to whom the notice is given does not make an election within the prescribed period of time, the person is deemed to have elected to receive

(a) immediate payment of a pension benefit, if the person is eligible to receive the immediate payment; or

(b) a pension beginning at the earliest date on which the person would be entitled to an unreduced pension under the pension plan as of the effective date of the wind-up, if the person is ineligible to receive the immediate payment.

(4) Within the prescribed period of time, the administrator shall make payment in accordance with the election or deemed election. 2011, c. 41, s. 95.

Determination of amount of benefits on wind-up

99 (1) For the purpose of determining the amounts of pension benefits and any other benefits and entitlements on the winding up of a pension plan, in whole or in part,

(a) the employment of each member affected by the winding up is deemed to have been terminated on the effective date of the winding up;

(b) each member's pension benefits as of the effective date of the wind-up must be determined as if the member had satisfied all eligibility conditions for a deferred pension; and

(c) provision must be made for the rights, if any, pursuant to Section 100.

(2) A person entitled to a pension benefit on the wind-up of a pension plan, other than a person who is receiving a pension, is entitled to the rights pursuant to subsection 61(1) of a member who terminates employment and for that purpose subsection 61(4) does not apply.

(3) Except as provided under subsection (2), the administrator is not required to purchase life annuities for members, former members, retired members or other persons entitled to benefits under the pension plan in order to distribute the assets of the pension fund in connection with a partial wind-up.

(4) Where the administrator does not purchase life annuities in the circumstances described in subsection (3), the administrator shall comply with such requirements as may be prescribed in connection with the distribution of the assets of the pension fund in connection with a partial wind-up. 2011, c. 41, s. 96.

Pension rights of member on wind-up

100 (1) A member of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least 55, at the effective date of the wind-up of the pension plan, in whole or in part, has the right to receive

(a) a pension in accordance with the terms of the pension plan if, under the pension plan, the member is eligible for immediate payment of the pension benefit;

(b) a pension in accordance with the terms of the pension plan, beginning at the earlier of

(i) the normal retirement age under the pension plan, and

(ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or

(c) a reduced pension in the amount payable under the terms of the pension plan, beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

(2) In determining the combination of age plus employment or membership, one-twelfth credit must be given for each month of age and for each month of continuous employment or membership at the effective date of the wind-up.

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not wound up and if the membership of the member were continued must be included in calculating the pension benefit pursuant to subsection (1) of a person who has at least 10 years of continuous employment with the employer or has been a member for at least 10 years.

(4) For the purpose of subsection (3), where the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the bridging benefit must be pro-rated by the ratio that the

member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of pension benefits and a full bridging benefit under the pension plan if the pension plan were not wound up or partially wound up.

(5) Membership in a pension plan that is wound up, in whole or in part, includes the period of notice of termination of employment required pursuant to the *Labour Standards Code*.

(6) Subsection (5) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment.

(7) For the purpose of this Section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer is deemed to have given the consent.

(8) For the purpose of this Section, where the consent of the administrator of a jointly sponsored pension plan is an eligibility requirement for entitlement to receive an ancillary benefit, the administrator is deemed to have given the consent.

(9) A benefit described in subsection (1) for which a member has met all eligibility requirements under this Section must be included in calculating the member's pension benefit or the commuted value of the pension benefit.

(10) This Section does not apply in respect of a multi-employer pension plan.

(11) This Section does not apply in respect of a jointly sponsored pension plan while an election made under Section 101 for the plan and its members is in effect. 2011, c. 41, s. 97.

Election

101 (1) The employers, or any persons or entities who make contributions on behalf of the employers or who represent the employers, and the members, or the representatives of the members, of a jointly sponsored pension plan may elect, in accordance with this Section, to exclude the plan and its members from the operation of Section 100.

(2) An election may only be made within the prescribed period and the persons or entities making the election must satisfy such requirements as may be prescribed in connection with the election.

(3) Only one election may be made in respect of a pension plan.

(4) An election to exclude a pension plan and its members from the operation of Section 100 takes effect when notice of the election is filed with the Superintendent or on a later date specified in the notice.

(5) An election may be rescinded by the persons and entities described in subsection (1), and the rescission takes effect when notice of the rescis-

sion is filed with the Superintendent or on a later date specified in the notice. 2011, c. 41, s. 98.

Employer's payments on wind-up

102 (1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund an amount equal to the total of all payments that, pursuant to this Act, the regulations and the pension plan, are due or have accrued and that have not been paid into the pension fund.

(2) Where, at the wind-up on or after May 1, 2007, of a pension plan other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan and under Section 100, the employer shall make such payments into the pension fund of the amount necessary to fund the benefits provided under the plan and under Section 100.

(3) The employer shall pay the monies due pursuant to subsections (1) and (2) in the prescribed manner and at the prescribed time.

(4) This Section does not apply to jointly sponsored pension plans. 2011, c. 41, s. 99.

Liability on wind-up, jointly sponsored pension plans

103 (1) Where a jointly sponsored pension plan is wound up in whole or in part, the employer or the person or entity required to make contributions under the plan on behalf of the employer shall pay into the pension fund

(a) an amount equal to the total of all payments that, under this Act, the regulations and the plan, are payable by the employer or by the person or entity on behalf of the employer, that are due or have accrued and that have not been paid into the pension fund; and

(b) any additional amounts that, under the documents that create and support the plan, are payable in the circumstances by the employer or the person or entity on behalf of the employer.

(2) Where a jointly sponsored pension plan is wound up in whole or in part, the members shall pay into the pension fund,

(a) an amount equal to the total of all payments that, under this Act, the regulations and the plan, are payable by the members, that are due or have accrued and that have not been paid into the pension fund; and

(b) any additional amounts that, under the documents that create and support the plan, are payable in the circumstances by the members.

(3) The payments required by subsections (1) and (2) must be made in the prescribed manner and at the prescribed times. 2011, c. 41, s. 100.

Application of Act after wind-up

104 The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until the employer satisfies its obligations

under Section 102 and all the assets of the pension fund have been disbursed. 2011, c. 41, s. 101.

Reduction of benefits

105 Where the money in a pension fund is not sufficient to pay all the pension benefits and other benefits on the wind-up of the pension plan, the pension benefits and other benefits must be distributed and, where appropriate, reduced in the prescribed manner. 2011, c. 41, s. 102.

SURPLUS

Eligible annuity recipient

106 In Sections 107, 108 and 109, “eligible annuity recipient” means the person for whom an annuity was purchased pursuant to subsections 63(1) and (3) who is or may be entitled to participate in the allocation of surplus of the pension plan in accordance with subsection 63(7). 2019, c. 21, s. 7.

Consent of Superintendent to pay surplus

107 (1) No money that is surplus, other than surplus held in a reserve account, may be paid out of a pension fund to the employer without the prior consent of the Superintendent.

(2) An employer who applies to the Superintendent for consent to payment of money to the employer out of the surplus of the pension fund shall transmit notice of the application, containing the prescribed information, to

- (a) each member, former member and retired member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members;
- (c) each trade union that represents the members, former members or retired members of the pension plan on the date of the wind-up, if the pension plan is being wound up, in whole or in part;
- (d) any eligible annuity recipient;
- (e) any other individual who is receiving payments out of the pension fund; and
- (f) the advisory committee of the pension plan.

(3) A person to whom notice has been transmitted pursuant to subsection (2) may make written representation to the Superintendent with respect to the application within 30 days after receiving the notice. 2011, c. 41, s. 103; 2019, c. 21, s. 8.

Entitlement to surplus

108 (1) Subject to subsection (3), the documents that create and support a pension plan and pension fund govern the entitlement of the employer and other persons to payment of surplus under the pension plan, except as otherwise provided under this Act and subject to the restrictions on payment set out in Sections 107 and 109.

(2) Subsection (1) does not apply to the payment of surplus from a reserve account.

(3) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence is deemed to prohibit the withdrawal of surplus accrued on or after January 1, 1988.

(4) A pension plan that does not provide for payment of surplus money to the employer on the wind-up of the pension plan is deemed to require that surplus accrued on or after January 1, 1988, other than surplus held in a reserve account, be distributed proportionately on the wind-up among members, former members, retired members, any eligible annuity recipients and any other persons entitled to payments under the pension plan on the date of the wind-up.

(5) Where a pension plan is a successor pension plan and it is being wound up in whole or in part, the employer is not entitled to payment of surplus under the pension plan, other than surplus held in a reserve account, unless the documents that created and supported the original pension plan and pension fund and those that create and support the successor pension plan and pension fund both provide for payment of surplus to the employer on the wind-up of the pension plan.

(6) Subsection (5) does not preclude a written agreement described in subsection (8) from providing for payment of surplus to the employer in the circumstances specified in the agreement.

(7) Subsection (5) does not apply if the effective date of the transfer of assets from the original pension plan to the successor pension plan is earlier than June 1, 2015.

(8) A written agreement among the following persons may provide for payment of surplus money to the employer in the circumstances specified in the agreement and as of the date specified in the agreement:

(a) where the surplus is to be paid to the employer while the pension plan continues in existence,

(i) the employer,

(ii) at least two thirds of the members and, for this purpose, a trade union that represents members may agree on behalf of those members, and

(iii) the prescribed number of former members, retired members and other persons who are entitled to payments under the pension plan as of the specified date for payment of the surplus; or

(b) where the surplus is to be paid to the employer on the wind-up of the pension plan,

(i) the employer,

(ii) at least two thirds of the members and, for this purpose, a trade union that represents or represented members on the date of the wind-up may agree on behalf of those members, and

(iii) the prescribed number of former members, retired members, eligible annuity recipients and other persons who are entitled to payments under the pension plan as of the date of the wind-up or, in the case of a partial wind-up, are affected by the partial wind-up and are entitled to payments under the pension plan.

(9) Before entering into a written agreement described in subsection (8), an employer shall give notice in the prescribed manner of its intention to enter into such an agreement to all members, former members, retired members, eligible annuity recipients and other persons who are entitled to payments under the pension plan, and such notice must contain the prescribed information concerning the employer's proposal for payment of surplus money.

(10) A written agreement described in subsection (8) prevails over any document that creates and supports the pension plan and pension fund, over subsections (3), (4) and (5) and notwithstanding any trust that may exist in favour of any person. 2011, c. 41, s. 104; 2019, c. 21, s. 9.

Conditions for consent

109 (1) Subject to Section 119, the Superintendent shall not consent to payment of surplus money to the employer out of a continuing pension plan unless

(a) the Superintendent is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;

(b) the withdrawal of surplus by the employer while the pension plan continues in existence is authorized either as provided in Section 108 or by a court order declaring that the employer is entitled to the surplus while the plan continues;

(c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the normal cost of the pension plan, determined in accordance with the regulations, is retained in the pension fund as surplus;

(d) the greater of the following amounts is retained in the pension fund as surplus:

(i) the sum of A and B where,

A is an amount equal to twice the normal cost of the pension plan, and

B is an amount equal to five per cent of the liabilities of the pension plan, determined in accordance with the regulations, and

(ii) an amount equal to 25% of the liabilities of the pension plan, determined in accordance with the regulations; and

(e) the applicant and the pension plan comply with all other requirements prescribed pursuant to other Sections of this Act in respect of the payment of surplus out of a pension fund.

(2) Subject to Section 119, the Superintendent must not consent to payment of surplus to an employer out of a pension plan that is being wound up, in whole or in part, unless

(a) the Superintendent is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;

(b) the payment of surplus to the employer on the wind-up of the pension plan is authorized either as provided in Section 108 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up;

(c) provision has been made for the payment of all liabilities of the pension plan, as calculated for the purpose of the termination of the pension plan; and

(d) the applicant and the pension plan comply with all other requirements prescribed pursuant to other Sections of this Act in respect of the payment of surplus out of the pension fund.

(3) Where a pension plan is being wound up in whole or in part, payment from surplus may be made to or for the benefit of members, former members, retired members, eligible annuity recipients and other persons, other than an employer, who are entitled to payments under the plan as of the date of the wind-up.

(4) The Superintendent may order the administrator of a pension plan to distribute surplus in accordance with a written agreement described in subsection 108(7).

(5) The order of the Superintendent is final.

(6) An order under this Section, excluding the reasons for the order, may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court. 2011, c. 41, s. 105; 2019, c. 21, s. 10.

ASSET TRANSFERS BETWEEN PENSION PLANS

Prohibition on asset transfers

110 (1) No person shall transfer assets between pension plans if the transferred assets relate to the provision of defined benefits unless

(a) the transfer is authorized under Section 32, 61, 112, 113 or 114; or

(b) the transfer satisfies the prescribed requirements and the Superintendent has consented in advance to the transfer.

(2) No person shall transfer assets between pension plans that provide only defined contribution benefits unless the transfer satisfies the prescribed requirements and the Superintendent consents to the transfer.

(3) No person shall transfer assets between pension plans if the transferred assets relate to the provision of target benefits unless the transfer satis-

fies the prescribed requirements and the Superintendent has consented in advance to the transfer.

(4) Subsection (3) comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 106.

Requirements, etc., for all asset transfers

111 (1) This Section applies to every transfer of assets between pension plans that is authorized under Section 110, 112, 113 or 114.

(2) The effective date of the transfer of assets is determined in accordance with the regulations.

(3) Where any of the assets to be transferred relate to the provision of defined benefits in the original pension plan, the transferred assets must be used to provide defined benefits in the successor pension plan at the effective date, in accordance with such requirements as may be prescribed.

(4) Every transfer of assets must satisfy such funding requirements as may be prescribed.

(5) Where either pension plan has going concern unfunded liabilities or solvency deficiencies determined as of the effective date of the transfer, the transfer of assets must satisfy such additional requirements as may be prescribed.

(6) The administrator of each pension plan shall comply with such requirements as may be prescribed with respect to the transfer of assets between the pension plans, including any requirement to give notice about the transfer.

(7) Where the amount of the assets to be transferred in relation to an individual's pension benefits and other benefits under the original pension plan is greater than the amount allowed under the *Income Tax Act* (Canada) for such a transfer, the administrator of the original pension plan shall pay the portion that exceeds that allowed amount into a prescribed retirement savings arrangement on behalf of the individual.

(8) Where the amount to be paid under subsection (7) into a prescribed retirement savings arrangement is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the individual.

(9) Where the assets are transferred in accordance with this Act and the regulations, the transferred assets become part of the assets of the pension fund for the successor pension plan and they cease to be identified as assets of the original pension plan.

(10) Where the assets are transferred in accordance with this Act and the regulations, the employer who is the sponsor of the successor pension plan assumes responsibility for providing pension benefits and other benefits under the original pension plan to the transferred members, former members, retired members and other persons entitled to payments under that plan, and the transferred mem-

bers, former members, retired members and other persons entitled to payments have no further claim against the original pension plan.

(11) Subsection (10) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

(12) Subsection (11) does not affect any claims of the transferred members, former members, retired members or other persons under the successor pension plan.

(13) Where the transfer of assets is made with the consent of the transferred member, former member, retired member or other person, the administrator of the original pension plan is discharged on transferring the assets in accordance with this Act and the regulations.

(14) The Superintendent by order may require the administrator of the successor pension plan to return to the original pension plan, with interest calculated in the prescribed manner, assets transferred in contravention of this Act or the regulations.

(15) Subject to Section 119, an order under subsection (14), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court. 2011, c. 41, s. 107.

Transfer upon sale of business

112 (1) In this Section,

“employers’ agreement” means the agreement described in subsection (6);

“original employer” means the employer who sells, assigns or otherwise disposes of all or part of the employer’s business or all or part of the assets of the employer’s business;

“original pension plan” means the original employer’s pension plan;

“sale of the business” means the sale, assignment or other disposal referred to in subsection (2) of all or part of a business or all or part of the assets of the business;

“successor employer” means the person who acquires the business or the assets of the original employer;

“successor pension plan” means the successor employer’s pension plan;

“transferred member” means the original employer’s employee who is a member of the original pension plan who becomes the successor employer’s employee and a member of the successor pension plan in connection with the sale of the business.

(2) This Section applies where an employer who contributes under a pension plan, or on whose behalf another person or entity makes contribu-

tions under a pension plan, sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business to another person or entity.

(3) Where, in conjunction with the sale of the business, an employee of the original employer who is a member of the original pension plan becomes an employee of the successor employer and a member of the successor pension plan, the employee's employment is deemed, for the purpose of this Act, not to have been terminated by the change of employer.

(4) Where the original employer's employee who is a member of the original pension plan becomes the successor employer's employee and a member of the successor pension plan, the member

(a) continues to be entitled to the benefits provided under the original pension plan in respect of employment in the Province or in a designated jurisdiction to the effective date of the sale of the business without further accrual;

(b) is entitled to credit in the successor pension plan for the period of the employee's membership in the original pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the successor pension plan; and

(c) is entitled to credit in the original pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the original pension plan.

(5) Where the successor employer assumes responsibility for the accrued pension benefits of the transferred member under the original pension plan, clause (4)(a) does not apply with respect to the member and the successor pension plan is deemed to be a continuation of the original pension plan with respect to any benefits or assets transferred.

(6) The original employer and the successor employer may enter into an agreement to transfer

(a) to the successor employer the responsibility for providing pension benefits and other benefits under the original pension plan for transferred members, former members, retired members and other persons entitled to benefits or for classes of them; and

(b) assets from the original pension plan to the successor pension plan in connection with this transfer of responsibility,

and the agreement may require the prior consent of a member, former member, retired member or other person to the transfer of assets in respect of the pension benefits and ancillary benefits of the member, former member, retired member or other person for which eligibility requirements have been met.

(7) A person or entity required to make contributions on behalf of the original employer or the successor employer under the employer's pension plan may enter into the employers' agreement on behalf of that employer.

(8) Clause (6)(a) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

(9) Where the employers' agreement provides for the consent of any member, former member, retired member or other person to the transfer of assets in respect of the pension benefits and ancillary benefits of the member, former member, retired member or other person for which any eligibility requirements have been met,

(a) the employers' agreement must give all members, former members, retired members or other persons the opportunity to consent; and

(b) the prior consent of the members, former members, retired members or other persons must be obtained in accordance with the prescribed requirements.

(10) The Superintendent's prior consent is required to authorize the transfer of assets from the original pension plan to the successor pension plan.

(11) The administrator of either pension plan or such other person as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan.

(12) Where the employers' agreement to transfer assets requires the consent of transferred members, former members, retired members or other persons, the applicant shall ensure that notice of the application for the Superintendent's consent is given in accordance with such requirements as may be prescribed.

(13) The Superintendent shall consent to the transfer of assets in accordance with the application and the employers' agreement to the extent that

(a) the original employer and the successor employer have entered into an agreement to transfer the assets, and the applicant has given the Superintendent notice of their agreement;

(b) where the agreement requires the consent of the transferred members, former members and retired members of the original pension plan or the consent of other persons entitled to benefits under the original pension plan, their consent has been given for the transfer, and the applicant has given the Superintendent notice of their consent;

(c) the administrators of the two pension plans have agreed upon the manner of determining the amount of the assets to be transferred, and the applicant has given the Superintendent notice of their agreement;

(d) where the pension benefits and other benefits to be provided under the successor pension plan for the transferred members are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for the transferred members under the successor pension plan are not less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the transferred members in connection with the transfer of the assets;

(e) the commuted value of the benefits referred to in clause (d) is determined as of the effective date of the transfer of the assets;

(f) where the original pension plan has a surplus as of the effective date of the transfer of assets, the amount of assets to be transferred includes a portion of the surplus determined in accordance with the regulations; and

(g) such other criteria as may be prescribed have been satisfied.

(14) The notices required by subsection (13) must comply with such requirements as may be prescribed.

(15) The Superintendent may waive one or more of the conditions referred to in subsections 111(4) and (5) in the prescribed circumstances. 2011, c. 41, s. 108.

Transfers upon change of trade unions, multi-employer pension plan

113 (1) This Section applies where

(a) a group of members of a multi-employer pension plan are represented by a trade union;

(b) in accordance with Section 34 of the *Trade Union Act*, the trade union ceases to represent the members and a different trade union becomes certified as the members' bargaining agent; and

(c) the members become members of a different pension plan, regardless of whether that pension plan is a multi-employer pension plan.

(2) For the purpose of this Section,

(a) the multi-employer pension plan referred to in clause (1)(a) is the original pension plan; and

(b) the pension plan referred to in clause (1)(c) is the successor pension plan.

(3) The administrator of the original pension plan shall transfer to the successor pension plan all the assets and liabilities respecting those members who have elected under Section 61 to transfer their entitlement to the successor pension plan and the administrator of the successor pension plan shall accept them as assets and liabilities of the successor pension plan.

(4) Where the members of the original pension plan are not entitled to make an election under Section 61, the administrator of the original pension plan shall transfer to the successor pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the successor pension plan shall accept them as assets and liabilities, determined as prescribed, of the successor pension plan.

(5) This Section does not apply where there is a reciprocal transfer agreement respecting the pension plans, or in such other circumstances as may be prescribed. 2011, c. 41, s. 109.

Establishment of successor pension plan

114 (1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan is deemed not to be wound up and the successor pension plan is deemed to be a continuation of the original pension plan.

(2) The benefits under the original pension plan in respect of employment before the establishment of the successor pension plan are deemed to be benefits under the successor pension plan.

(3) Subsection (2) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

(4) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the successor pension plan.

(5) The Superintendent's prior consent is required to authorize the transfer of assets from the original pension plan to the successor pension plan.

(6) The administrator of either pension plan or such other persons as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan.

(7) The Superintendent shall consent to the transfer of assets in accordance with the application to the extent that

(a) the administrators of the two pension plans have agreed upon the manner of determining the amount of assets to be transferred, and the applicant has given the Superintendent notice of their agreement;

(b) where the pension benefits and other benefits to be provided under the successor pension plan for the transferred members are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for the transferred members under the successor pension plan is not less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the transferred members in connection with the transfer of the assets;

(c) the commuted value of the benefits referred to in clause (b) is determined as of the effective date of the transfer of the assets;

(d) where the original pension plan has a surplus as of the effective date of the transfer of assets, the amount of assets to be transferred includes a portion of the surplus determined in accordance with the regulations; and

(e) such other criteria as may be prescribed, are satisfied.

(8) The Superintendent may waive one or more of the conditions referred to in subsections 111(4) and (5) in the prescribed circumstances. 2011, c. 41, s. 110.

INSOLVENCY AND BANKRUPTCY

Authority to approve agreements regarding insolvency, etc.

115 (1) For the purpose of subsection 6(7) of the *Companies' Creditors Arrangement Act* (Canada), the Superintendent may approve an agreement by the relevant parties referred to in that subsection respecting the payment to a pension fund of certain amounts referred to in subsection 6(6) of that Act in connection with a compromise or arrangement under that Act.

(2) For the purpose of subsection 60(1.6) of the *Bankruptcy and Insolvency Act* (Canada), the Superintendent may approve an agreement by the relevant parties referred to in that subsection respecting the payment to a pension fund of certain amounts referred to in subsection 60(1.5) of that Act in connection with a proposal under that Act.

(3) The Superintendent shall not approve an agreement under this Section unless it satisfies such requirements as may be prescribed.

(4) A decision by the Superintendent under this Section to approve or not to approve an agreement is final and is not subject to a hearing or an appeal.

(5) This Section and the heading immediately preceding this Section come into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 111.

ORDERS

Order of Superintendent

116 (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to Section 119, by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

(2) The Superintendent may make an order pursuant to this Section if the Superintendent is of the opinion, upon reasonable and probable grounds, that

- (a) the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) the pension plan does not comply with this Act and the regulations; or
- (c) the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

(3) In an order pursuant to this Section, the Superintendent may specify the time when or the period of time within which the person to whom the

order is directed must comply with the order, and may specify one or more such times or periods of time.

(4) An order pursuant to this Section is not effective unless the reasons for the order are set out in the order. 2011, c. 41, s. 112.

Order as result of report

117 (1) Where the Superintendent is of the opinion that

(a) the assumptions or methods used in the preparation of a report required pursuant to this Act or the regulations in respect of a pension plan are inappropriate in the circumstances for the pension plan, whether or not those assumptions or methods are otherwise consistent with accepted actuarial practice;

(b) the assumptions or methods used in the preparation of a report required pursuant to this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice; or

(c) a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan,

the Superintendent may, subject to Section 119, make an order requiring the administrator to take an action specified in subsection (2).

(2) An order pursuant to this Section may include requiring the preparation of a new report and specifying the assumptions or methods or both that must be used in the preparation of the new report.

(3) An order under subsection (1) may specify one or more deadlines or periods for complying with the order.

(4) In such circumstances as may be prescribed, the Superintendent may make an order requiring an administrator, an employer or any other person to prepare and file a new report or another prescribed type of report in respect of a pension plan if the Superintendent is of the opinion that there are reasonable and probable grounds to believe that

(a) there is a substantial risk to the security of the benefits payable under the pension plan to members, former members, retired members or other persons entitled to payments under the pension plan; or

(b) there has been a significant change in the circumstances of the pension plan.

(5) An order under subsection (4) may

(a) specify the assumptions or methods or both to be used in the preparation of the report;

(b) require an employer or other person to give the administrator any information necessary to prepare the report;

(c) require the administrator, employer or other person to pay all or part of the cost of preparing the report; and

(d) specify one or more deadlines or periods for complying with the order.

(6) The Superintendent shall serve a copy of the order under subsection (4), together with written reasons, upon the administrator, the employer and every other person who is required to comply with it.

(7) The order under subsection (4) takes effect on the later of

(a) the latest date on which a person is served under subsection (6) with a copy of the order; and

(b) the date specified in the order. 2011, c. 41, s. 113.

Hearing by Labour Board

118 (1) A person who is required to comply with an order made under subsection 117(4) is entitled to a hearing by the Board about the order if the person delivers a written request to the Board within 30 days after a copy of the order is served on the person.

(2) The request for a hearing by the Board does not stay the order, but the Board may grant a stay until it disposes of the request.

(3) Upon receiving the request made in accordance with subsection (1), the Board shall appoint a time for and hold the hearing.

(4) The parties to the hearing are the person who requests the hearing, the Superintendent and such other persons as the Board specifies.

(5) At or after the hearing, the Board by order may confirm, vary or revoke the order or substitute another order. 2011, c. 41, s. 114.

NOTICES OF, AND APPEALS FROM, INTENDED DECISIONS AND ORDERS

Notice of intention regarding registration

119 (1) Where the Superintendent intends to refuse to register a pension plan, an amendment to a pension plan or part of an amendment to a pension plan or to revoke such a registration, the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the applicant or administrator of the plan.

(2) Where the Superintendent intends to make an order pursuant to subsection 61(12), 64(4), 95(9), 111(14), 116(1) or 117(1), the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the administrator and on any person to whom the Superintendent intends to direct the order.

(3) Where the Superintendent intends to make or to refuse to make an order under subsection 48(1) requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the administrator, and the Superintendent

shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.

(4) Where the Superintendent intends to consent or refuse to consent under subsection 89(5) to a payment from the pension fund to the employer, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant and the Superintendent may require the applicant to transmit a copy of the notice and written reasons to such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant.

(5) Where an application is filed in accordance with subsection 107(2) for the payment of surplus to the employer and the Superintendent intends to consent or refuse to consent under subsection 107(1), the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant and on any person who made written representations to the Superintendent in accordance with subsection 107(3).

(6) Where the Superintendent intends to refuse to give an approval or consent or intends to attach terms and conditions to an approval or consent pursuant to this Act or the regulations, other than a consent pursuant to subsection (4) or (5), the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the applicant for the approval or consent.

(7) Where the Superintendent intends to make an order requiring the wind-up of a pension plan or declaring a pension plan wound up, in whole or in part, the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons to such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.

(8) A notice pursuant to subsection (1), (2), (3), (4), (5), (6) or (7) must state that the person on whom the notice is served is entitled to a hearing by the Board if the person delivers to the Board, within 30 days after service of the notice pursuant to that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

(9) Where the person on whom the notice is served does not require a hearing in accordance with subsection (8), the Superintendent may make the intended decision indicated in the notice.

(10) Where the person requires a hearing by the Board in accordance with subsection (8), the Board shall appoint a time for and hold the hearing.

(11) At or after the hearing, the Board by order may direct the Superintendent to make or refrain from making the intended decision indicated in the notice and to take such action as the Board considers the Superintendent ought to take in accordance with this Act and the regulations and, for such purpose, the Board may substitute its opinion for that of the Superintendent.

(12) The Superintendent, the person who requires a hearing and such other persons as the Board specifies are parties to the proceeding before the Board under this Section.

(13) Documents and things put in evidence at a hearing must, upon the request of the person who produced them, be released within a reasonable time after the matter in issue has been finally determined. 2011, c. 41, s. 115; 2013, c. 25, s. 7; 2019, c. 21, s. 11.

Appeal to Supreme Court

120 (1) A party to a proceeding before the Board under Section 118 or 119 may appeal to the Supreme Court of Nova Scotia from the decision or order of the Board.

(2) Upon the request of a party desiring to appeal to the Supreme Court of Nova Scotia and upon payment of any fee which may be prescribed, the Board shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from. 2011, c. 41, s. 116.

GENERAL

Order to provide information to Superintendent

121 (1) The Superintendent may, by order, require an employer, an administrator or any other person to supply to the Superintendent or a person designated by the Superintendent such information as the order specifies, for the purpose of enabling the Superintendent or a person designated to ascertain whether this Act and the regulations are being complied with.

(2) Without limiting the generality of subsection (1), the order may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers and provide the appraisal to the Superintendent or designate or it may authorize the Superintendent to obtain an appraisal at the administrator's expense.

(3) The order may specify the form in which information is to be provided and the time within which it is to be provided to the Superintendent or designate.

(4) The order has no effect unless the reasons for the order are set out in it.

(5) An order under this Section, excluding the reasons for the order, may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court. 2011, c. 41, s. 117.

Immunity

122 The Superintendent or the staff of the Superintendent are not personally liable for anything done in good faith in the execution or intended execution of a duty or authority pursuant to this Act or the regulations or for alleged neglect or default in the execution in good faith of such a duty or authority. 2011, c. 41, s. 118.

Examination by Auditor General

123 The Auditor General may examine the accounts and financial transactions of the Superintendent. 2011, c. 41, s. 119.

Annual report to Minister

124 (1) Within a reasonable time after the close of each fiscal year, the Superintendent shall file with the Minister an annual report on the matters for which the Superintendent is responsible under this Act.

(2) The Minister shall submit the annual report to the Governor in Council and then table the report in the House of Assembly if it is then sitting or, if it is not then sitting, file the report with the Clerk of the Assembly. 2011, c. 41, s. 120.

Agency

125 The Governor in Council may establish or designate an agency for the purpose, among others, of receiving, holding and disbursing pension benefits pursuant to this Act. 2011, c. 41, s. 121.

Deemed registration

126 Every pension plan that was registered and that continued to be qualified for registration pursuant to the former Act, immediately before the effective date, is deemed to be registered pursuant to this Act upon the effective date. 2011, c. 41, s. 122.

Extension of time limit

127 (1) Upon application by an affected person, the Superintendent may extend, before or after it has expired,

(a) a procedural time limit related to the powers and duties of the Superintendent under this Act or the regulations; or

(b) subject to subsection (2), a time limit related to the filing of such documents as may be prescribed that, under this Act or the regulations, must be filed,

if the Superintendent is satisfied that there are reasonable grounds for doing so.

(2) The time limit referred to in clause (1)(b) may be extended for a maximum of 60 days and, where the Superintendent is satisfied that extraordinary grounds exist and that no person will be unduly prejudiced, for further periods.

(3) When extending a time limit under this Section, the Superintendent may impose such conditions as the Superintendent considers appropriate in the circumstances. 2011, c. 41, s. 123.

Examinations, investigations and inquiries

128 (1) In this Section, “specified purpose” means

(a) the administration of this Act and the regulations;

(b) the enforcement of any provision of this Act or the regulations;

- (c) the exercise of a power or the carrying out of a duty under this Act or the regulations; or
- (d) the carrying out of an order made under this Act.
- (2) For a specified purpose, the Superintendent may, at any reasonable time,
- (a) enter and have access to, through and over any business premises if the Superintendent has reasonable grounds to believe that books, papers, documents or things are kept that relate to a pension plan or a pension fund;
- (b) make any examinations, investigations or inquiries and require the production of any book, paper, document or thing related to a pension plan or a pension fund;
- (c) make, take and remove or require the making, taking and removal of copies or extracts in relation to the subject-matter of an examination, investigation or inquiry; and
- (d) upon giving a receipt, remove any books, papers, documents or things related to the subject-matter of an examination, investigation or inquiry for the purpose of making copies, but the copying must be carried out with reasonable dispatch and the books, papers, documents and things must be returned immediately after the copying is completed.
- without (3) Subsection (2) is not authority to enter a private residence
- (a) the consent of the occupier; or
- (b) a court order.
- (4) The Superintendent shall provide identification at the time of entry when exercising a power of entry under this Section.
- (5) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by the Superintendent is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would be admissible.
- (6) Where an occupier of premises
- (a) denies entry or access to, through or over the premises to the Superintendent;
- (b) instructs the Superintendent to leave the premises;
- (c) obstructs the Superintendent while the Superintendent is acting for a specified purpose; or
- (d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a specified purpose,
- the Superintendent may apply to a justice of the peace for an inspection order under Section 131.

(7) A person whose services are engaged by the Minister pursuant to clause 12(b) may exercise and perform all of the powers, duties and authority conferred on the Superintendent by subsections (2), (4), (5) and (6).

(8) The Superintendent may require a person referred to in subsection (7) to prepare an opinion, report or professional attestation about the results of any examination, investigation or inquiry made by the person under this Section.

(9) The Superintendent may order any person to pay all or part of the cost of an examination, investigation or inquiry under this Section and to pay all or part of the cost of any opinion, report or professional attestation prepared following such an examination, investigation or inquiry, whether or not the opinion, report or attestation was required by the Superintendent, if the Superintendent considers it to be reasonable and fair in the circumstances to do so.

(10) Without limiting the generality of subsection (9), an administrator or employer may be required to make a payment under that subsection. 2011, c. 41, s. 124.

Payment for reports

129 The Superintendent may order an administrator, an employer or any other person to pay all or part of the cost of preparing any report required by this Act or the regulations, if the Superintendent considers it to be reasonable and fair in the circumstances to do so. 2011, c. 41, s. 125.

Obstruction

130 (1) No person shall hinder or obstruct the Superintendent or a person referred to in subsection 128(7) in lawfully carrying out a duty under this Act.

(2) A refusal of consent to enter a private residence is not hindering or obstructing within the meaning of subsection (1). 2011, c. 41, s. 126.

Inspection order

131 (1) Where a justice of the peace is satisfied on evidence upon oath or affirmation that

(a) there is reasonable and probable grounds for believing that it is necessary to

(i) enter and have access to, through and over any premises,

(ii) make examinations, investigations or inquiries, and

(iii) make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things for a specified purpose as defined by subsection 128(1); and

(b) the Superintendent

(i) has been denied entry to the premises,

- (ii) has reasonable grounds to believe that entry to the premises will be denied,
- (iii) has been instructed to leave the premises,
- (iv) has been obstructed, or
- (v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing the Superintendent or person referred to in subsection 128(7) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as the person calls upon for assistance.

(2) An inspection order issued under this Section must be executed between 6:00 a.m. and 9:00 p.m. unless the justice of the peace otherwise authorizes in the order.

(3) An inspection order issued under this Section must state the date on which it expires, which must be not later than 15 days after the inspection order is issued.

(4) A justice of the peace may receive and consider an application for an inspection order under this Section without notice to and in the absence of the owner or the occupier of the premises. 2011, c. 41, s. 127.

Offence

132 (1) Every person who contravenes this Act or the regulations is guilty of an offence.

(2) Every person who contravenes an order made pursuant to this Act is guilty of an offence. 2011, c. 41, s. 128.

Penalty

133 (1) Every person who is guilty of an offence contrary to this Act is liable on summary conviction to a fine of not more than \$100,000 for the first offence and not more than \$200,000 for each subsequent offence.

(2) Every director, officer, official or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association is guilty of an offence if the person

(a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in Section 132 by the corporation or unincorporated association; or

(b) fails to take all reasonable care in the circumstances to prevent the corporation or unincorporated association from committing an offence referred to in Section 132.

(3) A person who is guilty of an offence described in subsection (2) is liable on summary conviction to a fine of not more than \$100,000 for the first offence and not more than \$200,000 for each subsequent offence, whether or not the

corporation or unincorporated association has been prosecuted for or convicted of an offence arising from the same facts or circumstances.

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company.

(5) An order for payment pursuant to subsection (4) may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

(6) No proceeding pursuant to this Act may be commenced more than two years after the date when the subject-matter of the proceeding came to the knowledge of the Superintendent.

(7) No prosecution for an offence under this Act may be commenced after five years after the date when the offence occurred or is alleged to have occurred.

(8) A statement by the Superintendent as to the date when the subject-matter of a proceeding first came to the knowledge of the Superintendent is admissible in evidence in or in respect of the proceeding as prima facie proof of the facts stated therein without proof of the appointment or signature of the Superintendent. 2011, c. 41, s. 129.

Evidence

134 (1) A document, including a certificate, order, decision, direction, inquiry or notice, that purports to be signed by or on behalf of the Superintendent must be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of the signature or the position of the person appearing to have signed the document.

(2) A true copy certified by the Superintendent of a document or thing in the custody of the Superintendent is admissible in evidence to the same extent and has the same evidentiary value as the document or thing of which it is a copy. 2011, c. 41, s. 130.

Registering order

135 (1) To register an order with the Supreme Court of Nova Scotia pursuant to subsection 61(13), 64(5), 109(6), 111(15), 121(5) or 133(5) for the purpose of enforcement of the order, the Superintendent shall make a certified copy of the order, upon which is the following endorsement, signed by the Superintendent:

Register the within with the Supreme Court of Nova Scotia.

Dated this day of , 20

.....
Superintendent of Pensions

(2) The Superintendent may forward the certified copy referred to in subsection (1), so endorsed, to a prothonotary of the Supreme Court of Nova

Scotia who shall, upon receipt, enter it as a record and it shall thereupon be registered with and enforceable in the same manner as a judgment of that Court. 2011, c. 41, s. 131; 2019, c. 21, s. 12.

Injunction

136 Where a provision of this Act or the regulations is contravened, notwithstanding any other remedy or penalty imposed, the Superintendent may apply to the Supreme Court of Nova Scotia for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the Court, will or will likely result in the continuation or repetition of the contravention by the person committing the contravention, and the Court may make the order and the order may be enforced in the same manner as any other order of the Court. 2011, c. 41, s. 132.

Power to restrain

137 Where a provision of this Act or the regulations or an order, approval or consent of the Superintendent under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the administrator of the pension plan affected by the contravention. 2011, c. 41, s. 133.

Service

138 (1) A notice, order or other document pursuant to this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by regular mail addressed to the person to whom it is to be given, served or delivered at the person's last known address.

(2) A notice, order or other document sent by regular mail in accordance with subsection (1) is deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, the person did not receive the notice, order or other document, or did not receive it until a later date, through absence, accident, illness or other cause beyond that person's control.

(3) Where the Superintendent is of the opinion that because the persons who are to be given any notice or document under this Act or the regulations are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Superintendent may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Superintendent may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed is deemed to be the date on which the notice or document is given. 2011, c. 41, s. 134.

Time limit for action

139 The administrator of a pension plan who is required to take an action pursuant to this Act or the regulations shall take the action within the prescribed period of time. 2011, c. 41, s. 135.

Fees

140 (1) The Minister may make regulations prescribing fees in relation to any matter under this Act.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of *Regulations Act*. 2011, c. 41, s. 136.

Forms

141 (1) The Superintendent may approve forms for any purpose of this Act and require their use.

(2) Any person required to use forms approved by the Superintendent shall provide the information specified in them. 2011, c. 41, s. 137.

Conflict

142 In the event of a conflict between this Act and any other Act, this Act prevails unless the other Act states that it is to prevail over this Act. 2011, c. 41, s. 138.

Regulations

143 (1) The Governor in Council may make regulations

(a) prescribing any matter that, under this Act, is permitted or required to be prescribed or to be otherwise done by regulation or in accordance with the regulations;

(b) prescribing the times for filing or the last dates for filing of documents that are required to be filed pursuant to this Act;

(c) prescribing reports that must be submitted to the Superintendent, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared;

(d) prescribing

(i) procedures governing the establishment of advisory committees and the appointments of members of advisory committees,

(ii) requirements respecting meetings between the administrator and an advisory committee and the provision of assistance to the committee, and

(iii) the costs associated with an advisory committee that are payable out of a pension fund and any restrictions on such costs;

(e) prescribing procedures governing the appointment of members of pension committees;

(f) prescribing requirements and restrictions that apply with respect to actuarial methods and assumptions that may be used in the preparation of reports required under this Act or the regulations;

(g) prescribing classes of employees for the purpose of this Act and the regulations;

- (h) prescribing the methods of calculating
 - (i) the values of assets and liabilities of pension plans and pension funds, and
 - (ii) the normal cost of pension benefits and ancillary benefits;
- (i) prescribing criteria that must be complied with before any surplus, other than surplus in a reserve account, may be paid out of a pension fund;
- (j) prescribing the rate or the method of determining the rate at which an employer shall pay money due from the employer pursuant to this Act on a wind-up, the manner of payment and to whom payment must be made;
- (k) regulating or prohibiting the investment of money from pension funds and prescribing investments or classes of investments in which such money may be invested;
- (l) prescribing requirements for retirement savings contracts and life annuity contracts between members, former members and retired members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;
- (m) respecting the division of pensions or pension benefits pursuant to Section 76;
- (n) respecting commencement of payment of a pension for the purpose of Section 76;
- (o) respecting circumstances in which Section 61 is applicable to a spouse of a member or former member for the purpose of Section 76;
- (p) respecting the entitlement to a pension or pension benefit divided under Section 76 upon the death of
 - (i) a member or former member, or
 - (ii) a spouse of a member or former member;
- (q) prohibiting, prescribing or limiting fees and expenses that may be charged or paid by administrators, and charged by other persons or entities, in relation to the administration of a pension plan or the administration and investment of a pension fund, and prescribing limitations on fees that may be charged by administrators in relation to the division of a pension or pension benefits made pursuant to Section 76 of this Act and the regulations;
- (r) prescribing the rate of interest and the method of calculating interest payable pursuant to this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;

- (s) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served must be given, transmitted, filed or served;
- (t) prescribing requirements that must be complied with in the administration of a pension plan and pension fund;
- (u) prescribing records that must be kept by an administrator, and the manner in which and period of time for which such records must be retained;
- (v) requiring the audit of pension plans or classes of pension plans and pension funds or classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;
- (w) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable to employment before, on or after the effective date;
- (x) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada);
- (y) governing the wind-up of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind-up, including priorities in allocation of assets;
- (z) governing the receiving, holding and disbursing of pension benefits by any agency established or designated pursuant to this Act;
- (aa) exempting pension plans, classes of pension plans, pension funds, employees, classes of employees, administrators or other persons from the application of this Act or the regulations or from any Section of this Act or the regulations;
- (ab) prescribing for the purpose of Section 93, the cost of complying with an attachment;
- (ac) prescribing retirement savings arrangements, circumstances and amounts and restrictions for the purpose of Section 92;
- (ad) prescribing retirement savings arrangements, circumstances or amounts and conditions and restrictions for the purpose of Section 94;
- (ae) prescribing the information concerning an employer's proposal for payment of surplus money that must be contained in a notice given pursuant to subsection 108(8);
- (af) prescribing, for the purpose of the definition of "designated jurisdiction" in Section 2, any jurisdiction in Canada, including Canada itself, as a jurisdiction in which there is in force legislation substantially similar to this Act;
- (ag) prescribing the date on which an agreement under Section 9 comes into effect with respect to a designated jurisdiction and the date on which such an agreement ceases to have effect with respect to the designated jurisdiction;

(ah) providing for any matter that the Governor in Council considers necessary or advisable for the implementation of an agreement under Section 9;

(ai) establishing one or more classes of multi-employer pension plans and prescribing the requirements and restrictions that apply to transfers pursuant to Section 113 in relation to multi-employer pension plans;

(aj) prescribing additional criteria that must be satisfied by a pension plan to be a jointly sponsored pension plan and prescribing other pension plans that are included within the definition of “jointly sponsored pension plan” in Section 2;

(ak) prescribing requirements in relation to phased retirement options pursuant to Section 51;

(al) prescribing

(i) requirements for determining solvency deficiencies, solvency liabilities, transfer ratios, and going concern funded ratios in respect of a pension plan, and

(ii) levels at which transfer ratios and going concern funded ratios must be maintained;

(am) prescribing persons or entities that may be an administrator of a pension plan, the circumstances in which the Superintendent may appoint or terminate the appointment of an administrator of a pension plan, and the circumstances in which the Superintendent may act as administrator of a pension plan;

(an) prescribing documents and information that must be filed with the Superintendent in making an application for registration of a pension plan or an amendment to a pension plan, and the circumstances in which the requirement to file a particular prescribed document or piece of information does not apply;

(ao) prescribing information that must be contained in the documents that create and support a pension plan, and the specified circumstances in which the requirement to include prescribed information does not apply;

(ap) prescribing persons or entities that may be authorized by the documents which create and support a jointly sponsored pension plan to establish or maintain a separate jointly sponsored pension plan for persons employed in less than full-time continuous employment in accordance with the requirements set out in the Act;

(aq) prescribing

(i) employers who may provide a letter of credit, persons and entities to whom a letter of credit may be provided and the time period within which the letter of credit must be provided,

(ii) circumstances in which the persons and entities to whom a letter of credit has been provided shall demand payment of the amount of the letter of credit, and

- (iii) requirements, time periods and the manner of notification of the Superintendent that must be satisfied in relation to a letter of credit;
- (ar) prescribing requirements and restrictions that apply with respect to asset transfers between pension plans, the circumstances in which the Superintendent may waive a condition in relation to a transfer of assets, and the means by which the effective date of a transfer of assets is determined;
- (as) prescribing requirements for agreements for the purpose of Section 115;
- (at) prescribing requirements in relation to reciprocal transfer agreements;
- (au) prescribing the manner, times and requirements for funding in relation to contributions that must be made under a pension plan and the circumstances and manner in which contributions may be reduced or suspended;
- (av) prescribing pension plan contributions that may be paid into a reserve account other than solvency deficiency payments;
- (aw) prescribing for a pension plan's reserve account
 - (i) conditions for withdrawals from the surplus,
 - (ii) requirements respecting an application for the Superintendent's consent to the withdrawal,
 - (iii) requirements respecting the Superintendent's consent to the withdrawal,
 - (iv) the amount of and the manner in which the surplus may be withdrawn,
 - (v) the persons authorized to make withdrawals from the surplus and any notice to be provided of the withdrawal,
 - (vi) the conditions to be met before a withdrawal may be made from the surplus,
 - (vii) the basis upon which the amount proposed to be withdrawn is calculated, and
 - (viii) the times at which and the period within which an amount may be withdrawn;
- (ax) prescribing
 - (i) persons who may be a trustee of a pension fund, and
 - (ii) the manner and period within which such a person shall provide notification to the Superintendent if a summary has not been received pursuant to subsection 82(3) or a contribution is not paid when due as required by subsection 82(4);

- (ay) prescribing the period within which a person may deliver a direction to the administrator pursuant to Section 55, 61, 65, 69, 72 or 90;
- (az) prescribing the period within which an election may be made pursuant to Section 101, and the requirements that must be satisfied in relation to such an election;
- (ba) prescribing requirements and restrictions in relation to target benefits and target benefit plans;
- (bb) prescribing requirements and restrictions in relation to the payment of pensions or pension benefits under a pension plan that provides defined contribution benefits;
- (bc) prescribing requirements and exemptions in relation to optional benefits and optional contributions;
- (bd) prescribing a pension plan for the purpose of Section 61;
- (be) prescribing limitations in respect of the transfer of funds from pension funds;
- (bf) respecting the transfer of funds from pension plans into pooled registered pension plans;
- (bg) respecting the transfer of funds from pooled registered pension plans into pension plans or prescribed retirement savings arrangements;
- (bh) prescribing requirements for the form and content of a notice of intended purchase of an annuity pursuant to subsection 63(2), including the giving of the notice;
- (bi) prescribing for the purchase of an annuity pursuant to Section 63
 - (i) requirements for the form and content of the contract for the purchase of a deferred pension or a pension and any ancillary benefits, and
 - (ii) conditions, requirements and limitations related to the purchase, including conditions, requirements and limitations related to pension plan funding;
- (bj) prescribing requirements for the actuarial certificate for the purpose of subsection 63(5);
- (bk) respecting the discharge of an administrator pursuant to Section 63 and the deeming that an administrator has not been discharged pursuant to Section 64;
- (bl) prescribing
 - (i) an additional benefit that is attributable to an amount paid by an employer, and
 - (ii) the manner of calculation and limits of a reduction of such additional benefit;
- (bm) defining any word or expression used but not defined in this Act;

(bn) generally for carrying into effect the provisions of this Act.

(2) A regulation may be general or particular in its application and may be limited as to time or place.

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Governor in Council considers necessary, any code, formula, standard or procedure and may require compliance with a code, formula, standard or procedure so adopted.

(4) Any provision of a regulation may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation.

(5) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*.

(6) Clause (1)(ba) comes into force on such day as the Governor in Council orders and declares by proclamation. 2011, c. 41, s. 139; 2014, c. 37, s. 26A; 2015, c. 48, s. 4; 2019, c. 21, s. 13; 2021, c. 16, s. 2.

Application of former Act and regulations

144 Notwithstanding the repeal of the former Act, the former Act and the regulations made under that Act continue to apply to persons who have, before the effective date, ceased to be members of a pension plan or retired from a pension plan. 2011, c. 41, s. 140.

CHAPTER P-13

**An Act Respecting the Perennia Food
and Agriculture Corporation**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Supervision and management of Act	3
Former corporation continued as Perennia Food and Agriculture Corporation.....	4
Assignment of agreements.....	5
Actions of former corporation ratified and confirmed.....	6
Capital stock of Corporation.....	7
Agent of Crown.....	8
Objects of Corporation.....	9
Powers of Corporation	10
Management and control of Corporation	11
Chief Executive Officer	12
Advisory Board.....	13
Composition and term of Advisory Board.....	14
Chair and Vice-chair of Advisory Board.....	15
Vacancy on Advisory Board.....	16
Remuneration and expenses of Advisory Board members	17
Powers of Advisory Board respecting Corporation employees	18
Quorum	19
Deputy Minister and Chief Executive Officer may attend meetings	20
Directors of former corporation become Advisory Board members.....	21
Duty of good faith and care.....	22
Duties of Advisory Board	23
Advisory Board resolutions	24
Bylaws.....	25
Policy directions.....	26
Fiscal year of Corporation.....	27
Accounting system.....	28
Not subject to taxation	29
Annual business plan	30
Multi-year strategic plan.....	31
Conflict of Interest Act.....	32
Freedom of Information and Protection of Privacy Act.....	33
Civil Service Act.....	34
Proceedings against the Crown Act	35
Ministerial regulations	36
Governor in Council regulations.....	37
Transfer of employees.....	38
Civil Service Act and Civil Service Collective Bargaining Act.....	39

Short title

1 This Act may be cited as the *Perennia Food and Agriculture Corporation Act*. 2022, c. 39, s. 1.

Interpretation

- 2** In this Act,
- “Advisory Board” means the Advisory Board of the Corporation;
 - “Corporation” means Perennia Food and Agriculture Corporation;
 - “Deputy Minister” mean the Deputy Minister of Agriculture;
 - “former corporation” means Perennia Food and Agriculture Incorporated, registered under the *Companies Act*;
 - “Minister” means the Minister of Agriculture. 2022, c. 39, s. 2.

Supervision and management of Act

- 3** The Minister has the general supervision and management of this Act. 2022, c. 39, s. 3.

Former corporation continued as Perennia Food and Agriculture Corporation

- 4** Effective December 1, 2022,
- (a) Perennia Food and Agriculture Incorporated is continued as a body corporate with share capital, to be known as Perennia Food and Agriculture Corporation;
 - (b) all shares of the former corporation are cancelled;
 - (c) the registration of the former corporation under the *Companies Act* is revoked;
 - (d) all matters, affairs and actions of the former corporation are assigned to the Corporation;
 - (e) all assets of the former corporation, including the rights, titles and interests of the former corporation, are vested in the Corporation;
 - (f) all obligations and liabilities of the former corporation are the obligations and liabilities of the Corporation; and
 - (g) subject to Section 5, a reference in any enactment or document to the former corporation is to be read and construed as a reference to the Corporation, unless a contrary intention appears. 2022, c. 39, s. 4.

Assignment of agreements

- 5** (1) Any agreement to which the former corporation is a party that is in effect immediately before December 1, 2022, is assigned to the Corporation and the Corporation is bound by and may enforce the agreement as if it were the original party.
- (2) Where an agreement is assigned under subsection (1),
- (a) the assignment may be carried out notwithstanding any restriction on the assignment under any agreement, contract or enactment;
 - (b) the assignment is not subject to any requirement for notice that may exist in any agreement, contract or enactment;

(c) the assignment is not required to be in writing notwithstanding any requirement to the contrary in any agreement, contract or enactment; and

(d) no person has or may maintain any cause of action or claim against the Crown in right of the Province, the Minister, the Department of Agriculture or the Corporation arising from or in relation to the assignment. 2022, c. 39, s. 5.

Actions of former corporation ratified and confirmed

6 Any act or thing done by or on behalf of the Corporation or the former corporation before December 1, 2022, is ratified and confirmed. 2022, c. 39, s. 6.

Capital stock of Corporation

7 The capital stock of the Corporation is one share with a par value of one dollar, to be issued and registered in the name of the Crown in right of the Province as represented by the Minister. 2022, c. 39, s. 7.

Agent of Crown

8 The Corporation is an agent of the Crown in right of the Province. 2022, c. 39, s. 8.

Objects of Corporation

9 The objects of the Corporation are to align with and further the strategic economic policy objectives and priorities of the Government and, in doing so, to

(a) support growth, transformation and economic development in the Province's agriculture, seafood and food and beverage sectors;

(b) provide services for agriculture production extension and development services and applied research;

(c) provide services and development relating to fisheries and aquaculture initiatives;

(d) provide services and development for quality and food safety services;

(e) provide product development and commercialization services, analytical testing and training;

(f) exercise and perform the functions and duties conferred on it by this Act, the regulations, the business plan of the Corporation and the strategic plan of the Corporation; and

(g) fulfill such other roles and responsibilities as may be assigned to the Corporation by the Minister. 2022, c. 39, s. 9.

Powers of Corporation

10 The Corporation may

(a) employ and contract with, in accordance with the *Personal Services Contract Regulations* made under the *Public Service Act*, such persons as it may require for the purpose of carrying out its objects;

(b) receive, acquire, take, hold, mortgage, sell, convey or otherwise dispose of or deal with real and personal property and any interest therein;

(c) where directed by the Minister, provide such programs and services as the Minister considers appropriate;

(d) levy fees related to the delivery of programs and services under this Act;

(e) with the approval of the Minister, enter into agreements for the purpose of this Act with any person or body, including a federal, provincial or municipal government or any department or agency thereof;

(f) do such other things as may be incidental or conducive to carrying into effect the purpose and intent of this Act or the regulations; and

(g) exercise such other powers as may be prescribed by the regulations. 2022, c. 39, s. 10.

Management and control of Corporation

11 (1) The management and control of the affairs of the Corporation are vested in the Minister.

(2) The Minister may exercise the powers of the Corporation subject to this Act and the regulations.

(3) The Minister may consult with the ministers of other departments as necessary to ensure the objects of the Corporation are achieved. 2022, c. 39, s. 11.

Chief Executive Officer

12 (1) The Governor in Council shall appoint a Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer reports to the Deputy Minister.

(3) The Chief Executive Officer shall perform such duties as the Minister may determine. 2022, c. 39, s. 12.

Advisory Board

13 The Corporation has an Advisory Board that provides advice and recommendations to further the Corporation's objects. 2022, c. 39, s. 13.

Composition and term of Advisory Board

14 (1) The Advisory Board consists of not more than 12 members, appointed by the Governor in Council, who represent the agriculture, seafood and food and beverage manufacturing industries and other industries as determined by the Minister.

(2) Advisory Board members hold office for such period of time as is determined by the Governor in Council and may be reappointed. 2022, c. 39, s. 14.

Chair and Vice-chair of Advisory Board

15 The Governor in Council shall appoint a Chair and a Vice-chair of the Advisory Board, who hold office for such period of time as is determined by the Governor in Council. 2022, c. 39, s. 15.

Vacancy on Advisory Board

16 A vacancy on the Advisory Board does not impair the right of the remaining members to act. 2022, c. 39, s. 16.

Remuneration and expenses of Advisory Board members

17 Each Advisory Board member is entitled to such remuneration and reimbursement of expenses as is determined by the Governor in Council. 2022, c. 39, s. 17.

Powers of Advisory Board respecting Corporation employees

18 Subject to the approval of the Deputy Minister, the Advisory Board may

- (a) avail itself of the services of the employees of the Corporation; and
- (b) appoint an employee of the Corporation to act as the Secretary of the Advisory Board. 2022, c. 39, s. 18.

Quorum

19 A majority of Advisory Board members constitutes a quorum. 2022, c. 39, s. 19.

Deputy Minister and Chief Executive Officer may attend meetings

20 The Deputy Minister and the Chief Executive Officer of the Corporation may attend meetings of the Advisory Board, but the Deputy Minister and the Chief Executive Officer

- (a) are not members of the Advisory Board; and
- (b) may not vote at meetings of the Advisory Board. 2022, c. 39, s. 20.

Directors of former corporation become Advisory Board members

21 Effective December 1, 2022, each director of the former corporation becomes a member of the Advisory Board until the earlier of

- (a) the expiry of the current term of that member; or
- (b) the date on which the member's appointment is revoked by the Governor in Council. 2022, c. 39, s. 21.

Duty of good faith and care

22 A member of the Advisory Board shall, when exercising the powers or performing the duties of the member's position,

- (a) act honestly and in good faith with a view to the best interests of the Corporation;

- (b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances; and
- (c) act in accordance with this Act and the regulations. 2022, c. 39, s. 22.

Duties of Advisory Board

23 The Advisory Board shall

- (a) report to the Minister through the Chief Executive Officer;
- (b) advise the Minister on matters related to agriculture production, agri-food processing and seafood and aquaculture products as are referred to the Advisory Board for consideration by the Minister; and
- (c) bring to the attention of the Minister matters that are of interest and concern to the public, agriculture producers, agri-food processors, seafood processors and aquaculture producers respecting agriculture and seafood products. 2022, c. 39, s. 23.

Advisory Board resolutions

24 The Advisory Board may pass resolutions to document its recommendations to the Minister but, for greater certainty, the Minister is not bound by any recommendation or resolution of the Board. 2022, c. 39, s. 24.

Bylaws

25 The Minister may make bylaws, not inconsistent with this Act, respecting the internal organization and procedures of the Advisory Board, subject to the approval of the Governor in Council. 2022, c. 39, s. 25.

Policy directions

26 (1) The Minister may issue such policy directions to the Advisory Board as are consistent with this Act if, in the opinion of the Minister, it is in the public interest to do so.

(2) The Advisory Board shall comply with a direction issued under subsection (1). 2022, c. 39, s. 26.

Fiscal year of Corporation

27 The fiscal year of the Corporation is the same as the fiscal year of the Province. 2022, c. 39, s. 27.

Accounting system

28 The Corporation's system of accounting is subject to the approval of the Minister of Finance and Treasury Board. 2022, c. 39, s. 28.

Not subject to taxation

29 The Corporation, its property and its assets are not subject to taxation. 2022, c. 39, s. 29.

Annual business plan

30 (1) Annually as required by the Minister, the Corporation shall submit to the Minister for approval a detailed business plan for the Corporation for the following fiscal year.

(2) The business plan must contain such information as required by the Minister. 2022, c. 39, s. 30.

Multi-year strategic plan

31 When required by the Minister, the Corporation shall submit to the Minister for approval a multi-year strategic plan for the operation of the Corporation. 2022, c. 39, s. 31.

Conflict of Interest Act

32 The Advisory Board is a department for the purpose of the definition of “department” in the *Conflict of Interest Act* and, for greater certainty, Section 22 of that Act applies to Advisory Board members. 2022, c. 39, s. 32.

Freedom of Information and Protection of Privacy Act

33 The Corporation is a public body as defined in the *Freedom of Information and Protection of Privacy Act* and, for greater certainty, that Act applies to the Corporation. 2022, c. 39, s. 33.

Civil Service Act

34 Section 41 of the *Civil Service Act* applies with necessary changes to the Corporation and the Advisory Board. 2022, c. 39, s. 34.

Proceedings against the Crown Act

35 (1) The *Proceedings against the Crown Act* applies to actions and proceedings against the Corporation.

(2) For the purpose of this Section, a reference in the *Proceedings against the Crown Act* to

(a) the Crown is to be construed as a reference to the Corporation; and

(b) the General Revenue Fund is to be construed as a reference to the funds of the Corporation.

(3) In proceedings under this Section, an action must be brought against the Corporation in the name of the Corporation.

(4) Where a document or notice is to be served upon or given to the Corporation pursuant to this Section or the *Proceedings against the Crown Act*, it may be served by delivering a copy to the office of the Attorney General or the Deputy Attorney General or any lawyer employed in the Legal Services Division of the Department of Justice or by delivering a copy to a lawyer designated for that purpose by the Attorney General and such service is deemed to be service on the Corporation. 2022, c. 39, s. 35.

Ministerial regulations

36 (1) The Minister may make regulations prescribing fees that may be levied by the Corporation.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2022, c. 39, s. 36.

Governor in Council regulations

37 (1) The Governor in Council may make regulations

- (a) respecting the powers, duties and activities of the Corporation;
- (b) respecting the duties and activities of the Advisory Board;
- (c) respecting any matter authorized by this Act to be done by regulation;
- (d) defining any word or expression used but not defined in this Act;
- (e) 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*. 2022, c. 39, s. 37.

Transfer of employees

38 (1) Effective December 1, 2022, every employee of the former corporation

- (a) ceases to be an employee of the former corporation and becomes an employee of the Corporation;
- (b) is employed by the Corporation on the same or equal terms and conditions of employment as those under which the employee was employed by the former corporation, until changed by contract of employment;
- (c) is deemed to have been employed with the Corporation for the same period of employment that the employee was credited with as an employee of the former corporation; and
- (d) is entitled to all vacation leave accumulated, less any vacation arrears that accrued, while the employee was employed by the former corporation.

(2) The continuity of employment of an employee transferred under this Section is not broken by the effect of this Section.

(3) The obligations and liabilities of the former corporation in respect of its employees are the obligations and liabilities of the Corporation, including all employee benefits and entitlements.

- not to
- (4) For greater certainty, the operation of this Section is deemed
- (a) constitute a termination, constructive dismissal or lay-off of any employee;
 - (b) constitute a breach, termination, repudiation or frustration of any contract;
 - (c) constitute an event of default or *force majeure* under any contract; or
 - (d) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right, or to any right to terminate or repudiate a contract, licence, permit or other right, or to any estoppel. 2022, c. 39, s. 38.

Civil Service Act and Civil Service Collective Bargaining Act

39 The *Civil Service Act* and the regulations made under that Act and the *Civil Service Collective Bargaining Act* do not apply to employees of the Corporation. 2022, c. 39, s. 39.

CHAPTER P-14

**An Act to Abolish the Rules of Law
against Perpetuities**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Rules against perpetuities abolished.....	3
Application.....	4

Short title

1 This Act may be cited as the *Perpetuities Act*. 2011, c. 42, s. 1.

Interpretation

2 In this Act,

“modern rule against perpetuities” includes the operation of the rule respecting remoteness of vesting and perpetual duration and respecting testamentary executory interests in personal property;

“rules of law against perpetuities” means

- (a) the rule in *Whitby v. Mitchell*; and
- (b) the modern rule against perpetuities. 2011, c. 42, s. 2.

Rules against perpetuities abolished

3 The rules of law against perpetuities are abolished. 2011, c. 42, s. 3.

Application

4 (1) Subject to subsection (2), this Act applies to

- (a) all interests in property created before, on or after July 23, 2013; and
- (b) all trusts, whether taking effect before, on or after July 23, 2013.

(2) The rules of law against perpetuities continue to apply to an interest or purported interest in property if, before July 23, 2013,

- (a) the period permitted for the vesting of the interest or purported interest has terminated and any act or step has been taken as a consequence of that termination; or

(b) a court has held the interest or purported interest to be void for breach of the rules of law against perpetuities. 2011, c. 42, s. 4.

CHAPTER P-15

An Act Respecting Personal Directives

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Personal directives	3
More than one personal directive.....	4
Contents of personal directive.....	5
Effect of delegate ceasing to be spouse	6
No sub-delegation of authority unless authorized.....	7
No remuneration unless provided for.....	8
Times when personal directive is in effect.....	9
Assessments of capacity.....	10
Use of force	11
Personal directive ceases to have effect.....	12
Delegate's authority ceases.....	13
Authority to make certain decisions.....	14
Making of decisions by delegate.....	15
Restriction of decision-making by regulations	16
Access to information and records.....	17
Duties of healthcare providers	18
Emergency healthcare	19
No action lies	20
Act does not grant greater rights.....	21
Application of Act.....	22
Personal directive may be combined with enduring power of attorney.....	23
Instruments made outside Province	24
Offence respecting documents.....	25
Offence respecting misrepresentations	26
Offence respecting goods and services	27
Offence respecting coercion or undue influence.....	28
Application to court	29
Service of notice.....	30
Powers of court	31
Regulations.....	32

Short title

1 This Act may be cited as the *Personal Directives Act*. 2008, c. 8, s. 1.

Interpretation

2 In this Act,

“capacity” means the ability to understand information that is relevant to the making of a personal-care decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision;

“common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year;

“continuing-care home” means any facility licensed under the *Homes for Special Care Act*, any facility for which a resident may be approved for admission by the Department of Health and Wellness or the Department of Community Services and any facility prescribed by the regulations;

“court” means the Supreme Court of Nova Scotia;

“delegate” means a person authorized under a personal directive to make, on the maker’s behalf, decisions concerning the maker’s personal care;

“healthcare decision” includes instructions, consent and refusal and withdrawal of consent with respect to healthcare;

“healthcare provider” includes a person licensed or registered under Provincial legislation to provide healthcare;

“home-care services” includes healthcare services and support services provided to a person in the person’s own home or while resident in a continuing-care home where the need for services is assessed by a person licensed or registered under Provincial legislation to provide healthcare or a person authorized by the Minister of Health and Wellness or the Minister of Community Services to perform need assessments;

“maker” means a person who makes a personal directive;

“nearest relative” means, with respect to any person, the relative of that person first listed in the following clauses:

- (a) spouse;
- (b) child;
- (c) parent;
- (d) person standing *in loco parentis*;
- (e) sibling;
- (f) grandparent;
- (g) grandchild;
- (h) aunt or uncle;
- (i) niece or nephew;
- (j) other relative,

who, except in the case of a minor spouse, is of the age of majority;

“person represented” means a person on whose behalf decisions are made by a statutory decision maker;

“personal care” includes healthcare, nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities, support services and any other personal matter that is prescribed by the regulations;

“spouse” means, with respect to any person, a person who is cohabiting with that person in a conjugal relationship as married spouse, registered domestic partner or common-law partner;

“statutory decision-maker” means a nearest relative or the Public Trustee authorized under Section 14. 2008, c. 8, s. 2.

Personal directives

- 3** (1) A person with capacity may make a personal directive
- (a) setting out instructions or an expression of the maker's values, beliefs and wishes about future personal-care decisions to be made on the maker's behalf; and
 - (b) authorizing one or more persons who, except in the case of a minor spouse, is or are of the age of majority to act as delegate to make, on the maker's behalf, decisions concerning the maker's personal care.
- (2) A personal directive must be in writing, be dated and be signed by the maker or, where the maker is unable to sign, by a person who is not a delegate or the spouse of the delegate on behalf of the maker at the maker's direction and in the maker's presence, and in the presence of a witness who must also sign.
- (3) The signing of a personal directive must be witnessed by someone other than a delegate, a spouse of a delegate, a person who signs on behalf of the maker or the spouse of a person who signs on behalf of the maker.
- (4) A person may not act as a delegate under a personal directive if the person provides personal-care services to the maker for compensation unless
- (a) the person is the maker's spouse or a relative listed in the definition of "nearest relative" in Section 2; or
 - (b) the personal-care services for compensation provided by the person are specifically authorized by the maker in the personal directive.
- (5) A personal directive that appoints two or more delegates must assign to each of the delegates authority with respect to different matters.
- (6) An alternative delegate named in a personal directive has authority to act if a delegate
- (a) declines to act;
 - (b) is unavailable;
 - (c) resigns;
 - (d) dies;
 - (e) becomes incapable of acting as delegate for personal care;
 - (f) has the delegate's authority removed by the court; or
 - (g) as otherwise provided in the personal directive. 2008, c. 8, s. 3.

More than one personal directive

- 4** (1) A person may make more than one personal directive.

(2) Where the provisions of two personal directives cannot reasonably be reconciled, to the extent they conflict the later provision will prevail. 2008, c. 8, s. 4.

Contents of personal directive

5 (1) A personal directive is subject to the conditions and restrictions that are contained in the personal directive and this Act.

(2) In a personal directive the maker may

(a) identify persons with whom the delegate is to consult in making a personal-care decision;

(b) identify any persons who are to be notified and any persons who are not to be notified of the coming into effect of the personal directive;

(c) identify any nearest relatives or other relatives who are not to act under Section 14.

(3) An instruction in a personal directive that is prohibited by law is void. 2008, c. 8, s. 5.

Effect of delegate ceasing to be spouse

6 Unless a personal directive expressly provides otherwise, where, after making a personal directive in which the maker's spouse is appointed as delegate, the spouse is no longer a spouse, the appointment of the spouse as delegate is revoked. 2008, c. 8, s. 6.

No sub-delegation of authority unless authorized

7 A delegate may not delegate decision-making authority under a personal directive to another person unless the personal directive authorizes such delegation. 2008, c. 8, s. 7.

No remuneration unless provided for

8 A delegate is not entitled to receive any remuneration for exercising any authority under a personal directive unless the personal directive so provides. 2008, c. 8, s. 8.

Times when personal directive is in effect

9 A personal directive is in effect whenever the maker lacks capacity to make a personal-care decision. 2008, c. 8, s. 9.

Assessments of capacity

10 (1) A personal directive may name a person, by name, title or position, with whom the person making an assessment of the capacity of the maker is to consult in making the assessment.

(2) A delegate, statutory decision-maker, nearest relative, health-care provider, person in charge of a home-care services provider or person in charge of a continuing-care home in which a maker or person represented resides may request an assessment of capacity of a maker or person represented.

(3) A maker or person represented may request a reassessment of capacity.

(4) A person assessing capacity of a maker or person represented has the right to all medical information and documents relevant for the purpose of making the assessment.

(5) A person who has custody or control of any information or document referred to in subsection (4) shall, at the request of the person assessing capacity, disclose that information. 2008, c. 8, s. 10.

Use of force

11 (1) Where a person has made a personal directive and there is a reasonable basis to believe that the maker lacks capacity to make the decision to leave the Province, a police officer may use force that is necessary and reasonable in the circumstances to prevent the maker from leaving the Province until an assessment of capacity can be completed.

(2) An assessment under subsection (1) must be completed as soon as is practicable.

(3) No action lies against a delegate, a police officer or any other person assisting the delegate or the police officer arising from the use of force that is authorized by this Act. 2008, c. 8, s. 11.

Personal directive ceases to have effect

12 (1) A personal directive has no effect

(a) in respect of a personal-care decision, whenever the maker has capacity;

(b) on the maker's death;

(c) when the personal directive is revoked by a maker who has capacity and makes the revocation in writing, executed in the same way as the personal directive; or

(d) on a determination by the court that the personal directive ceases to have effect.

(2) Notwithstanding clause (1)(c), a maker with capacity may revoke a personal directive by destroying the originals of the personal directive with the intention of revoking the personal directive. 2008, c. 8, s. 12.

Delegate's authority ceases

13 A delegate's authority under a personal directive ceases

(a) when the delegate resigns, dies or lacks capacity to make personal-care decisions on behalf of the maker;

(b) when the maker revokes the delegate's authority pursuant to clause 12(1)(c) or subsection 12(2); or

(c) on a determination by the court that the delegate's authority ceases. 2008, c. 8, s. 13.

Authority to make certain decisions

14 (1) Subject to the *Hospitals Act*, the *Involuntary Psychiatric Treatment Act*, clause 5(2)(c) and subsection 22(2), where a person who lacks capacity to make decisions regarding healthcare or a decision to accept an offer of placement in a continuing-care home or regarding home-care services has not made a personal directive authorizing a delegate or setting out instructions or wishes regarding

- (a) healthcare;
- (b) a decision to accept an offer of placement in a continuing-care home; or
- (c) home-care services,

and does not have a guardian with authority to make such decisions, healthcare decisions, a decision to accept an offer of placement in a continuing-care home and home-care services decisions may be made on behalf of the person by

- (d) the nearest relative who has capacity and is willing to make the decision; or
- (e) where there is no nearest relative who has capacity and is willing to make the decision, the Public Trustee.

(2) A nearest relative shall not exercise the authority given by subsection (1) unless the nearest relative

- (a) excepting a spouse, has been in personal contact with the person over the preceding 12-month period or has been granted a court order to shorten or waive the 12-month period;
- (b) is willing to assume the responsibility for making the decision;
- (c) knows of no person of a higher rank in priority who is able and willing to make the decision; and
- (d) makes a statement in writing certifying the relationship to the person and the facts and beliefs set out in clauses (a) to (c).
2008, c. 8, s. 14.

Making of decisions by delegate

15 (1) Subject to the *Hospitals Act* and the *Involuntary Psychiatric Treatment Act*, all decisions made by a delegate must be made in accordance with subsection (2).

- (2)** In making any decision, a delegate shall
 - (a) follow any instructions in a personal directive unless
 - (i) there were expressions of a contrary wish made subsequently by the maker who had capacity,
 - (ii) technological changes or medical advances make the instruction inappropriate in a way that is contrary to the intentions of the maker, or
 - (iii) circumstances exist that would have caused the maker to set out different instructions had the circumstances

been known based on what the delegate knows of the values and beliefs of the maker and from any other written or oral instructions;

(b) in the absence of instructions, act according to what the delegate believes the wishes of the maker would be based on what the delegate knows of the values and beliefs of the maker and from any other written or oral instructions; and

(c) where the delegate does not know the wishes, values and beliefs of the maker, make the personal-care decision that the delegate believes would be in the best interests of the maker.

(3) Subject to the *Hospitals Act* and the *Involuntary Psychiatric Treatment Act*, all decisions made by a statutory decision-maker must be made in accordance with subsection (4).

(4) A statutory decision-maker shall

(a) act according to what the statutory decision-maker believes the wishes of the person represented would be based on what the statutory decision-maker knows of the values and beliefs of the person represented and from any other written or oral instructions; and

(b) where the statutory decision-maker does not know the wishes, values and beliefs of the person represented, make the personal-care decision that the statutory decision-maker believes would be in the best interests of the person represented. 2008, c. 8, s. 15.

Restriction of decision-making by regulations

16 A delegate or statutory decision-maker has no authority to make decisions relating to healthcare prescribed in the regulations unless the personal directive contains instructions or expressions of wishes that enable the delegate or statutory decision-maker to do so. 2008, c. 8, s. 16.

Access to information and records

17 A delegate or statutory decision-maker has the right to access and to be provided with the information and records, including information and records subject to privilege, pertaining to the maker or person represented that are relevant to a decision to be made. 2008, c. 8, s. 17.

Duties of healthcare providers

18 (1) Before seeking a decision of a statutory decision-maker in relation to a healthcare decision for a person, a healthcare provider must inquire whether the person has made a personal directive.

(2) Where a healthcare provider is aware that a personal directive exists for a maker, the healthcare provider shall request a copy of a personal directive and, upon receipt, include it in the maker's health record.

(3) A healthcare provider shall follow

(a) any instructions by a delegate acting in accordance with this Act;

(b) where there is no delegate, the instructions or an expression of the maker's wishes contained in a personal directive; or

(c) where there is no applicable personal directive, any instructions by a statutory decision-maker acting in accordance with this Act. 2008, c. 8, s. 18.

Emergency healthcare

19 Where a maker or person represented requires emergency healthcare, a healthcare provider is not required to obtain consent from the delegate or statutory decision-maker if

(a) the medical treatment is necessary to preserve the life or health of the maker or person represented;

(b) the delay involved in obtaining consent from the delegate or statutory decision-maker may pose a significant risk to the maker or person represented; and

(c) there is no information available that makes it clear that the maker or person represented would not want the required treatment. 2008, c. 8, s. 19.

No action lies

20 No action lies against

(a) any person who acts in good faith according to a decision by a delegate or statutory decision-maker or in accordance with an instruction or expression of wishes in a personal directive;

(b) a delegate, statutory decision-maker, nearest relative, health-care provider, person in charge of a home-care services provider or person in charge of a continuing-care home who acted in good faith under subsection 10(2) in requesting an assessment of capacity of a maker or person represented;

(c) a healthcare provider for failing to comply with subsection 18(3) if the healthcare provider complies with subsection 18(1) and did not know of the existence of the personal directive or its contents; or

(d) a delegate or statutory decision-maker for anything done or omitted to be done in good faith while carrying out authority in accordance with this Act. 2008, c. 8, s. 20.

Act does not grant greater rights

21 Nothing in this Act grants greater rights, access to services or privileges to a maker or person represented or delegate or statutory decision-maker acting on behalf of a maker or person represented than would apply to the maker or person represented if the maker or person represented had capacity. 2008, c. 8, s. 21.

Application of Act

22 (1) This Act applies only to a personal directive made on or after April 1, 2010.

(2) Nothing in this Act invalidates an authorization made under the former *Medical Consent Act* before April 1, 2010. 2008, c. 8, s. 22.

Personal directive may be combined with enduring power of attorney

23 Nothing in this Act precludes combining a personal directive with an enduring power of attorney made under the *Powers of Attorney Act* in a single instrument provided that the instrument conforms to the form and execution requirements of this Act. 2008, c. 8, s. 23.

Instruments made outside Province

24 An instrument authorizing a person to make personal-care decisions on behalf of another or setting out instructions, values, beliefs or wishes regarding personal care made outside of the Province has the same effect as a personal directive made under this Act if it was made in the form required

- (a) in this Act; or
 - (b) in the legislation of
 - (i) the jurisdiction where the instrument was made, or
 - (ii) the jurisdiction where the person who made the instrument was habitually resident at the time the instrument was made.
- 2008, c. 8, s. 24.

Offence respecting documents

25 A person who, without the maker's consent, wilfully destroys, conceals, alters or forges a personal directive or a revocation of a personal directive is guilty of an offence. 2008, c. 8, s. 25.

Offence respecting misrepresentations

26 A person who wilfully misrepresents the person's own self in relation to a personal directive or wilfully misrepresents the wishes of the maker of a personal directive is guilty of an offence. 2008, c. 8, s. 26.

Offence respecting goods and services

27 Any person who requires another person to make a personal directive as a condition for obtaining any goods or services is guilty of an offence. 2008, c. 8, s. 27.

Offence respecting coercion or undue influence

28 Any person who coerces or exerts undue influence on another person to make or revoke a personal directive is guilty of an offence. 2008, c. 8, s. 28.

Application to court

29 A maker, person represented or any other interested person may apply to the court for any one or more orders referred to in Section 31. 2008, c. 8, s. 29.

Service of notice

30 (1) Notice of an application under Section 29 must be served on the maker or the person represented and the persons prescribed in the regulations and on any other person the court determines should be served.

(2) The court may, where the court considers it appropriate to do so, with respect to any or all of the persons referred to in subsection (1),

- (a) shorten the time for service;
- (b) direct the manner of service or approve the manner of service that has been effected; or
- (c) dispense with the requirement for service except with respect to the person who is the subject of the application.

(3) Notwithstanding subsection (1), an application may be made *ex parte* if the court considers it appropriate to do so. 2008, c. 8, s. 30.

Powers of court

31 (1) The court may, on hearing an application under Section 29, do any one or more of the following:

- (a) where a court is satisfied that a writing embodies the intentions of the maker, the court may, notwithstanding that the writing was not executed in compliance with the requirements of this Act, order that the writing is valid and fully effective as a personal directive as if it had been executed in compliance with the requirements of this Act;
- (b) make a determination of capacity of the maker or person represented or a delegate or statutory decision-maker after considering a report made under clause (2)(b);
- (c) determine the validity of a personal directive or any part of it;
- (d) based on instructions contained in a personal directive or other evidence of the maker's instructions or wishes made while the maker had capacity, vary, confirm or rescind a personal-care decision, in whole or in part, made by a delegate or statutory decision-maker;
- (e) determine the authority of a delegate or statutory decision-maker;
- (f) provide advice and directions;
- (g) stay a decision of a delegate or statutory decision-maker;
- (h) substitute another person as delegate;
- (i) order that all or part of a personal directive ceases to have effect;
- (j) order that costs of the proceeding be paid from the estate of the maker or person represented;

(k) make any other order that the court considers appropriate.

(2) For the purpose of assisting the court in making a decision under subsection (1), the court may

(a) require a delegate or statutory decision-maker to provide to the court a report of personal-care decisions made by the delegate or statutory decision-maker; or

(b) order that a report on the capacity of a maker or person represented or a delegate or statutory decision-maker be prepared.

(3) In making a decision under subsection (1), the court may not add to or alter the intent of an instruction contained in a personal directive unless the court is satisfied that the maker's instruction or wishes changed subsequent to the making of the instruction. 2008, c. 8, s. 31.

Regulations

32 (1) The Governor in Council may make regulations

(a) prescribing facilities for the purpose of the definition of "continuing-care home" in Section 2;

(b) prescribing matters for the purpose of the definition of "personal care" in Section 2;

(c) respecting the assessment or reassessment of capacity for the purpose of Section 9, subsection 10(3) or (4) or Section 11;

(d) prescribing healthcare for the purpose of Section 16;

(e) prescribing persons to be served for the purpose of subsection 30(1);

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

(g) redefining any word or expression defined in this Act;

(h) considered necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2008, c. 8, s. 32.

CHAPTER P-16

**An Act Respecting the Collection,
Use, Disclosure and Retention
of Personal Health Information**

Table of Contents

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

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Personal health information	4
Application of Act	
Application of Act.....	5
Act does not apply.....	6
Conflict with other enactments	7
Application of Freedom of Information and Protection of Privacy Act	8
Exceptions.....	9
Consent does not affect collection, use or disclosure permitted by Act	10
Consent	
Consent required unless exempt by Act.....	11
Knowledgeable implied consent	12
Requirements for knowledgeable implied consent	13
Deemed knowledgeable consent.....	14
Reasonable to believe individual knowledge.....	15
Express consent.....	16
Limitations or revocation of consent	17
Ability to consent.....	18
Inability to consent.....	19
Consent includes disclosure to others	20
Substitute Decision-maker	
Substitute decision-maker	21
Making of decisions by substitute decision-maker	22
Reliance on written statement.....	23
Collection, Use and Disclosure	
Other available information	24
Minimum amount.....	25
Authority of custodian	26
Collection and use of health-card number	27
Custodian's responsibility.....	28
Agent may act on behalf of custodian.....	29
Collection	
Collecting personal health information.....	30
Collecting information directly from individual.....	31
Express consent for collection	32
Use	
Use of personal health information.....	33

Express consent for use of information	34
Consent not required for custodian use of information	35
Disclosure	
Disclosure by custodian	36
Disclosure of general information	37
Disclosing information without consent and review process	38
Disclosure to a non-custodian without consent	39
Disclosing information about deceased person	40
Custodian may obtain consent for disclosure	41
Documenting disclosure without consent	42
Express consent for disclosure	43
Disclosure to person outside Province	44
Authority of non-custodian to collect information	45
Authority of Minister to give access to health-card number	46
Retention, Destruction, Disposal and De-identification	
Paper and electronic records	47
Information practices	48
Securely destroyed, erased or de-identified information	49
Written retention schedule	50
Retention and destruction schedules	51
Research	
Interpretation	52
Research	53
Minimum amount of information	54
Steps required prior to using information	55
Obligations of researcher	56
Disclosure without individual consent	57
Forms	58
Research plan	59
Custodian-researcher agreement	60
Practices to Protect Personal Health Information	
Confidentiality	61
Information practices and complaints policy	62
Record of user activity for electronic information system	63
Refusal of access request	64
Safeguards	65
Restriction or conditions of disclosure	66
Designation of contact person	67
Public written statement	68
Reporting of a Privacy Breach	
Notifying individual	69
Notification to individual not required	70
Access to an Individual's Own Personal Health Information	
Right of access	71
Refusing access	72
Consultation before determining access	73
Access not available	74
Process for Requesting Access	
Request to examine record	75
Offer of assistance with request	76
Waiver of written request	77
Reasons for request not required	78
Confirming individual's identity	79

Interpretation

3 In this Act,

“accreditation” means an ongoing process of assessing health services organizations against standards of excellence to identify what is being done well and what needs improvement;

“agent”, in relation to a custodian, means a person who, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent’s purposes, whether or not the agent has the authority to bind the custodian, is paid by the custodian or is being remunerated by the custodian, and includes an employee of a custodian or a volunteer who deals with personal health information, a custodian’s insurer, a lawyer retained by the custodian’s insurer or a liability protection provider;

“capacity” means the ability to understand information that is relevant to the making of a decision related to the collection, use or disclosure of personal health information and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision;

“collect”, in relation to personal health information, means to gather, acquire, receive, gain access to or obtain the information by any means from any source;

“Common Client Registry” means a Provincial database that is a master index for

- (a) all residents eligible to receive insured services; and
- (b) all non-residents who have received insured services in the Province;

“common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year;

“custodian” means an individual or organization described below who has custody or control of personal health information as a result of or in connection with performing the person’s or organization’s powers or duties:

- (a) a regulated health professional or a person who operates a group practice of regulated health professionals;
- (b) the Minister;
- (c) a health authority as defined in the *Health Authorities Act*;
- (d) the Review Board under the *Involuntary Psychiatric Treatment Act*;
- (e) a pharmacy licensed under the *Pharmacy Act*;
- (f) a continuing-care facility licensed by the Minister under the *Homes for Special Care Act* or a continuing-care facility approved by the Minister;
- (g) Canadian Blood Services;

(h) any other individual or organization or class of individual or class of organization prescribed by the regulations as a custodian;

“de-identified information” is information that has had all identifiers removed that

(a) identify the individual; or

(b) where it is reasonably foreseeable in the circumstances, could be utilized, either alone or with other information, to identify the individual;

“disclose”, in relation to personal health information in the custody or under the control of a custodian or a person, means to make the information available or to release it to another custodian or to another person, but does not include to use the information;

“domestic partnership” means a domestic partnership as defined in the *Vital Statistics Act*;

“health-card number” means a unique identification number assigned by the Minister to individuals insured under the *Health Services and Insurance Act*;

“healthcare” means an observation, examination, assessment, care, service or procedure in relation to an individual that is carried out, provided or undertaken for one or more of the following health-related purposes:

(a) the diagnosis, treatment or maintenance of an individual’s physical or mental condition;

(b) the prevention of disease or injury;

(c) the promotion and protection of health;

(d) palliative care;

(e) the compounding, dispensing or selling of a drug, healthcare aid, device, product, equipment or other item to an individual or for the use of an individual, under a prescription; or

(f) a program or service designated as a healthcare service in the regulations;

“identifying information” means information that identifies an individual or, where it is reasonably foreseeable in the circumstances, could be utilized, either alone or with other information, to identify an individual;

“individual”, in relation to personal health information, means the individual, whether living or deceased, with respect to whom the information was or is being collected or created;

“information practices”, in relation to a custodian or a prescribed entity, means the policies of the custodian or a prescribed entity for actions in relation to personal health information, including

(a) when, how and the purposes for which the custodian routinely collects, uses, discloses, retains, de-identifies, destroys or disposes of personal health information; and

(b) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information;

“insured services” means insured hospital services and insured professional services as defined in the *Health Services and Insurance Act*;

“Minister” means the Minister of Health and Wellness;

“person” includes a partnership, association or other entity;

“personal health information” means identifying information about an individual, whether living or deceased, and in both recorded and unrecorded forms, if the information

(a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family;

(b) relates to the application, assessment, eligibility and provision of healthcare to the individual, including the identification of a person as a provider of healthcare to the individual;

(c) relates to payments or eligibility for healthcare in respect of the individual;

(d) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance;

(e) is the individual’s registration information, including the individual’s health-card number; or

(f) identifies an individual’s substitute decision-maker;

“planning and management of the health system” means the analysis of information with respect to

(a) the management, evaluation or monitoring of;

(b) the allocation of resources to; or

(c) planning for all or part of,

the health system, including the delivery of services;

“prescribed” means prescribed by the regulations;

“proceeding” means a proceeding held before, in or under the rules of a court, a tribunal, a commission, a justice of the peace, a regulated health-profession body, an arbitrator or a mediator;

“record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record;

“regulated health professional” means a health professional who is licensed or registered to provide healthcare under an Act of the Province specific to the health professional’s profession and who provides healthcare or who is a member of a class of persons prescribed as regulated health professionals;

“regulated health-profession body” means a body with statutory authority for the discipline of a regulated health professional;

“resident” means a resident as defined in the *Health Services and Insurance Act*;

“Review Officer” means the Privacy Review Officer under the *Privacy Review Officer Act*;

“spouse”, with respect to any person, means a spouse, registered domestic partner or common-law partner who is cohabiting with that person in a conjugal relationship;

“use”, in relation to personal health information in the custody or under the control of a custodian or a person, means to handle or deal with the information, but does not include to disclose the information. 2010, c. 41, s. 3; 2012, c. 31, s. 1; 2014, c. 32, s. 151; 2022, c. 22, s. 1.

Personal health information

4 (1) In addition to the matters referred to in the definition of “personal health information” in Section 3 and subject to subsection 8(2), personal health information includes identifying information about an individual that is not personal health information but that is contained in a record that contains personal health information about the individual within the meaning of that definition.

(2) Notwithstanding subsection (1), personal health information does not include identifying information contained in a record that is in the custody or under the control of a custodian if

- (a) the identifying information contained in the record relates primarily to an employee or agent of the custodian; and
- (b) the record is created or maintained primarily for a purpose other than the provision of healthcare or assistance in providing healthcare to the employee or agent. 2010, c. 41, s. 4.

APPLICATION OF ACT

Application of Act

5 (1) Unless specifically provided otherwise in this Act or the regulations, this Act applies to

- (a) the collection of personal health information by a custodian on or after June 1, 2013;
- (b) the use or disclosure of personal health information on or after June 1, 2013, by
 - (i) a custodian, whether or not the custodian collected the information before June 1, 2013, or
 - (ii) a person who is not a custodian and to whom a custodian disclosed the information, whether or not the person received the information before June 1, 2013; and
- (c) the collection, use or disclosure of a health-card number by any person on or after June 1, 2013.

- (2) This Act does not apply to
- (a) statistical, aggregate or de-identified health information; or
 - (b) personal health information about an individual after the earlier of 120 years after a record containing the information was created and 50 years after the death of the individual.

(3) Nothing in this Act is to be interpreted to interfere with solicitor-client privilege. 2010, c. 41, s. 5.

Act does not apply

6 (1) Unless specifically provided otherwise in this Act, this Act does not apply to an individual or organization that collects, uses or discloses personal health information for purposes other than healthcare and the planning and management of the health system, including

- (a) an employer;
- (b) an insurance company;
- (c) a regulated health-profession body;
- (d) a regulated health professional who is not providing healthcare; or
- (e) any other prescribed individual or organization or class of individual or organization.

(2) Except as prescribed, a person described in clause (a) of the definition of “custodian” in Section 3 is not a custodian in respect of personal health information that the person collects, uses or discloses while performing the person’s powers or duties when an agent of a custodian. 2010, c. 41, s. 6.

Conflict with other enactments

7 (1) Except as otherwise provided in this Act, where this Act or the regulations are in conflict with another Act or regulation enacted before or after June 1, 2013, this Act and the regulations prevail unless the other Act or regulation more completely protects the privacy of the personal health information.

(2) For the purpose of this Section, there is no conflict unless it is not possible to comply with both this Act and the regulations and the other Act or regulation.

- (3) Notwithstanding subsection (1), where
- (a) access to a record of personal health information is prohibited or restricted by;
 - (b) a right of access to a record of personal health information is provided in; or
 - (c) a requirement or authorization to disclose personal health information is imposed or conferred upon a custodian in,

a provision of an Act or regulations that is designated in the regulations under this Act, that provision prevails over this Act and the regulations. 2010, c. 41, s. 7.

Application of Freedom of Information and Protection of Privacy Act

8 (1) Subject to subsections (2) and (3), the *Freedom of Information and Protection of Privacy Act* does not apply to personal health information collected by a custodian or in the custody or under the control of a custodian unless this Act specifies otherwise.

(2) Where

(a) a record contains

(i) personal health information, and

(ii) subject matter to which Section 14, 15 or 16, clause 17(1)(b) or Section 27 of the *Freedom of Information and Protection of Privacy Act* may apply; and

(b) the custodian is a public body within the meaning of the *Freedom of Information and Protection of Privacy Act*,

the *Freedom of Information and Protection of Privacy Act* applies to the record instead of this Act.

(3) The *Freedom of Information and Protection of Privacy Act* applies where personal health information is contained in a record primarily created for a purpose other than for healthcare and the custodian is a public body within the meaning of that Act.

(4) This Act does not limit a person's right of access under Section 7 of the *Freedom of Information and Protection of Privacy Act* to a record of personal health information if all the types of information referred to in the definition of "personal health information" in Section 3 are reasonably severed from the record under this Act.

(5) This Act does not apply to a request for access or a review made under the *Freedom of Information and Protection of Privacy Act*, the *Hospitals Act* and the *Privacy Review Officer Act* before June 1, 2013, and the *Freedom of Information and Protection of Privacy Act*, the *Hospitals Act* and the *Privacy Review Officer Act* continue to apply to the request or review.

(6) Nothing in this Act affects the application of the *Personal Information International Disclosure Protection Act* to the records of a custodian who is also a public body under that Act. 2010, c. 41, s. 8.

Exceptions

9 Except as otherwise specifically provided in this Act, this Act does not

(a) affect the law of evidence or limit the information otherwise available by law to a party to a proceeding;

(b) affect the power of a court or tribunal to compel a witness to testify or to compel the production of documents;

(c) affect anything in connection with a subrogated claim or a potential subrogated claim;

- (d) interfere with the activities of a regulated health-profession body;
- (e) affect a court order that prohibits a person from making information public or from publishing information; or
- (f) prohibit the transfer, storage or disposition of a record in accordance with another Act or an Act of the Parliament of Canada. 2010, c. 41, s. 9.

Consent does not affect collection, use or disclosure permitted by Act

10 (1) A provision of this Act that applies to the collection, use or disclosure of personal health information about an individual by a custodian with the consent of the individual, whatever the nature of the consent, does not affect the collection, use or disclosure that this Act permits or requires the custodian to make of the information without the consent of the individual.

(2) A provision of this Act that permits a custodian to disclose personal health information about an individual without the consent of the individual

- (a) does not require the custodian to disclose it unless required to do so by law;
- (b) does not relieve the custodian from a legal requirement to disclose the information; and
- (c) does not prevent the custodian from obtaining the individual's consent for the disclosure or giving notice to the individual of the disclosure. 2010, c. 41, s. 10.

CONSENT

Consent required unless exempt by Act

11 A custodian shall not collect, use or disclose personal health information about an individual unless

- (a) the custodian has the individual's consent under this Act and the collection, use or disclosure is reasonably necessary for a lawful purpose; or
- (b) the collection, use or disclosure is permitted or required by this Act. 2010, c. 41, s. 11.

Knowledgeable implied consent

12 Unless this Act requires express consent or makes exception to the requirement for consent, knowledgeable implied consent may be accepted as consent for the collection, use and disclosure of personal health information. 2010, c. 41, s. 12.

Requirements for knowledgeable implied consent

13 Where this Act requires knowledgeable implied consent or express consent of an individual for the collection, use or disclosure of personal health information by a custodian, the consent must

- (a) be a consent of the individual;
- (b) be knowledgeable;

- (c) relate to the specific information at issue; and
- (d) be voluntary. 2010, c. 41, s. 13.

Deemed knowledgeable consent

14 A consent to the collection, use or disclosure of personal health information about an individual is knowledgeable if it is reasonable in the circumstances for the custodian to believe that the individual knows

- (a) the purpose of the collection, use or disclosure, as the case may be; and
- (b) that the individual may give or withhold consent. 2010, c. 41, s. 14.

Reasonable to believe individual knowledge

15 (1) Unless it is not reasonable in the circumstances, it is reasonable to believe that an individual knows the purpose of the collection, use or disclosure of personal health information about the individual by a custodian if the custodian

- (a) makes readily available a notice describing the purpose in a manner that the purpose is likely to come to the individual's attention; or
- (b) explains the purpose to the individual.

(2) Subsection (1) does not apply if the custodian should have known that the individual

- (a) has a limited ability to read or understand the language in which the notice or explanation is presented; or
- (b) has a disability or condition that impairs the individual's ability to read or understand the notice.

(3) A custodian shall make reasonable efforts to assist an individual referred to in subsection (2) with the individual's understanding of the purpose of the collection, use and disclosure of the individual's personal health information. 2010, c. 41, s. 15.

Express consent

16 Where express consent is required, the consent may be written or oral. 2010, c. 41, s. 16.

Limitations or revocation of consent

17 (1) An individual may limit or revoke the individual's consent to the collection of personal health information or to the use or disclosure of personal health information in the custody or control of a custodian by notice to the custodian.

(2) A consent may be limited or revoked at any time, but no limitation or revocation has retroactive effect.

(3) A custodian shall take reasonable steps to comply with a limitation or revocation of consent after receiving the notice.

(4) The custodian shall inform the individual of the consequences of limiting or revoking consent in the specific circumstances.

(5) Where the disclosing custodian does not have the consent of the individual to disclose all the personal health information about the individual that it considers reasonably necessary for that purpose, the disclosing custodian shall notify the custodian to whom it disclosed the information of that fact.

(6) This Section does not apply to personal health information that a custodian is required by law to collect, use or disclose, as the case may be. 2010, c. 41, s. 17.

Ability to consent

18 Any capable individual, regardless of age, may consent or withdraw consent for the purpose of this Act. 2010, c. 41, s. 18.

Inability to consent

19 (1) An individual may have the capacity at a particular time to consent to the collection, use or disclosure of some parts of personal health information but be incapable of consenting at another time.

(2) An individual may have the capacity to consent to the collection, use or disclosure of some parts of personal health information but be incapable of consenting with respect to other parts. 2010, c. 41, s. 19.

Consent includes disclosure to others

20 Where an individual is deemed to have the capacity to consent to the collection, use and disclosure of personal health information, this capacity to consent includes disclosure to a parent, guardian or substitute decision-maker where applicable. 2010, c. 41, s. 20.

SUBSTITUTE DECISION-MAKER

Substitute decision-maker

21 (1) For the purpose of this Act, consent to the collection, use and disclosure of personal health information may be given or refused on behalf of an individual by a substitute decision-maker if the individual lacks the capacity to make the decision.

(2) For the purpose of this Act, access to personal health information may be requested by a substitute decision-maker on behalf of an individual if

(a) the request is in the best interest of the individual who is the subject of the information; and

(b) the request is in compliance with this Act.

(3) The substitute decision-maker of an individual shall be chosen from the following in descending order:

- (a) a person who is authorized by or required by law to act on behalf of the individual;
- (b) the individual's guardian appointed by a court of competent jurisdiction;
- (c) the spouse of the individual;
- (d) an adult child of the individual;
- (e) a parent of the individual;
- (f) a person who stands in *loco parentis* to the individual;
- (g) an adult sibling of the individual;
- (h) a grandparent of the individual;
- (i) an adult grandchild of the individual;
- (j) an adult aunt or uncle of the individual;
- (k) an adult niece or nephew of the individual;
- (l) any other adult next of kin of the individual;
- (m) the Public Trustee.

(4) Where a person in a category in subsection (3) fulfills the criteria for a substitute decision-maker as set out in subsection (6) but refuses consent on the individual's behalf, the consent of a person in a subsequent category is not valid.

(5) Where two or more persons who are not described in the same clause of subsection (3) claim the authority to give or refuse consent under that subsection, the one under the clause occurring first in that subsection prevails.

(6) A person referred to in clauses (3)(b) to (g) shall not exercise the authority given by that subsection unless the person

- (a) has been in personal contact with the individual throughout the preceding 12-month period or has been granted a court order to shorten or waive the 12-month period;
- (b) is willing to assume the responsibility for consenting or refusing consent;
- (c) knows of no person of a higher category who is able and willing to make the decision; and
- (d) makes a statement in writing certifying the person's relationship to the individual and the facts and beliefs set out in clauses (a) to (c). 2010, c. 41, s. 21; 2022, c. 22, s. 2.

Making of decisions by substitute decision-maker

22 In making any decision, a substitute decision-maker shall

- (a) follow any prior express request of the individual, unless circumstances exist that would have caused the individual to set out different

instructions had the circumstances been known, based on what the delegate knows of the values and beliefs of the individual and from any other written or oral instructions;

(b) in the absence of instructions, act according to what the substitute decision-maker believes the wishes of the individual would be, based on what the substitute decision-maker knows of the values and beliefs of the individual and from any other written or oral instructions; and

(c) where the substitute decision-maker does not know the wishes, values and beliefs of the individual, make the decision that the delegate believes would be in the best interests of the individual. 2010, c. 41, s. 22.

Reliance on written statement

23 Whoever seeks a person's consent on an individual's behalf is entitled to rely on that person's statement in writing as to the person's relationship with the individual and as to the facts and beliefs mentioned in clauses 21(6)(a) to (c), unless it is not reasonable to believe the statement. 2010, c. 41, s. 23.

COLLECTION, USE AND DISCLOSURE

Other available information

24 A custodian shall not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure. 2010, c. 41, s. 24.

Minimum amount

25 (1) The collection, use and disclosure of personal health information must be limited to the minimum amount of personal health information necessary to achieve the purpose for which it is collected, used and disclosed.

(2) For greater certainty,

(a) in respect of the use of personal health information by a custodian, the custodian shall limit the use of personal health information in its custody or under its control to those of its agents who need to know the information to carry out the purpose for which the information was collected or a purpose authorized under this Act; and

(b) in respect of the disclosure of personal health information by a custodian, the custodian shall limit the disclosure of personal health information in the custodian's custody or under the custodian's control to those regulated health professionals, who have the right to treat individuals in the custodian's healthcare facility, to only that information that the health professionals require to carry out their duties and responsibilities. 2010, c. 41, s. 25.

Authority of custodian

26 (1) Sections 24 and 25 apply in circumstances where the custodian is authorized to collect, use and disclose personal health information

(a) with knowledgeable implied consent;

(b) without consent; and

(c) without consent unless the individual objects.

(2) Sections 24 and 25 do not apply to personal health information that a custodian is required by law to collect, use or disclose. 2010, c. 41, s. 26; 2012, c. 31, s. 2.

Collection and use of health-card number

27 A person who is not

- (a) a custodian; or
- (b) authorized by the regulations to do so,

shall not collect or use an individual's health-card number. 2010, c. 41, s. 27.

Custodian's responsibility

28 (1) A custodian is responsible for personal health information in the custody or control of the custodian and may permit the custodian's agent to collect, use, disclose, retain, destroy or dispose of personal health information on the custodian's behalf only if

(a) the custodian is permitted or required to collect, use, disclose, retain, destroy or dispose of the information, as the case may be;

(b) the collection, use, disclosure, retention, destruction or disposition of the information, as the case may be, is in the course of the agent's duties and not contrary to the limits imposed by the custodian, this Act or another law; and

(c) the prescribed requirements, if any, are met.

(2) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, an agent of a custodian shall not collect, use, disclose, retain, destroy or dispose of personal health information on the custodian's behalf unless the custodian permits the agent to do so in accordance with subsection (1).

(3) An agent of a custodian shall notify the custodian at the first reasonable opportunity if personal health information handled by the agent on behalf of the custodian is stolen, lost or accessed by unauthorized persons. 2010, c. 41, s. 28.

Agent may act on behalf of custodian

29 (1) Where a custodian is authorized to use personal health information for a purpose, the custodian may provide the information to an agent who may use it for that purpose on behalf of the custodian.

(2) For the purpose of this Act, the providing of personal health information between a custodian and an agent of the custodian is a use by the custodian and is not a disclosure by the custodian or a collection by the agent. 2010, c. 41, s. 29.

COLLECTION

Collecting personal health information

30 A custodian may collect personal health information

- (a) for a lawful purpose related to the authority of the custodian; or
- (b) if it is expressly authorized by this Act or another Act of the Province or of the Parliament of Canada. 2010, c. 41, s. 30.

Collecting information directly from individual

31 A custodian shall collect personal health information directly from the individual about whom the information is being collected, except in the following circumstances:

- (a) the individual authorizes collection from another person;
- (b) the collection is from the substitute decision-maker if the substitute decision-maker has the authority to act;
- (c) the information to be collected is reasonably necessary for providing healthcare or assisting in providing healthcare to the individual and it is not reasonably possible to collect, directly from the individual,
 - (i) personal health information that can reasonably be relied on as accurate, or
 - (ii) personal health information in a timely manner;
- (d) the custodian believes, on reasonable grounds, that collection from the individual who is the subject of the information would prejudice the safety of any individual;
- (e) for the purpose of assembling a family history if the information collected is to be used in the context of providing healthcare to the individual from whom the information is being collected;
- (f) collection is for
 - (i) determining the eligibility of an individual to participate in a program of, or to receive a benefit, product or health service from, a custodian, and the information is collected in the course of processing an application made by or for the individual who is the subject of the information, or
 - (ii) verifying the eligibility of an individual who is participating in a program of, or receiving a benefit, product or health service from, a custodian to participate in the program or to receive the benefit, product or service;
- (g) the custodian is a public body within the meaning of the *Freedom of Information and Protection of Privacy Act* or is acting as part of such a public body, and the custodian is collecting the information for a purpose related to
 - (i) investigating a breach of an agreement or a contravention or an alleged contravention of the laws of the Province or Canada,
 - (ii) the conduct of a proceeding or a possible proceeding, or

- (iii) the statutory function of the custodian;
- (h) the custodian collects the information from a person who is not a custodian for the purpose of carrying out a research project that has been approved by the research ethics board or a research ethics body, except if the person is prohibited by law from disclosing the information to the custodian;
- (i) the custodian is a prescribed entity mentioned in clause 38(1)(j) and the custodian is collecting personal health information from a person who is not a custodian for the purpose of that clause;
- (j) the custodian collects the information from a person who is permitted or required by law or by a treaty, agreement or arrangement made under this Act or another Act of the Province or of the Parliament of Canada to disclose it to the custodian;
- (k) subject to the requirements and restrictions, if any, that are prescribed, the custodian is permitted or required by law or by a treaty, agreement or arrangement made under this Act or another Act of the Province or of the Parliament of Canada to collect the information indirectly;
- (l) the custodian is the Minister and the collection of the personal health information is for the purpose of planning and management of the health system;
- (m) the collection is for the purpose of ensuring quality or standards of care within a quality review program within the custodian's organization;
- (n) the collection is reasonably necessary for the administration of payments in connection with the provision of healthcare to the individual or for contractual or legal requirements in that connection; or
- (o) the custodian is the Minister and the collection of personal health information is from another custodian for the purpose of creating or maintaining an electronic health record. 2010, c. 41, s. 31; 2012, c. 31, s. 3.

Express consent for collection

32 Express consent is required for the collection of personal health information for

- (a) fund-raising activities; or
- (b) market research or marketing any service for a commercial purpose. 2010, c. 41, s. 32.

USE

Use of personal health information

- 33** A custodian may use an individual's personal health information for
- (a) the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose;
 - (b) a purpose for which this Act, another Act of the Province or of the Parliament of Canada permits or requires a person to disclose it to the custodian; or

- (c) educating agents to provide healthcare. 2010, c. 41, s. 33.

Express consent for use of information

34 Express consent is required for the use of personal health information for

- (a) fund raising activities; or
- (b) market research or marketing any service for a commercial purpose. 2010, c. 41, s. 34.

Consent not required for custodian use of information

35 (1) A custodian may use personal health information about an individual without the individual's consent

(a) for planning or delivering programs or services that the custodian provides or that the custodian funds in whole or in part, allocating resources to any of them and evaluating or monitoring any of them;

(b) for detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;

(c) for the purpose of ensuring quality or standards of care within a quality review program within the custodian's organization;

(d) for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;

(e) for the purpose of seeking the individual's consent, when the personal health information used by the custodian for this purpose is limited to the individual's name and contact information;

(f) for the purpose of a proceeding or a contemplated proceeding in which the custodian or an agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(g) for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of healthcare or related goods and services;

(h) for research conducted by the custodian, in accordance with Sections 52 to 60;

(i) for the purpose of creating or maintaining an electronic health record, if the custodian is the Minister and the information was collected from another custodian for that purpose;

(j) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under this Act or another Act of the Province or of the Parliament of Canada; or

(k) for the purpose of risk management or patient safety within the custodian's organization.

(2) Where subsection (1) authorizes a custodian to use personal health information for a purpose, the custodian may provide the information to an agent of the custodian who may use it for that purpose on behalf of the custodian. 2010, c. 41, s. 35; 2012, c. 31, s. 4.

DISCLOSURE

Disclosure by custodian

36 Subject to Section 17, a custodian may disclose personal health information about an individual to a custodian involved in the individual's healthcare if the disclosure is reasonably necessary for the provision of healthcare to the individual. 2010, c. 41, s. 36.

Disclosure of general information

37 A custodian has the discretion to disclose personal health information about an individual to

- (a) family members of the individual; or
- (b) another person if the custodian has a reasonable belief that the person has a close personal relationship with the individual,

if the information is given in general terms and concerns the presence, location, and general condition of the individual on the day on which the information is disclosed and the disclosure is not contrary to the express request of the individual. 2010, c. 41, s. 37.

Disclosing information without consent and review process

38 (1) A custodian may disclose personal health information about an individual without the individual's consent

- (a) to another custodian if the custodian disclosing the information has a reasonable expectation that the disclosure will prevent or assist an investigation of fraud, limit abuse in the use of health services or prevent the commission of an offence under an enactment of a province or the Parliament of Canada;
- (b) to persons acting on behalf of the individual, including
 - (i) a person who is legally entitled to make a healthcare decision on behalf of the individual,
 - (ii) a legal guardian, or
 - (iii) the administrator of an estate, if the use or disclosure is for the purpose of the estate;
- (c) to a regulated health-profession body or a prescribed professional body that requires the information for the purpose of carrying out its duties in the Province under an Act of the Province or in another province of Canada under an Act of that province regulating the profession;
- (d) to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize an imminent and significant danger to the health or safety of any person or class of persons;

(e) to an official of a correctional facility, as defined in the *Correctional Services Act*, or to an official of a penitentiary, as defined in the *Corrections and Conditional Release Act (Canada)* in which the individual is being lawfully detained if the purpose of the disclosure is to allow the provision of healthcare to the individual or to assist the correctional facility or penitentiary in making a decision concerning correctional services as defined in the *Correctional Services Act* or services provided under the *Corrections and Conditional Release Act (Canada)*;

(f) to another custodian for the purpose of ensuring quality or standards of care within a quality review program within the custodian's organization;

(g) to the Minister for the purpose of planning and management of the health system;

(h) to the Nova Scotia Prescription Monitoring Board for monitoring prescriptions pursuant to the *Prescription Monitoring Act*;

(i) to the Canadian Institute for Health Information to assist in the planning and management of the health system in accordance with the terms of an agreement between the Canadian Institute for Health Information and the Province;

(j) to a prescribed entity, for the planning and management of the health system for all or part of the health system, including the delivery of services, if the entity meets the requirements under subsection (2);

(k) from the Province to another provincial or territorial government or the Government of Canada to assist in the planning and management of the health system;

(l) subject to the requirements and restrictions, if any, that are prescribed, if the disclosure is required or permitted by law or a treaty, agreement or arrangement made pursuant to this Act or another Act of the Province or the Parliament of Canada;

(m) to another custodian for the purpose of determining or verifying an individual's eligibility for insured services;

(n) subject to the requirements and restrictions, if any, that are prescribed, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or by or under this Act or another Act of the Province or an Act of the Parliament of Canada for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure;

(o) to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such;

(p) to a litigation guardian or legal representative who is authorized under the *Civil Procedure Rules*, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding;

(q) for the purpose of complying with

(i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or

(ii) a procedural rule that relates to the production of information in a proceeding;

(r) the disclosure is reasonably necessary for the administration of payments in connection with the provision of healthcare to the individual or for contractual or legal requirements in that connection;

(s) for the purpose of a proceeding or a contemplated proceeding in which the custodian or an agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(t) for the purpose of risk management or patient safety within the custodian's organization;

(u) to the Minister for the purpose of creating or maintaining an electronic health record; or

(v) to a custodian's authorized person conducting an audit or reviewing an application for accreditation or reviewing an accreditation, if the audit or review relates to the services provided by a custodian.

(2) Subject to subsection (3), a custodian may disclose personal health information to a prescribed entity under clause (1)(j) if, in addition to any other requirements of this Act, the prescribed entity has in place information practices to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information.

(3) Where the custodian makes the disclosure on or after June 1, 2014,

(a) the Review Officer must have reviewed the prescribed entity's information practices and recommended their approval to the Minister; and

(b) the Minister must have approved the information practices,

before the disclosure by the custodian.

(4) Pursuant to clause (1)(j), the Review Officer shall review the practices and procedures of each prescribed entity every five years from the date of its approval pursuant to clause (3)(b) and advise the custodian and the Minister whether the entity continues to meet the requirements of subsection (2).

(5) A prescribed entity that is not a custodian is authorized to collect the personal health information that a custodian may disclose to the prescribed entity under clause (1)(j).

(6) Subject to the exceptions and additional requirements, if any, that are prescribed, a prescribed entity that receives personal health information under clause (1)(j) shall not use the information except for the purposes for which it received the information, and shall not disclose the information except as required by law.

(7) An agent or former agent who receives personal health information under clause (1)(n), (o), (p) or (q) or under subsection 35(2) for the purpose of a proceeding or contemplated proceeding may disclose the information to the agent's or former agent's professional advisor for the purpose of providing advice or representation to the agent or former agent if the advisor is under a professional duty of confidentiality.

(8) Where a custodian discloses personal health information under clause (1)(v), the person conducting the audit or reviewing an application for accreditation or reviewing an accreditation must agree in writing

(a) to destroy the information at the earliest possible opportunity after the audit or review; and

(b) not to disclose the information to any other person, except as required to accomplish the audit or review. 2010, c. 41, s. 38; 2012, c. 31, s. 5; 2022, c. 22, s. 3.

Disclosure to a non-custodian without consent

39 (1) Subject to subsection (2), a custodian may disclose personal health information about an individual to a non-custodian without the individual's consent at the request of any custodian for the purpose of facilitating assessment, care or treatment services for the individual.

(2) Before a disclosure contemplated in subsection (1), the Minister must have authorized the non-custodian to receive the information and the custodian shall make a request to the Minister in writing and detail the reasons why the non-custodian requires this type of information on an ongoing basis. 2010, c. 41, s. 39.

Disclosing information about deceased person

40 (1) A custodian may disclose personal health information about an individual who is deceased, or is believed to be deceased,

(a) for the purpose of identifying the individual;

(b) for the purpose of informing any person whom it is reasonable to inform that the individual is deceased or believed to be deceased;

(c) to a spouse, parent, sibling or child of the individual if the recipient of the information reasonably require the information to make decisions about the recipient's own healthcare or the recipient's children's healthcare and it is not contrary to a prior express request of the individual; or

(d) for carrying out the deceased person's wishes for the purpose of tissue or organ donation.

(2) Where an individual is deceased, personal health information may be disclosed by a custodian to

- (a) a family member of the individual; or
- (b) to another person if the custodian has a reasonable belief that the person has a close personal relationship with the individual,

if the information relates to circumstances surrounding the death of the individual or to healthcare recently received by the individual and the disclosure is not contrary to a prior express request of the individual. 2010, c. 41, s. 40.

Custodian may obtain consent for disclosure

41 (1) A provision of this Act that permits a custodian to disclose personal health information about an individual without the consent of the individual does not prevent the custodian from obtaining the individual's consent for the disclosure.

(2) Subsection (1) does not apply where the custodian is required by law to disclose the personal health information. 2010, c. 41, s. 41.

Documenting disclosure without consent

42 (1) A disclosure of health information without consent must be documented.

- (2) The documentation must include
- (a) a description or copy of the personal health information disclosed;
 - (b) the name of the person or organization to whom the personal health information was disclosed;
 - (c) the date of the disclosure; and
 - (d) the authority for the disclosure. 2010, c. 41, s. 42.

Express consent for disclosure

43 Express consent of the individual to whom personal health information relates is required for the disclosure of the information

- (a) by a custodian to a non-custodian unless required or authorized by law;
- (b) by a custodian to another custodian if the disclosure is not for the purpose of providing healthcare, unless required or authorized by law;
- (c) for fund-raising activities;
- (d) for market research or marketing any service for a commercial purpose;
- (e) to the media; or
- (f) to a person or organization for the purpose of research unless provided for in Section 57. 2010, c. 41, s. 43.

Disclosure to person outside Province

44 (1) A custodian may disclose personal health information about an individual collected in the Province to a person outside the Province if

- (a) the individual who is the subject of the information consents to the disclosure;
- (b) the disclosure is permitted by this Act or the regulations;
- (c) the disclosure is to a regulated health professional and the disclosure is to meet the functions of another jurisdiction's prescription monitoring program;
- (d) the following conditions are met:
 - (i) the disclosure is for the purpose of the planning and management of the health system or health administration,
 - (ii) the information relates to healthcare provided in the Province to an individual who resides in another province of Canada, and
 - (iii) the disclosure is made to the government of that other province of Canada; or
- (e) the disclosure is reasonably necessary for the provision of healthcare to the individual and the individual has not expressly instructed the custodian not to make the disclosure.

(2) Where a custodian discloses personal health information about an individual under clause (1)(e) and an express request of the individual who is the subject of the information prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of healthcare to the individual, the custodian shall notify the person to whom it makes disclosure of that fact. 2010, c. 41, s. 44.

Authority of non-custodian to collect information

45 (1) A person who is not a custodian is authorized to collect the personal health information that a custodian may disclose to it, but that person does not become a custodian merely by virtue of its collection of the personal health information that the custodian has disclosed to it.

(2) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose the information for any purpose other than

- (a) the purpose for which the custodian was authorized to disclose the information under this Act; or
- (b) the purpose of carrying out a legal duty.

(3) Subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a custodian, and to whom a custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless the use or disclosure is required by law.

(4) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, where a custodian discloses information to another custodian and the information is identifying information of the type described in Section 9 in the custody or under the control of the receiving custodian, the receiving custodian shall not

(a) use or disclose the information for any purpose other than

(i) the purpose for which the disclosing custodian was authorized to disclose the information under this Act, or

(ii) the purpose of carrying out a legal duty; or

(b) use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be.

(5) The restrictions set out in clauses (4)(a) and (b) apply to a custodian that receives the identifying information described in subsection (4) whether or not the information was received before June 1, 2013.

(6) Except as prescribed, this Section does not apply to a public body within the meaning of the *Freedom of Information and Protection of Privacy Act* that is not a custodian. 2010, c. 41, s. 45; 2022, c. 22, s. 4.

Authority of Minister to give access to health-card number

46 Notwithstanding any enactment, except the *Juries Act* and the *Elections Act*, the Minister has the sole authority for deciding who may have access to the information in the health-card number database, the Common Client Registry or any successor client information system related to the health-card number. 2010, c. 41, s. 46.

RETENTION, DESTRUCTION, DISPOSAL AND DE-IDENTIFICATION

Paper and electronic records

47 Sections 48 to 51 apply to personal health information in both paper records and an electronic information system. 2010, c. 41, s. 47.

Information practices

48 A custodian shall have in place and comply with information practices that meet the requirements of this Act. 2010, c. 41, s. 48.

Securely destroyed, erased or de-identified information

49 (1) In this Section, “securely destroyed” means destroyed in such a manner that reconstruction is not reasonably foreseeable in the circumstances.

(2) At the expiry of the relevant retention period, personal health information that is no longer required to fulfill the purposes identified in the retention schedule must be securely destroyed, erased or de-identified.

(3) Subject to Section 50, personal health information may be de-identified and retained for purposes other than the original purposes for which it was collected. 2010, c. 41, s. 49.

Written retention schedule

50 (1) Every custodian shall have a written retention schedule for personal health information that includes

- (a) all legitimate purposes for retaining the information;
- and
- (b) the retention period and destruction schedules associated with each purpose.

(2) Subsection (1) does not override or modify any requirement in an enactment of the Province or the Parliament of Canada concerning the retention or destruction of records maintained by public bodies. 2010, c. 41, s. 50.

Retention and destruction schedules

51 Before release of personal health information, including disclosure to the archives of a custodian or to the Public Archives, the custodian shall ensure that the custodian's retention and destruction schedules have been followed. 2010, c. 41, s. 51.

RESEARCH

Interpretation

52 In Sections 53 to 60,

“data matching” means the creation of individual identifying health information by combining individual identifying or non-identifying health information or other information from two or more databases without the consent of the individuals who are the subjects of the information;

“impracticable” means a degree of difficulty higher than inconvenience or impracticality but lower than impossibility;

“research” means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research;

“research ethics board” means a research ethics board established and operating in conformity with the Tri-Council Policy Statement;

“Tri-Council Policy Statement” means the Tri-Council Policy Statement “Ethical Conduct for Research Involving Humans” adopted in August 1998 by the Medical Research Council of Canada, the Natural Sciences and Engineering Research Council of Canada and the Social Sciences and Humanities Research Council of Canada, and includes any amendments or successor statements. 2010, c. 41, s. 52.

Research

53 Planning and management of the health system does not constitute research for the purpose of this Act. 2010, c. 41, s. 53.

Minimum amount of information

54 The use and disclosure of personal health information by a custodian is limited to the minimum amount of information necessary to accomplish the research purposes for which it is to be used or disclosed. 2010, c. 41, s. 54.

Steps required prior to using information

55 A custodian may use personal health information for research if, before commencing the research, the custodian

- (a) prepares a research plan that meets the requirements in Section 59;
 - (b) receives the approval of a research ethics board; and
 - (c) meets any conditions imposed by the research ethics board.
- 2010, c. 41, s. 55; 2012, c. 31, s. 6.

Obligations of researcher

56 A custodian may disclose personal health information about an individual to a researcher if the researcher

- (a) submits to the custodian
 - (i) an application in writing,
 - (ii) a research plan that meets the requirements of Section 59, and
 - (iii) a copy of the submission to and decision of a research ethics board that approves the research plan; and
- (b) enters into the agreement required by Section 60. 2010, c. 41, s. 56.

Disclosure without individual consent

57 A custodian may disclose personal health information about an individual to a researcher without the consent of the subject individual if

- (a) the researcher has met the requirements in Section 56;
- (b) a research ethics board has determined that the consent of the subject individuals is not required;
- (c) the custodian is satisfied that
 - (i) the research cannot be conducted without using the personal health information,
 - (ii) the personal health information is limited to that necessary to accomplish the purpose of the research,
 - (iii) the personal health information is in the most de-identified form possible for the conduct of the research,
 - (iv) the personal health information will be used in a manner that ensures its confidentiality, and
 - (v) it is impracticable to obtain consent; and
- (d) the custodian informs the Review Officer. 2010, c. 41, s. 57; 2012, c. 31, s. 7.

Forms

- 58** A custodian may prescribe forms for use by researchers for
- (a) an application under subclause 56(a)(i);
 - (b) a research plan under Section 59; and
 - (c) a disclosure agreement under Section 60. 2010, c. 41, s. 58.

Research plan

59 (1) Before commencing research, a researcher seeking to conduct research utilizing personal health information shall submit a research plan to a research ethics board.

(2) The research plan must be in writing.

(3) In order to meet the requirements for a custodian under this Act, the research plan must include

- (a) a description of the research proposed to be conducted;
- (b) a statement regarding the duration of the research;
- (c) a description of the personal health information required and the potential sources of the information;
- (d) a description as to how the personal information will be used in the research;
- (e) where the personal health information will be linked to other information, a description of the other information as well as how the linkage will be conducted;
- (f) where the researcher is conducting the research on behalf of or with the support of a person or organization, the name of the person or organization;
- (g) the nature and objectives of the research and the public or scientific benefit anticipated as a result of the research;
- (h) where consent is not being sought, an explanation as to why seeking consent is impracticable;
- (i) an explanation as to why the research cannot reasonably be accomplished without the use of personal health information;
- (j) where there is to be data matching, an explanation of why data matching is required;
- (k) a description of the reasonably foreseeable risks arising from the use of personal health information and how those risks are to be mitigated;
- (l) a statement that the personal health information is to be used in the most de-identified form possible for the conduct of the research;
- (m) a description of all individuals who will have access to the information, and
 - (i) why their access is necessary,

- (ii) their roles in relation to the research, and
- (iii) their qualifications;
- (n) a description of the safeguards that the researcher will impose to protect the confidentiality and security of the personal health information;
- (o) information as to how and when the personal health information will be destroyed or returned to the custodian;
- (p) the funding source of the research;
- (q) whether the researcher has applied for the approval of another research ethics board and, if so, the response to or status of the application; and
- (r) whether the researcher's interest in the disclosure of the personal health information or the conduct of the research would potentially result in an actual or perceived conflict of interest on the part of the researcher. 2010, c. 41, s. 59.

Custodian-researcher agreement

60 (1) Where a custodian discloses personal health information to a researcher, the researcher shall enter into an agreement with the custodian to adhere to the requirements in subsection (2).

(2) An agreement referred to in subsection (1) must include a commitment by the researcher

- (a) to comply with any terms and conditions imposed by a research ethics board;
- (b) to comply with any terms and conditions imposed by the custodian;
- (c) to use the information only for the purposes outlined in the research plan as approved by a research ethics board;
- (d) not to publish the information in a form where it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual;
- (e) to allow the custodian to access or inspect the researcher's premises to confirm that the researcher is complying with the terms and conditions of this Act and of the agreement between the custodian and the researcher;
- (f) to notify the custodian immediately and in writing if the personal health information is stolen, lost or subject to unauthorized access, use, disclosure, copying or modification;
- (g) to notify the custodian immediately and in writing of any known or suspected breach of the agreement between the custodian and the researcher; and
- (h) not to attempt to identify or contact the individuals unless the custodian or researcher has obtained prior consent by the individuals. 2010, c. 41, s. 60.

PRACTICES TO PROTECT
PERSONAL HEALTH INFORMATION

Confidentiality

61 A custodian shall protect the confidentiality of personal health information that is in its custody or under its control and the privacy of the individual who is the subject of that information. 2010, c. 41, s. 61.

Information practices and complaints policy

62 (1) A custodian shall implement, maintain and comply with information practices that

- (a) meet the requirements of this Act and the regulations;
- (b) are reasonable in the circumstances; and
- (c) ensure that personal health information in the custodian's custody or under its control is protected against
 - (i) theft or loss of the information, and
 - (ii) unauthorized access to or use, disclosure, copying or modification of the information.

(2) A custodian shall implement, maintain and comply with a complaints policy for an individual to make a complaint under this Act. 2010, c. 41, s. 62.

Record of user activity for electronic information system

63 (1) A custodian shall create and maintain, or have created and maintained, a record of user activity for any electronic information system it uses to maintain personal health information.

(2) A record of user activity may be generated manually or electronically.

(3) Subject to any prescribed administrative requirements, a record of user activity related to an individual's personal health information must be available to that individual upon request as soon as possible but no later than 30 days after the custodian has received the request from the individual.

(4) A custodian shall not charge an individual for a record of user activity.

(5) A custodian may audit records of user activity to detect and investigate privacy breaches, in accordance with the guidelines set by the Minister or the regulations. 2010, c. 41, s. 63; 2022, c. 22, s. 5.

Refusal of access request

64 (1) Where a custodian believes on reasonable grounds that a request for a record of user activity is

- (a) frivolous or vexatious; or

(b) part of a pattern of conduct that amounts to an abuse of the right of a request for a record of user activity,

the custodian may refuse to grant the request.

(2) When a refusal is made under subsection (1), the custodian shall provide the individual with written notice that sets out the reasons for the refusal and states that the individual is entitled to make a complaint to the Review Officer about the refusal. 2010, c. 41, s. 64.

Safeguards

65 A custodian who maintains an electronic information system shall implement any additional safeguards for such information required by the regulations. 2010, c. 41, s. 65.

Restriction or conditions of disclosure

66 When disclosing personal health information, a custodian may make the disclosure subject to any restrictions or conditions that the disclosing custodian considers advisable to protect the information. 2010, c. 41, s. 66.

Designation of contact person

67 (1) A custodian shall designate one or more individuals as a contact person who is authorized on behalf of the custodian to

- (a) facilitate the custodian's compliance with this Act;
- (b) ensure that all agents of the custodian are appropriately informed of their duties under the Act;
- (c) respond to inquiries about the custodian's information practices;
- (d) respond to requests for access to and correction of records;
- (e) receive and process complaints under this Act;
- (f) facilitate the communications to and the training of the custodian's staff about the custodian's policies and procedures and about this Act; and
- (g) develop information to explain the organization's policies and procedures.

(2) A custodian who is a natural person and who does not designate a contact person under subsection (1) shall perform the functions described in that subsection. 2010, c. 41, s. 67.

Public written statement

68 A custodian shall, in a manner that is practical in the circumstances, make available to the public a written statement that

- (a) provides a general description of the custodian's information practices;

- (b) describes how to contact
 - (i) the contact person described in Section 67, if the custodian has one, or
 - (ii) the custodian, if the custodian does not have that contact person;
- (c) describes how an individual may obtain access to or request correction of a record of personal health information about the individual that is in the custody or control of the custodian; and
- (d) describes how to make a complaint under this Act to the custodian and to the Review Officer. 2010, c. 41, s. 68.

REPORTING OF A PRIVACY BREACH

Notifying individual

69 Subject to the exceptions and additional requirements, if any, that are prescribed, a custodian that has custody or control of personal health information about an individual shall notify the individual at the first reasonable opportunity if the custodian believes on a reasonable basis that

- (a) the information is stolen, lost or subject to unauthorized access, use, disclosure, copying or modification; and
- (b) as a result, there is potential for harm or embarrassment to the individual. 2010, c. 41, s. 69.

Notification to individual not required

70 (1) Where a custodian determines on a reasonable basis that personal health information has been stolen, lost or subject to unauthorized access, use, disclosure, copying or modification, but

- (a) it is unlikely that a breach of the personal health information has occurred; or
- (b) there is no potential for harm or embarrassment to the individual as a result,

the custodian may decide that notification to the individual pursuant to Section 69 is not required.

(2) Where a custodian makes the decision not to notify an individual pursuant to this Section, the custodian shall notify the Review Officer as soon as possible. 2010, c. 41, s. 70.

ACCESS TO AN INDIVIDUAL'S OWN PERSONAL HEALTH INFORMATION

Right of access

71 An individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a custodian. 2010, c. 41, s. 71.

Refusing access

72 (1) Notwithstanding Section 71, a custodian may refuse to grant access to an individual's personal health information about that individual if it is reasonable to believe that

(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the individual;

(b) another Act of the Province or of the Parliament of Canada or a court order prohibits disclosure to the individual of the record or the information in the record in the circumstances;

(c) the information in the record was collected or created primarily for the purpose of ensuring quality or standards of care within a quality review program in the custodian's organization;

(d) the information in the record was collected or created in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, have not been concluded;

(e) the following conditions are met:

(i) the information was collected or created in the course of an inspection, investigation or similar procedure authorized by law, or undertaken for the purpose of the detection, monitoring or prevention of an individual's receiving or attempting to receive a service or benefit to which the person is not entitled under an Act of the Province or a program operated by the Minister, or a payment for such a service or benefit, and

(ii) the inspection, investigation or similar procedure, together with all proceedings, appeals or processes resulting from them, have not been concluded;

(f) granting the access could reasonably be expected to result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious harm to the mental or physical health of the individual;

(g) granting the access could reasonably be expected to result in a risk of serious harm to the mental or physical health of another individual;

(h) granting the access could reasonably be expected to lead to the identification of a person who provided information in the record to the custodian in circumstances in which confidentiality was reasonably expected; or

(i) granting access could reasonably be expected to result in the release of another individual's personal health information.

(2) Notwithstanding subsection (1), an individual has a right of access to that part of a record of personal health information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access as a result of clauses (1)(a) to (i). 2010, c. 41, s. 72.

Consultation before determining access

73 Before deciding to refuse to grant an individual access to a record of personal health information under clause 72(1)(f) or (g), a custodian may consult with a health professional who has been involved in the individual's care or another appropriate health professional. 2010, c. 41, s. 73.

Access not available

74 Sections 71 and 72 do not apply to a record in the custody or under the control of a custodian acting as an agent of a public body within the meaning of the *Freedom of Information and Protection of Privacy Act* that is not a custodian if the individual has the right to request access to the record under that Act. 2010, c. 41, s. 74.

PROCESS FOR REQUESTING ACCESS

Request to examine record

75 A person may ask to examine a record or ask for a copy of a record, or both, pursuant to Section 71 by

- (a) making a request in writing to the custodian that has the custody or control of the record;
- (b) specifying the subject-matter of the record requested with sufficient particulars to enable the custodian to identify and locate the record; and
- (c) paying any required fees. 2010, c. 41, s. 75.

Offer of assistance with request

76 Where the request does not contain sufficient detail to enable the custodian to identify and locate the record with reasonable efforts, the custodian shall offer to assist the person requesting access and, where the person accepts, assist in revising the request to comply with Section 75. 2010, c. 41, s. 76.

Waiver of written request

77 A custodian may waive the requirement to make the request in writing if the individual making the request

- (a) has a limited ability to read or write English; or
- (b) has a disability or condition that impairs the individual's ability to make a request in writing. 2010, c. 41, s. 77.

Reasons for request not required

78 An individual does not have to provide the reasons or purposes for which they are requesting the information. 2010, c. 41, s. 78.

Confirming individual's identity

79 A custodian shall not make a record of personal health information, or a part of it, available to an individual or provide a copy of it to an individual without first taking reasonable steps to be satisfied as to the individual's identity and authority to access the information. 2010, c. 41, s. 79.

Duties of custodian

80 (1) Nothing in this Act prevents a custodian from

(a) granting an individual access to a record of personal health information, to which the individual has a right of access if the individual makes an oral request for access or does not make any request for access under Section 75; or

(b) with respect to a record of personal health information to which an individual has a right of access, communicating with the individual or the individual's substitute decision-maker who is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual.

(2) Nothing in this Act relieves a custodian from a legal duty to provide, in a manner that is not inconsistent with this Act, personal health information as expeditiously as is necessary for the provision of healthcare to the individual.

(3) A custodian has the discretion to determine whether to grant informal access. 2010, c. 41, s. 80.

Refusing request

81 (1) Where a custodian believes on reasonable grounds that a request for access

(a) is frivolous or vexatious; or

(b) is part of a pattern of conduct that amounts to an abuse of the right of access,

the custodian may refuse to grant the request.

(2) When a refusal is made under subsection 72(1) or subsection (1), the custodian shall provide the individual with written notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Review Officer. 2010, c. 41, s. 81.

Fees

82 (1) Where a custodian makes a record of personal health information, or a part of it, available to an individual or provides a copy of it to an individual, the custodian may charge the individual a fee for that purpose if the custodian first gives the individual an estimate of the fee.

(2) The amount of the fee must not exceed the prescribed amount or, where no amount is prescribed, the amount of reasonable cost recovery.

(3) A custodian has the discretion to determine whether to grant a fee waiver and may waive the payment of all or any part of the fee that an individual is required to pay under that subsection if, in the custodian's opinion, the individual cannot afford the payment or for any other reason it is fair to excuse payment. 2010, c. 41, s. 82.

No fee for individual's own information

83 Notwithstanding Section 82, a fee must not be charged to an individual accessing the individual's own personal health information under this Act from the Minister. 2010, c. 41, s. 83; 2012, c. 31, s. 8.

Deadline to respond to request

84 (1) A custodian who receives a request from an individual for access to or correction of a record of personal health information shall, as soon as possible in the circumstances but no later than 30 days after receiving the request, by written notice to the individual,

- (a) grant the individual's request;
- (b) refuse the individual's request; or
- (c) extend the deadline for replying for a period of not more than 30 days or, with the Review Officer's permission, for a longer period if
 - (i) replying to the request within 30 days would unreasonably interfere with the activities of the custodian, or
 - (ii) the time required to undertake the consultations necessary to reply to the request within 30 days would make it not reasonably practical to reply within that time.

(2) A custodian that extends the time limit under subsection (1) shall

- (a) give the individual written notice of the extension setting out the length of the extension and the reason for the extension; and
- (b) grant or refuse the individual's request as soon as possible in the circumstances but no later than the expiry of the time limit as extended. 2010, c. 41, s. 84.

CORRECTION**Requesting correction**

85 (1) Where a custodian has granted an individual access to a record of the individual's personal health information and the individual believes that the record is not accurate, complete or up-to-date, the individual may request in writing that the custodian correct the record.

(2) Where the individual makes an oral request that the custodian correct the record, nothing in this Act prevents the custodian from making the requested correction. 2010, c. 41, s. 85.

Deemed refusal

86 A custodian that does not grant a request for a correction under Section 85 within the time required under Section 84 is deemed to have refused the request. 2010, c. 41, s. 86.

Granting request

87 (1) A custodian shall grant a request for a correction under Section 85 if the individual demonstrates, to the satisfaction of the custodian, that the record is not complete, accurate or up-to-date and gives the custodian the information necessary to enable the custodian to correct the record.

(2) Notwithstanding subsection (1), a custodian is not required to correct a record of personal health information if

(a) it consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

(3) Where, due to subsection (2), the custodian does not grant a request for a correction, the custodian shall provide written notice to the individual. 2010, c. 41, s. 87; 2012, c. 31, s. 9.

Making correction

88 Upon granting a request for a correction, the custodian shall

(a) make the requested correction by

(i) recording the correct information in the record and

(A) striking out the incorrect information in a manner that does not obliterate the record, or

(B) where that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that indicates that a correction has been made and enables a person to trace the incorrect information, or

(ii) where it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;

(b) give written notice to the individual of what has been done under clause (a); and

(c) at the request of the individual, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the custodian has disclosed the information unless the correction cannot reasonably be expected to have an effect on the ongoing provision of healthcare or other benefits to the individual. 2010, c. 41, s. 88.

Notice of refusal

89 Where a custodian believes on reasonable grounds that a request for a correction

(a) is frivolous or vexatious; or

(b) is part of a pattern of conduct that amounts to an abuse of the right of correction,

the custodian may refuse to grant the request and shall provide written notice to the individual. 2010, c. 41, s. 89.

Reasons for refusal

90 A notice of refusal provided under subsection 87(3) or Section 89 must give the reasons for the refusal and inform the individual that the individual is entitled to

- (a) prepare a concise statement of disagreement that sets out the correction that the custodian has refused to make;
 - (b) require that the custodian attach the statement of disagreement as part of the records that it holds of the individual's personal health information;
 - (c) disclose the statement of disagreement whenever the custodian discloses information to which the statement relates;
 - (d) require that the custodian make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under clause 88(c) if the custodian had granted the requested correction; and
 - (e) make a complaint about the refusal to the Review Officer.
- 2010, c. 41, s. 90; 2012, c. 31, s. 10.

REVIEW AND OVERSIGHT

Review by Review Officer

91 Where

- (a) an individual believes that a custodian has contravened this Act or the regulations; or
- (b) a custodian has refused an individual access to a record of the individual's personal health information or has refused to make a correction to a record of the individual's personal health information,

the individual may ask the Review Officer to conduct a review pursuant to clause 92(2)(a) or (3)(a). 2010, c. 41, s. 91.

Duties and powers of Review Officer

92 (1) In this Section,

“privacy provisions” means Sections 11 to 70;

“access and correction provisions” means Sections 71 to 90.

(2) The Review Officer may

- (a) monitor how the privacy provisions are administered and conduct reviews of complaints arising from the privacy provisions;
- (b) initiate an investigation of compliance if there are reasonable grounds to believe that a custodian has contravened or is about to contravene the privacy provisions and the subject-matter of the review relates to the contravention;

- (c) mediate and make recommendations on complaints concerning the privacy provisions;
- (d) undertake research matters concerning the privacy provisions;
- (e) inform the public about the privacy provisions; and
- (f) on the request of a custodian, provide advice and comments on the privacy provisions.

(3) The Review Officer may

- (a) conduct reviews of complaints arising from the access and correction provisions;
- (b) mediate and make recommendations on requests for review of decisions in respect of the access and correction provisions;
- (c) undertake research matters concerning the access and correction provisions;
- (d) inform the public about the access and correction provisions; and
- (e) on the request of a custodian, provide advice and comments on the access and correction provisions.

(4) The Review Officer may exercise the powers under clauses (2)(a) and (c) only after the person who has made the complaint has completed the internal complaint policy of the custodian to which the complaint was made. 2010, c. 41, s. 92.

Annual estimate and report

93 The Review Officer shall

- (a) prepare annually a separate estimate of the sums required for the carrying out of this Act during the fiscal year; and
- (b) issue an annual report, with information on the exercise of the functions of the Review Officer under this Act and cause the report to be laid before the House of Assembly. 2010, c. 41, s. 93.

Procedure to request review

94 (1) To ask for a review pursuant to Section 91, an individual shall file a written request with the Review Officer within

- (a) 60 days after the person asking for the review is notified of the decision of the custodian; or
- (b) a longer period allowed by the Review Officer.

(2) The failure of a custodian to respond in time to a request for access to a record or the correction of a record is to be treated as a decision to refuse access to the record or to correct the record.

(3) The failure of a custodian to respond to a privacy complaint in the time required by the custodian's complaint policy required by subsection 62(2) is to be treated as a decision to refuse to respond to the complaint.

(4) On receiving a request for a review pursuant to Section 91 or initiating a review pursuant to clause 92(2)(b), the Review Officer shall immediately give a copy to

- (a) the custodian concerned; and
- (b) any other person that the Review Officer considers appropriate. 2010, c. 41, s. 94.

Decision not to review

95 (1) The Review Officer may decide not to review the subject-matter of the review pursuant to clause 92(2)(a) or (3)(a) for whatever reason the Review Officer reasonably considers appropriate, including if satisfied that

- (a) the custodian has responded adequately to the concerns;
- (b) the concerns have been or could be more appropriately dealt with, initially or completely, by means of a procedure other than a request for a review under this Act;
- (c) the length of time that has elapsed between the date when the subject-matter of the review arose and the date the review was requested is such that a review under this Section would likely result in undue prejudice to any person;
- (d) the person requesting a review does not have a sufficient personal interest in the subject-matter of the review;
- (e) the request for a review is frivolous or vexatious; or
- (f) the request for review is part of a pattern of conduct that amounts to an abuse of the right of review.

(2) Where the Review Officer decides not to conduct a review under subsection (1), the Review Officer shall give written notice to the custodian and any other person the Review Officer considers appropriate. 2010, c. 41, s. 95.

Settlement through mediation

96 (1) The Review Officer may try to settle a matter under review pursuant to clause 92(2)(a) or (3)(a) through mediation.

(2) Where the Review Officer is unable to settle a matter within 30 days through mediation, the Review Officer shall proceed with the review. 2010, c. 41, s. 96.

Review in private

97 The Review Officer may conduct a review in private. 2010, c. 41, s. 97.

Representations to Review Officer

98 (1) The following persons are entitled to make representations to the Review Officer in the course of a review:

- (a) the person who applies for the review if the review is pursuant to clause 92(2)(a) or (3)(a);

(b) the custodian whose decision or action is the subject of the review; and

(c) any other person the Review Officer considers appropriate.

(2) The Review Officer may decide

(a) whether the representations are to be made orally or in writing; and

(b) whether a person is entitled to be present during a review or to have access to or comment on representations made to the Review Officer by any other person. 2010, c. 41, s. 98.

Production requests and inspection

99 (1) Notwithstanding any other Act or any privilege that is available at law, with the exception of solicitor-client privilege, the Review Officer may, in a review pursuant to clause 92(2)(a) or (b) or (3)(a),

(a) require to be produced and examine any record relevant to the matter that is in the custody or under the control of the custodian; and

(b) enter and inspect any premises occupied by the custodian.

(2) A custodian shall comply with a requirement imposed by the Review Officer pursuant to clause (1)(a) within such time as is prescribed.

(3) Where a custodian does not comply with a requirement imposed by the Review Officer pursuant to clause (1)(a) within the time limited for so doing in subsection (2), a judge of the Supreme Court of Nova Scotia may, on the application of the Review Officer, order the custodian to do so.

(4) In an application made pursuant to subsection (3), a judge may give such directions as the judge thinks fit, including ordering which persons are parties to the application, which persons must be given notice of the application and the manner in which such notice must be given.

(5) An order made pursuant to subsection (3) may contain such provisions and such terms and conditions as the judge thinks fit. 2010, c. 41, s. 99.

Report following review

100 (1) On completing a review pursuant to clause 92(2)(a), (2)(b) or (3)(a), the Review Officer shall

(a) prepare a written report setting out the Review Officer's recommendations with respect to the matter and the reasons for those recommendations; and

(b) send a copy of the report

(i) to the custodian, and

(ii) for the purpose of clause 92(2)(a) or (3)(a), to the individual whose information was the subject of the review.

(2) The Review Officer may send a copy of the report to any person identified under clause 98(1)(c) if the report has been de-identified.

(3) In the case of a review pursuant to clause 92(2)(b), where a class of persons is the subject of the review, the Review Officer, where appropriate, may make the report available to the public in lieu of contact with every member of the class.

(4) In the report, the Review Officer may make any recommendations with respect to the matter under review that the Review Officer considers appropriate. 2010, c. 41, s. 100.

Custodian response to report

101 (1) Within 30 days after receiving a report of the Review Officer pursuant to subsection 100(1), the custodian shall

(a) make a decision whether or not to follow, in whole or in part, the recommendation of the Review Officer; and

(b) give written notice of the decision in clause (a) to the Review Officer and the individuals who were sent a copy of the Review Officer's report.

(2) Where the custodian makes a decision not to follow the recommendation of the Review Officer, the custodian shall, in writing, inform the persons who were sent a copy of the report of the right to appeal the decision to the Supreme Court of Nova Scotia within 30 days of making the decision pursuant to clause (1)(a).

(3) Where the custodian does not give notice within the time required by subsection (1), the custodian is deemed to have refused to follow the recommendation of the Review Officer. 2010, c. 41, s. 101; 2022, c. 22, s. 6.

Appeal to Supreme Court of Nova Scotia

102 (1) Within 30 days after receiving a decision of the custodian pursuant to Section 101, an applicant may appeal that decision to the Supreme Court of Nova Scotia in such form and manner as may be prescribed by the *Civil Procedure Rules* or by the regulations.

(2) An appeal is deemed not to have been taken pursuant to this Section unless a notice of appeal is given to the custodian by the person taking the appeal.

(3) The Review Officer is not a party to an appeal. 2010, c. 41, s. 102.

Powers of Supreme Court of Nova Scotia

103 (1) On an appeal, the Supreme Court of Nova Scotia may

(a) determine the matter *de novo*; and

(b) examine any record in camera in order to determine on the merits whether the information in the record may be withheld pursuant to this Act.

(2) Notwithstanding any other Act or any privilege that is available at law, the Supreme Court may, on an appeal, examine any record in the custody or under the control of a custodian, and no information may be withheld from the Supreme Court on any grounds.

(3) The Supreme Court shall take every reasonable precaution, including, where appropriate, receiving representations *ex parte* and conducting hearings in camera.

(4) The Supreme Court may disclose to the Minister of Justice or the Attorney General of Canada information that may relate to the commission of an offence pursuant to another enactment by an officer or employee of a custodian.

- (5) Where the Supreme Court determines that the custodian
- (a) has contravened this Act;
 - (b) is not authorized to refuse to give the applicant access to a record of the applicant's personal health information; or
 - (c) is not authorized to refuse to correct a record of the applicant's personal health information,

the Supreme Court shall make any order that it considers appropriate, including ordering the custodian to give the applicant access to the record, or part of it, subject to any conditions that the Supreme Court considers appropriate. 2010, c. 41, s. 103; 2012, c. 31, s. 11.

GENERAL

No liability where person acted in good faith

104 No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that

- (a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the Review Officer that any other person has contravened or is about to contravene this Act or the regulations;
- (b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act or the regulations;
- (c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act or the regulations; or
- (d) any person believes that the person will do anything described in clause (a), (b) or (c). 2010, c. 41, s. 104.

No action lies

105 (1) No action or other proceeding for damages may be instituted against a custodian or any other person for

- (a) anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of the person's powers or duties under this Act; or

(b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of the person's powers or duties under this Act.

(2) Notwithstanding subsections 5(2) and (4) of the *Proceedings against the Crown Act*, subsection (1) does not relieve the Crown in right of the Province of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

(3) A person who, on behalf of or in the place of an individual, gives or refuses consent to a collection, use or disclosure of personal health information about the individual, makes a request or gives an instruction is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this Act and the regulations.

(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with a collection, use or disclosure of, or access to, the information under this Act, to the effect that the other person is

(a) authorized to request access to a record of personal health information under Section 71; or

(b) entitled under Section 21 to consent to the collection, use or disclosure of personal health information about another individual. 2010, c. 41, s. 105.

OFFENCES AND PENALTIES

Offence

106 A person is guilty of an offence if the person

(a) wilfully collects, uses or discloses health information in contravention of this Act or the regulations;

(b) wilfully gains or attempts to gain access to health information in contravention of this Act or the regulations;

(c) wilfully obtains or attempts to obtain another individual's personal health information by falsely representing that the person is entitled to the information;

(d) fails to protect personal health information in a secure manner as required by this Act;

(e) in connection with the collection, use or disclosure of personal health information or access to a record of personal health information makes an assertion, knowing that it is untrue, to the effect that the person is a person who is entitled to consent on behalf of another individual;

(f) wilfully disposes of a record of personal health information in contravention of the requirements for protection of personal health information required in this Act or the regulations;

(g) requires production of or collects or uses another person's health-card number in contravention of this Act or the regulations;

(h) wilfully alters, falsifies, conceals, destroys or erases any record, or directs another person to do so, with the intent to evade a request for access to the record;

(i) wilfully obstructs, makes a false statement to or misleads or attempts to mislead the Review Officer or another person in the performance of the duties, powers or functions of the Review Officer under this Act;

(j) wilfully obstructs, makes a false statement to or misleads or attempts to mislead another individual or organization in the performance of the duties, powers or functions of that individual or organization under this Act;

(k) uses individually identifying health information to market any service for a commercial purpose or to solicit money unless the individual who is the subject of the health information has expressly consented to its use for that purpose;

(l) discloses personal health information contrary to this Act with the intent to obtain a monetary or other material benefit or to confer such a benefit on another person; or

(m) breaches the terms and conditions of an agreement entered into with a custodian under this Act. 2010, c. 41, s. 106.

Penalty

107 A person who is guilty of an offence under this Act or the regulations is liable on summary conviction

(a) in the case of an individual, to a fine of not more than \$10,000 or imprisonment for six months, or both; or

(b) in the case of a corporation, to a fine of not more than \$50,000. 2010, c. 41, s. 107.

Corporation commits offence

108 Where a corporation commits an offence under this Act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable on conviction to the penalty for the offence, whether or not the corporation has been prosecuted or convicted. 2010, c. 41, s. 108.

Review by Minister

109 (1) Within three years after June 1, 2013, the Minister shall

(a) undertake, with public input, a comprehensive review of the operation of this Act; and

(b) within one year after the review is undertaken or within such further time as the House of Assembly may allow, submit a report on the review to the Assembly.

(2) Within five years of completing the initial review of this Act, and every five years thereafter, a full or partial review of this Act must be undertaken at the discretion of the Minister. 2010, c. 41, s. 109; 2022, c. 22, s. 7.

Regulations

- 110 (1)** The Governor in Council may make regulations
- (a) designating a program or service as a healthcare service;
 - (b) designating an individual or organization or a class of individuals or organizations as a custodian;
 - (c) exempting, either in whole or in part, an individual or organization or a class of individuals or organizations from the application of this Act;
 - (d) prescribing an individual or organization or a class of individuals or organizations for the purpose of clause 6(1)(e) or subsection 6(2);
 - (e) prescribing Acts or regulations for the purpose of subsection 7(3);
 - (f) prescribing the types of records referred to in subsection 8(3);
 - (g) specifying activities as described in subsection 8(3) for which personal health information is created or maintained for purposes other than the provision of healthcare;
 - (h) prescribing exceptions or additional requirements for the purpose of subsection 28(2), 45(2) or (4) or Section 69;
 - (i) prescribing a professional body for the purpose of clause 38(1)(c);
 - (j) prescribing a prescribed entity for the purpose of clause 38(1)(j);
 - (k) defining the administrative requirements pursuant to subsection 63(3);
 - (l) respecting audits of records of user activity pursuant to subsection 63(5);
 - (m) respecting required information practices;
 - (n) prescribing safeguards for holding personal health information in an electronic information system;
 - (o) specifying requirements, restrictions or prohibitions with respect to the collection, use or disclosure of any class of personal health information by any individual or organization or class of individual or organization in addition to the requirements, restrictions or prohibitions set out in this Act;
 - (p) prescribing fees for access to personal health information;
 - (q) specifying any exceptions or requirements related to a notification of breach;
 - (r) authorizing an individual or organization or a class of individuals or organizations to collect or use an individual's health-card number;

(s) specifying a time limit to comply with a requirement imposed by the Review Officer pursuant to subsection 99(2);

(t) prescribing an individual or organization or a class of individuals or organizations to collect, use or disclose personal health information for the purpose of planning and management of the health system;

(u) defining a word or expression used but not defined in this Act;

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

(w) 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. 41, s. 110; 2012, c. 31, s. 12; 2022, c. 22, s. 8.

CHAPTER P-17

**An Act to Protect the Personal
Information of Nova Scotians
from Disclosure Outside Canada**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Application of Act to persons.....	3
Application of Act to records.....	4
Information to be stored and accessed in Canada.....	5
Foreign demand for disclosure.....	6
Protection of employees.....	7
Prohibition on disclosure.....	8
Disclosure outside Canada.....	9
Disclosure for research.....	10
Disclosure by Public Archives.....	11
Offence and penalties.....	12
Offences and penalties for service providers.....	13
Summary Proceedings Act.....	14
Regulations.....	15

Short title

1 This Act may be cited as the *Personal Information International Disclosure Protection Act*. 2006, c. 3, s. 1.

Interpretation

- 2 (1)** In this Act,
- “affiliate” means an affiliate within the meaning of the *Companies Act*;
 - “associate” means, in relation to a service provider,
 - (a) an officer, director or partner of the service provider;
 - (b) an affiliate of the service provider;
 - (c) a subcontractor, or further subcontractor, of the service provider or an affiliate of the service provider; and
 - (d) an employee, officer, director or partner of an affiliate referred to in clause (b) or of a subcontractor or further subcontractor referred to in clause (c),

to or through whom access is made available to personal information that is held because of the service provider’s status as a service provider;

“employee”, in relation to a public body, includes

- (a) a volunteer; and
- (b) a service provider;

“foreign demand for disclosure” means a subpoena, warrant, order, demand or request that is

- (a) from a foreign court, an agency of a foreign state or another authority outside Canada; and
- (b) for the unauthorized disclosure of personal information to which this Act applies;

“head”, in the case of a public body that is a municipality, means the responsible officer as defined in Section 553 of the *Municipal Government Act*;

“public body” means a public body as defined by the *Freedom of Information and Protection of Privacy Act*, and includes a municipality as defined in Section 553 of the *Municipal Government Act*;

“service provider” means a person who

- (a) is retained under a contract to perform services for a public body; and
- (b) in the course of performance of the services, uses, discloses, manages, stores or accesses personal information in the custody or under the control of a public body;

“unauthorized disclosure of personal information” means the disclosure, production or provision of access to personal information to which this Act applies if that disclosure, production or access is not authorized by this Act.

(2) Subject to subsection (1), words and expressions have the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

(3) Where there is a conflict between this Act and any other enactment, this Act prevails over the other enactment. 2006, c. 3, s. 2.

Application of Act to persons

3 This Act applies to

- (a) every public body;
- (b) all directors, officers and employees of a public body;
- (c) all employees and associates of a service provider; and
- (d) for greater certainty, the Conflict of Interest Commissioner appointed pursuant to the *Conflict of Interest Act*, the Ombudsman appointed pursuant to the *Ombudsman Act* and the Review Officer appointed pursuant to the *Freedom of Information and Protection of Privacy Act*, their employees and, in relation to their service providers, the employees and associates of those service providers, as if those officers and their offices were public bodies. 2006, c. 3, s. 3; 2010, c. 35, s. 43.

Application of Act to records

4 (1) This Act applies to all records in the custody or under the control of a public body, including court administration records.

- (2)** Notwithstanding subsection (1), this Act does not apply to
- (a) published material or material that is available for purchase by the public;
 - (b) material that is a matter of public record;
 - (c) a record in a court file, a record of a judge of the Nova Scotia Court of Appeal, Supreme Court of Nova Scotia, Family Court for the Province of Nova Scotia or Provincial Court of Nova Scotia, a judicial administration record or a record relating to support services provided to the judges of those courts;
 - (d) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;
 - (e) a record of a question that is to be used on an examination or test;
 - (f) material placed in the custody of the Public Archives of Nova Scotia by or for a person, agency or other organization, other than a public body;
 - (g) material placed in the archives of a public body by or for a person, agency or other organization other than the public body; or
 - (h) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

- (3)** This Act does not
- (a) limit the information otherwise available by law to a party to litigation in Canada, including a civil, criminal or administrative proceeding;
 - (b) affect the power of any court or tribunal in Canada to compel a witness to testify or to compel the production of documents;
 - (c) prevent access to records maintained in a public office for the purpose of providing public access to information; or
 - (d) restrict disclosure of information for the purpose of a prosecution in Canada. 2006, c. 3, s. 4.

Information to be stored and accessed in Canada

5 (1) A public body shall ensure that personal information in its custody or under its control and a service provider or associate of a service provider shall ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada, unless

- (a) where the individual the information is about has identified the information and has consented, in the manner prescribed by the regulations, to it being stored in or accessed from, as the case may be, outside Canada;

4 personal information international disclosure protection c. P-17

(b) where it is stored in or accessed from outside Canada for the purpose of disclosure allowed under this Act; or

(c) the head of the public body has allowed storage or access outside Canada pursuant to subsection (2).

(2) The head of a public body may allow storage or access outside Canada of personal information in its custody or under its control, subject to any restrictions or conditions the head considers advisable, if the head considers the storage or access is to meet the necessary requirements of the public body's operation.

(3) Where the head of a public body makes a decision pursuant to subsection (2) in any year allowing storage or access outside Canada, the head shall, within 90 days after the end of that year, report to the Minister all such decisions made during that year, together with the reasons therefor.

(4) In providing storage, access or disclosure of personal information outside Canada, a service provider shall only collect and use such personal information that is necessary to fulfill its obligation as a service provider, and shall at all times make reasonable security arrangements to protect any personal information that it collects or uses by or on behalf of a public body. 2006, c. 3, s. 5.

Foreign demand for disclosure

6 (1) Where a public body, an employee of a public body or an employee or associate of a service provider

(a) receives a foreign demand for disclosure;

(b) receives a request to disclose, produce or provide access to personal information to which this Act applies and the public body, employee or associate of a service provider receiving the request

(i) knows that the request is for the purpose of responding to a foreign demand for disclosure, or

(ii) has reason to suspect that it is for such a purpose; or

(c) has reason to suspect that unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure,

the head of the public body, the employee of the public body or the employee or associate of a service provider, as the case may be, shall immediately notify the Minister.

(2) The notice pursuant to subsection (1) must include, as known or suspected,

(a) the nature of the foreign demand for disclosure;

(b) who made the foreign demand for disclosure;

(c) when the foreign demand for disclosure was received; and

(d) what information was sought by or disclosed in response to the foreign demand for disclosure. 2006, c. 3, s. 6.

Protection of employees

7 (1) In this Section, “employer” includes the persons referred to in clause 3(c).

(2) An employer, who is a service provider or an associate of a service provider, shall not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee of the employer, or deny that employee a benefit, because

(a) the employee, acting in good faith and on the basis of reasonable belief, has notified the Minister pursuant to Section 6;

(b) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Minister that the employer or any other person has contravened or is about to contravene this Act;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act;

(d) the employee, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act; or

(e) the employer believes that an employee will do anything described in clause (a), (b), (c) or (d). 2006, c. 3, s. 7.

Prohibition on disclosure

8 A person referred to in Section 3 who has access, whether authorized or unauthorized, to personal information in the custody or under the control of a public body, shall not disclose that information except as authorized pursuant to this Act. 2006, c. 3, s. 8.

Disclosure outside Canada

9 (1) A public body shall ensure that personal information in its custody or under its control and a service provider or associate of a service provider shall ensure that personal information in its custody or under its control is disclosed outside Canada only as permitted pursuant to this Section.

(2) A public body, service provider or associate of a service provider may disclose outside Canada personal information in its custody or under its control

(a) in accordance with this Act;

(b) where the individual the information is about has identified the information and consented, in writing, to its disclosure inside or outside Canada, as the case may be;

(c) in accordance with an enactment of the Province, the Government of Canada or the Parliament of Canada that authorizes or requires its disclosure;

(d) in accordance with a provision of a treaty, arrangement or agreement that

(i) authorizes or requires its disclosure, and

(ii) is made under an enactment of the Province, the Government of Canada or the Parliament of Canada;

(e) to the head of the public body, if the information is immediately necessary for the performance of the duties of the head;

(f) to a director, officer or employee of the public body or to the head of the public body, if the information is immediately necessary for the protection of the health or safety of the director, officer, employee or head;

(g) to the Attorney General or legal counsel for the public body, for use in civil proceedings involving the Government of the Province or the public body;

(h) for the purpose of

(i) collecting money owing by an individual to the Crown in right of the Province or to a public body, or

(ii) making a payment owing by the Crown in right of the Province or by a public body to an individual;

(i) for the purpose of

(i) licensing or registration of motor vehicles or drivers, or

(ii) verification of motor vehicle insurance, motor vehicle registration or drivers' licences;

(j) where the head of the public body determines that compelling circumstances exist that affect anyone's health or safety;

(k) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted; or

(l) in accordance with Section 10 or 11.

(3) In addition to the authority pursuant to this Section, a public body that is a law enforcement agency may disclose personal information in its custody or under its control to

(a) another law enforcement agency in Canada; or

(b) a law enforcement agency in a foreign country under an arrangement, a written agreement, a treaty or an enactment of the Province, the Government of Canada or the Parliament of Canada.

(4) The head of a public body may allow a director, officer or employee of the public body to transport personal information outside Canada temporarily if the head considers it is necessary for the performance of the duties of the director, officer or employee to transport the information in a computer, a cell phone or another mobile electronic device. 2006, c. 3, s. 9.

Disclosure for research

10 A public body may disclose outside Canada personal information for a research purpose, including statistical research, if

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;
- (b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- (c) the head of the public body concerned has approved conditions relating to
 - (i) security and confidentiality,
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time, and
 - (iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body; and
- (d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information. 2006, c. 3, s. 10.

Disclosure by Public Archives

11 The Public Archives of Nova Scotia, or the archives of a public body, may disclose outside Canada personal information for archival or historical purposes where

- (a) the disclosure would not be an unreasonable invasion of personal privacy;
- (b) the disclosure is for historical research and is in accordance with Section 10;
- (c) the information is about someone who has been dead for 20 or more years; or
- (d) the information is in a record that is in the custody or control of the archives and open for historical research on November 15, 2006. 2006, c. 3, s. 11.

Offence and penalties

12 Every director, officer or employee of a public body, other than a service provider or an employee or an associate of the service provider, who maliciously discloses personal information in contravention of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for six months, or both. 2006, c. 3, s. 12.

Offences and penalties for service providers

13 (1) A service provider, or an employee or associate of a service provider, who, in relation to personal information that is held because of the service provider's status as a service provider,

8 personal information international disclosure protection c. P-17

- (a) contrary to subsection 5(1), stores or allows access to personal information to which that subsection applies;
- (b) contrary to subsection 5(4), collects or uses personal information to which that subsection applies or fails to make reasonable security arrangements to protect that information; or
- (c) contravenes Section 6, 7, 8 or 9,

is guilty of an offence.

(2) Where a corporation is guilty of an offence under this Section, an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence is also guilty of an offence, whether or not the corporation is prosecuted for the offence.

(3) A person who is guilty of an offence under this Section is liable on summary conviction to

- (a) in the case of an individual, other than an individual who is a service provider, a fine of not more than \$2,000;
- (b) in the case of an individual who is a service provider, a fine of not more than \$25,000; or
- (c) in the case of a corporation, a fine of not more than \$500,000.

(4) A prosecution for an offence contrary to this Section may not be commenced more than

- (a) one year after the date on which the act or omission that is alleged to constitute the offence occurred; or
- (b) where the Minister issues a certificate described in subsection (5), one year after the date on which the Minister learned of the act or omission referred to in clause (a),

whichever is later.

(5) A certificate purporting to have been issued by the Minister responsible for this Act certifying the date referred to in clause (4)(b) is proof of that date.

(6) In a prosecution for an offence under this Section, it is a defence for the person charged to prove that the person exercised due diligence to avoid the commission of the offence. 2006, c. 3, s. 13.

Summary Proceedings Act

14 Section 34 of the *Summary Proceedings Act* does not apply to this Act. 2006, c. 3, s. 14.

Regulations

- 15 (1)** The Governor in Council may make regulations
- (a) prescribing requirements to be met with respect to disclosures of information to law enforcement agencies or investigative bodies;
 - (b) prescribing the manner of consent to personal information being stored in or accessed from outside Canada as required by clause 5(1)(a);
 - (c) prescribing the form and content of a report required by subsection 5(3);
 - (d) prescribing forms for the purpose of this Act;
 - (e) for any purpose contemplated by this Act;
 - (f) defining any word or expression used but not defined in this Act;
 - (g) enlarging or restricting the meaning of any word or expression defined in this Act;
 - (h) respecting any other matter or thing the Governor in Council considers advisable or necessary to carry out effectively the intent and purpose of this Act.

(2) A regulation may apply to all persons or bodies or to a class of persons or bodies to whom this Act applies and there may be different regulations for different classes of such persons or bodies.

(3) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*, 2006, c. 3, s. 15.

CHAPTER P-18

An Act Respecting Security Interests in Personal Property

Table of Contents

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

	Section
Short title.....	1
PART I	
Interpretation and Application	
Interpretation.....	2
Further interpretation	3
Application of Act.....	4
Act does not apply.....	5
Perfection of interest in goods or possessory interest.....	6
Removal from Province.....	7
Perfection of other interests	8
Security interest in investment property	9
Law of a jurisdiction	10
Applicable law	11
PART II	
Validity of Security Agreement and Rights of Parties	
Effect of security agreement	12
Enforceability against third party.....	13
Right of debtor to copy	14
Time of attachment of security interest.....	15
Attachment of a securities intermediary	16
Security interest in after-acquired property	17
Future advances.....	18
Application of contract law.....	19
Construction of acceleration clause	20
Duties and rights of secured party.....	21
Collateral proceeds held by secured party	22
Right to certain information.....	23
PART III	
Perfection and Priorities	
Time of perfection.....	24
Perfection of interest in securities account	25
Perfection on attachment.....	26
Subordination of unperfected interest.....	27
Deemed damages	28
Priority of purchase money security interest.....	29
Continuous perfection	30
Perfection by possession	31
Perfection by control of the collateral.....	32
Perfection by registration.....	33
Effect of delivery to debtor	34
Goods in possession of bailee	35
Proceeds of collateral	36
Reattachment after sale or lease.....	37

Rights of certain buyers and lessees	38
Rights of purchaser of a security	39
Money and other instruments	40
Rights of protected purchaser	41
Priority of certain liens	42
Transfers	43
Priority of certain security interests	44
Priority rules	45
Priority among conflicting security interests	46
Security interest in fixtures	47
Security interest in crops	48
Accessions	49
Goods becoming part of a product or mass	50
Subordination by secured party	51
Intangibles and chattel paper	52

PART IV

Registration

Personal Property Registry	53
Registration	54
Taxes for registrations	55
Life of registration and amendment of statements	56
Registration of transfers	57
Removal of data from registration	58
Registration not notice	59
Printed search result	60
Registration of security interests in fixtures and crops	61
Discharge of registration	62
Transfer of collateral	63
Actions against Crown	64
Action by trustee	65
Recovery from Crown	66

PART V

Default Rights and Remedies

Application and interpretation of Part	67
Rights and remedies of secured party	68
Rights of secured party and debtor	69
Rights and duties of secured party on default	70
Disposal of collateral by secured party	71
Surplus and deficiency	72
Taking collateral in satisfaction	73
Redemption	74
Powers of Court	75
Receiver	76
Limitation period	77

PART VI

General and Miscellaneous

Application of law and manner of exercising rights	78
Damages	79
Power of Court	80
Appeal	81
Manner of giving notice or demand	82
Conflict with other legislation	83
Regulations	84

PART VII

Transitional

Deemed references	85
Application of Act and applicable law	86
Deemed registration and perfection	87
Continued perfection	88

Short title

1 This Act may be cited as the *Personal Property Security Act*. 1995-96, c. 13, s. 1.

PART I

INTERPRETATION AND APPLICATION

Interpretation

2 (1) In this Act,

“accession” means goods that are installed in or affixed to other goods;

“account” means a monetary obligation not evidenced by chattel paper, a security or an instrument, whether or not the obligation has been earned by performance, but does not include investment property;

“advance” means the payment of money, the provision of credit or the giving of value and includes any liability of the debtor to pay interest, credit costs and other charges payable by the debtor in connection with an advance or the enforcement of a security interest securing the advance;

“broker” means a broker as defined in the *Securities Transfer Act*;

“building” means a structure, erection, mine or work built, constructed or opened on or in land;

“building materials” means materials that are incorporated into a building, and includes goods attached to a building so that their removal

(a) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal; or

(b) would result in weakening the structure of the building or exposing the building to weather damage or deterioration,

but does not include

(c) heating, air conditioning or conveyancing devices; or

(d) machinery installed in a building or on land for use in carrying on an activity in the building or on the land;

“certificated security” means a certificated security as defined in the *Securities Transfer Act*;

“chattel paper” means one or more writings that evidence both a monetary obligation and a security interest in, or a lease of, specific goods or specific goods and accessions;

“clearing house” means an organization through which trades in options or standardized futures are cleared and settled;

“clearing house option” means an option, other than an option on futures, issued by a clearing house to its participants;

“collateral” means personal property that is subject to a security interest;

“commercial consignment” means a consignment under which goods are delivered for sale, lease or other disposition to a consignee who, in the ordinary course of the consignee’s business, deals in goods of that description, by a consignor who

(a) in the ordinary course of the consignor’s business, deals in goods of that description; and

(b) reserves an interest in the goods after they have been delivered,

but does not include an agreement under which goods are delivered to

(c) an auctioneer for sale; or

(d) a consignee for sale, lease or other disposition if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others;

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“Court” means the Supreme Court of Nova Scotia;

“creditor” includes an assignee for the benefit of creditors, an executor, an administrator or a guardian of a creditor;

“crops” means crops, whether or not matured, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they are

(a) being grown as nursery stock;

(b) being grown for uses other than for the production of lumber and wood products; or

(c) intended to be replanted in another location for the purpose of reforestation;

“debtor” means

(a) a person who owes payment or performance of an obligation secured, whether or not that person owns or has rights in the collateral;

- (b) a person who receives goods from another person under a commercial consignment;
- (c) a lessee under a lease for a term of more than one year;
- (d) a transferor of an account or chattel paper;
- (e) a seller under a sale of goods without a change of possession;
- (f) in Sections 21, 31, 34 and 70, subsections 71(15) and 73(8) and Section 79, the transferee of a debtor's interest in the collateral; and
- (g) if the person referred to in clause (a) and the owner of the collateral are not the same person,
 - (i) where "debtor" is used in a provision dealing with the collateral, an owner of the collateral,
 - (ii) where "debtor" is used in a provision dealing with the obligation, the obligor, and
 - (iii) where the context permits, both the owner and the obligor;

"default" means

- (a) the failure to pay or otherwise perform the obligation secured when due; or
- (b) the occurrence of any event or set of circumstances whereupon, under the terms of the security agreement, the security interest becomes enforceable;

"document of title" means a writing issued by or addressed to a bailee

- (a) that covers goods in the bailee's possession that are identified or that are fungible portions of an identified mass; and
- (b) in which it is stated that the goods covered by it will be delivered to a named person, or to the transferee of that person, or to bearer or to the order of a named person;

"entitlement holder" means an entitlement holder as defined in the *Securities Transfer Act*;

"entitlement order" means an entitlement order as defined in the *Securities Transfer Act*;

"equipment" means goods that are held by a debtor other than as inventory or consumer goods;

"financial asset" means a financial asset as defined in the *Securities Transfer Act*;

"financing change statement" means the data authorized by the regulations to be entered in the Registry to renew, discharge or otherwise amend a financing statement;

“financing statement” means the data authorized by the regulations to be entered in the Registry to effect a registration for the purpose of perfecting a security interest in collateral pursuant to this Act and, where the context permits, includes

(a) a financing change statement; and

(b) a security agreement registered pursuant to the former *Assignment of Book Debts Act*, the former *Bills of Sale Act*, the former *Conditional Sales Act* or the former *Corporations Securities Registration Act* before November 3, 1997, together with any writing that was registered with the agreement or registered to rectify, amend or renew the agreement;

“fixture” does not include building materials;

“future advance” means an advance, whether or not made pursuant to an obligation, and includes advances and reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of the collateral;

“futures account” means an account maintained by a futures intermediary in which a futures contract is carried for a futures customer;

“futures contract” means a standardized future or an option on futures, other than a clearing house option, that is

(a) traded on or subject to the rules of a futures exchange recognized or otherwise regulated by the Nova Scotia Securities Commission or by a securities regulatory authority of another province of Canada; or

(b) traded on a foreign futures exchange and carried on the books of a futures intermediary for a futures customer;

“futures customer” means a person for which a futures intermediary carries a futures contract on its books;

“futures exchange” means an association or organization operated to provide the facilities necessary for the trading of standardized futures or options on futures;

“futures intermediary” means a person that

(a) is registered as a dealer permitted to trade in futures contracts, whether as principal or agent, under the securities laws or commodity futures laws of a province of Canada; or

(b) is a clearing house recognized or otherwise regulated by the Nova Scotia Securities Commission or by a securities regulatory authority of another province of Canada;

“goods” means tangible personal property, fixtures, crops and the unborn young of animals but does not include

(a) a document of title;

(b) chattel paper;

- (c) investment property;
- (d) an instrument;
- (e) money;
- (f) trees, other than crops, until they are severed; or
- (g) minerals until they are extracted;

“instrument” means

(a) a bill of exchange, note or cheque within the meaning of the *Bills of Exchange Act* (Canada);

(b) any other writing that evidences a right to payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; or

(c) a letter of credit or an advice of credit if the letter or advice states that it must be surrendered on claiming payment under it,

but does not include

(d) a document of title, chattel paper or investment property; or

(e) a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing;

“intangible” means personal property that is not goods, a document of title, chattel paper, investment property, an instrument or money;

“inventory” means goods that are

(a) held by a person for sale or lease, or that have been leased by that person as lessor;

(b) to be furnished or that have been furnished under a contract of service;

(c) raw materials or work in progress; or

(d) materials used or consumed in a business or profession;

“investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, futures contract or futures account;

“lease for a term of more than one year” includes

(a) a lease of goods for an indefinite term, including a lease for an indefinite term that is determinable by one or both parties within one year after its execution;

(b) a lease of goods initially for a term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for more than one year after the lessee, with the

consent of the lessor, first acquired possession of the goods, but the lease does not become a lease for a term of more than one year until the lessee's possession extends beyond one year; and

(c) a lease of goods for a term of one year or less where the lease provides that it is renewable for one or more terms automatically or at the option of one of the parties or by agreement of the parties if the total terms, including the original term, may exceed one year,

but does not include

(d) a lease of goods by a lessor who is not regularly engaged in the business of leasing goods;

(e) a lease of household furnishings or appliances as part of a lease of land where the goods are incidental to the use and enjoyment of the land; or

(f) a lease of goods of a prescribed kind, regardless of the length of the term of the lease;

“minerals” includes oil, gas and hydrocarbons;

“money” means a medium of exchange authorized by the Parliament of Canada as part of the currency of Canada or authorized or adopted by a foreign government as part of its currency;

“obligation secured” means, for the purpose of determining the amount payable under a lease that secures payment or performance of an obligation,

(a) the amount originally contracted to be paid as rent under the lease;

(b) any other amount payable under the terms of the lease; or

(c) the amount, if any, required to be paid by the lessee to obtain ownership of the collateral,

less any amount paid before the determination;

“option” means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement:

(a) receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option;

(b) purchase a specified quantity of the underlying interest of the option;

(c) sell a specified quantity of the underlying interest of the option;

“option on futures” means an option the underlying interest of which is a standardized future;

“pawnbroker” means a person who engages in the business of granting credit to individuals for personal, family or household purposes and who

(a) takes and perfects security interests in consumer goods by taking possession of them; or

(b) purchases consumer goods under agreements or undertakings, express or implied, that the goods may be repurchased by the sellers;

“personal property” means goods, a document of title, chattel paper, investment property, an instrument, money or an intangible;

“prescribed” means prescribed by or pursuant to the regulations;

“prior security interest” means an interest created by or provided for under a valid security agreement or other transaction entered into before November 3, 1997, that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force when the security agreement or other transaction was entered into;

“proceeds” means

(a) identifiable or traceable personal property that is derived directly or indirectly from a dealing with collateral or proceeds of collateral and in which the debtor acquires an interest;

(b) an insurance or other payment that represents indemnity or compensation for loss of or damage to collateral or proceeds of collateral, or a right to that payment;

(c) a payment made in total or partial discharge or redemption of chattel paper, an instrument, an intangible or investment property; and

(d) rights arising out of, or property collected on, or distributed on account of, collateral that is investment property;

“purchase” means taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction creating an interest in property;

“purchase money security interest” means

(a) a security interest taken in collateral, other than investment property, to the extent that it secures all or part of the purchase price of the collateral, other than investment property;

(b) a security interest taken in collateral, other than investment property, by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, other than investment property, to the extent that the value is applied to acquire the rights;

(c) the interest of a lessor of goods under a lease for a term of more than one year; or

(d) the interest of a consignor who delivers goods to a consignee under a commercial consignment,

but does not include a transaction of sale by and lease back to the seller, and for the purpose of this definition, “purchase price” and “value” include interest, credit costs and other charges payable for the purchase or loan credit;

“receiver” includes a receiver-manager;

“Registrar” means the Registrar of the Personal Property Registry appointed pursuant to this Act;

“Registry” means the Personal Property Registry established by this Act;

“registry of deeds” means the office of a registrar of deeds appointed pursuant to the *Registry of Deeds Act*;

“sale of goods without a change of possession” means a sale of goods that is not accompanied by an immediate delivery and an actual, apparent and continued change of possession of the goods sold, but does not include a sale of goods in the ordinary course of business of the seller, and for the purpose of this definition, “sale” includes an assignment, transfer, conveyance, declaration of trust or any other agreement or transaction, not intended to secure payment or performance of an obligation, by which an interest in goods is conferred;

“secured party” means

- (a) a person who has a security interest;
- (b) a person who holds a security interest for the benefit of another person; or
- (c) a trustee, if a security interest is embodied in a trust indenture;

“securities account” means a securities account as defined in the *Securities Transfer Act*;

“securities intermediary” means a securities intermediary as defined in the *Securities Transfer Act*;

“security” means a security as defined in the *Securities Transfer Act*;

“security agreement” means an agreement that creates or provides for a security interest and, where the context permits, includes

- (a) an agreement that creates or provides for a prior security interest; and
- (b) a writing that evidences a security agreement;

“security certificate” means a security certificate as defined in the *Securities Transfer Act*;

“security entitlement” means a security entitlement as defined in the *Securities Transfer Act*;

“security interest” means

(a) an interest in personal property that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods; and

(b) the interest of

(i) a consignor who delivers goods to a consignee under a commercial consignment,

(ii) a lessor under a lease for a term of more than one year,

(iii) a transferee under a transfer of an account or a transfer of chattel paper, or

(iv) a buyer under a sale of goods without a change of possession,

that does not secure payment or performance of an obligation;

“specific goods” means goods identified and agreed on at the time a security agreement in respect of those goods is made;

“standardized future” means an agreement traded on a futures exchange under standardized conditions contained in the bylaws, rules or regulations of the futures exchange, and cleared and settled by a clearing house, to do one or more of the following at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(a) make or take delivery of the underlying interest of the agreement; or

(b) settle the obligation in cash instead of delivery of the underlying interest;

“trust indenture” means a deed, indenture or document, however designated, by the terms of which a person issues or guarantees or provides for the issue or guarantee of debt obligations secured by a security interest and in which another person is appointed as trustee for the holders of the debt obligations issued, guaranteed or provided for under it;

“uncertificated security” means an uncertificated security as defined in the *Securities Transfer Act*;

“value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability, and “new value” means value other than an antecedent debt or liability.

(2) For the purpose of this Act,

(a) a secured party has control of a certificated security if the secured party has control in the manner provided under Section 23 of the *Securities Transfer Act*;

(b) a secured party has control of an uncertificated security if the secured party has control in the manner provided under Section 24 of the *Securities Transfer Act*;

(c) a secured party has control of a security entitlement if the secured party has control in the manner provided under Section 25 or 26 of the *Securities Transfer Act*;

(d) a secured party has control of a futures contract if

(i) the secured party is the futures intermediary with which the futures contract is carried, or

(ii) the futures customer, the secured party and the futures intermediary have agreed that the futures intermediary will apply a value distributed on account of the futures contract as directed by the secured party without further consent by the futures customer; and

(e) a secured party having control of all security entitlements or futures contracts carried in a securities account or futures account has control over the securities account or futures account. 1995-96, c. 13, s. 2; 2003, c. 13, s. 1; 2009, c. 26, s. 1; 2010, c. 8, s. 115.

Further interpretation

3 (1) For the purpose of this Act,

(a) a natural person knows or has knowledge when information is acquired by that person under circumstances in which a reasonable person would take cognizance of it;

(b) a partnership knows or has knowledge when information has come to the attention of one of the partners, or where the partnership is a limited partnership, one of the general partners, or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;

(c) a body corporate knows or has knowledge when information, in writing, has been delivered to the body corporate's registered office or recognized agent appointed by the body corporate in accordance with the *Corporations Registration Act* or the *Societies Act*, or when information has come to the attention of

(i) a managing director or officer of the body corporate, or

(ii) a senior employee of the body corporate with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it;

(d) the members of an association know or have knowledge when information has come to the attention of

(i) a managing director or officer of the association,

(ii) a senior employee of the association with responsibility for matters to which the information relates, or

(iii) all members,

under circumstances in which a reasonable person would take cognizance of it; and

(e) a government knows or has knowledge when information has come to the attention of a senior employee of the government with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.

(2) Except as otherwise provided in this Act, the determination as to whether goods are “consumer goods”, “inventory” or “equipment” is made as of the time the security interest attaches.

(3) Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the proceeds as provided in Section 36 and the person who has rights in or has dealt with the proceeds.

(4) This Act is to be interpreted and applied, in so far as the context permits, in a manner that promotes the inter-jurisdictional harmony of the law of personal property security in Canada.

(5) This Act binds the Crown in right of the Province. 1995-96, c. 13, s. 3; 2010, c. 8, s. 116.

Application of Act

4 (1) Subject to Section 5, this Act applies to

(a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral; and

(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, fixed charge, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust or transfer of chattel paper where it secures payment or performance of an obligation,

including, for greater certainty, a security interest in relation to personal property located in Nova Scotia lands as defined in the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* other than a security interest to which Sections 103 to 117 of that Act apply.

(2) Subject to Sections 5 and 67, this Act applies to

(a) a commercial consignment;

(b) a lease for a term of more than one year;

(c) a transfer of an account or chattel paper; and

(d) a sale of goods without a change of possession,

that does not secure payment or performance of an obligation. 1995-96, c. 13, s. 4; 2003, c. 13, s. 2.

Act does not apply

- 5** Except as otherwise provided in this Act, this Act does not apply to
- (a) a lien, charge or other interest given by rule of law or statute unless the statute provides that this Act applies;
 - (b) the creation or transfer of an interest or claim in or under a policy of insurance except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;
 - (c) a transfer of an interest in a claim in or under a contract of annuity other than a contract of annuity held by a securities intermediary for another person in a securities account;
 - (d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for work or services, the assignment or transfer of which is prohibited by any statute or rule of law;
 - (e) the transfer of an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;
 - (f) the creation or transfer of an interest in land, including a lease;
 - (g) the creation or transfer of an interest in a right to payment that arises in connection with an interest in or a lease of land other than an interest in a right to payment evidenced by an investment property or an instrument;
 - (h) a sale of accounts, chattel paper or goods as part of a sale of the business out of which they arose unless the vendor remains in apparent control of the business after the sale;
 - (i) a transfer of accounts made solely to facilitate the collection of accounts for the transferor;
 - (j) the creation or transfer of a right to damages in tort;
 - (k) a mortgage or sale registered pursuant to the *Canada Shipping Act, 2001*;
 - (l) a security agreement governed by an Act of the Parliament of Canada that deals with the rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, including any security agreement governed by Part VIII of the *Bank Act* (Canada). 1995-96, c. 13, s. 5; 2010, c. 8, s. 117.

Perfection of interest in goods or possessory interest

- 6 (1)** Subject to this Act, the validity, perfection and effect of perfection or non-perfection of
- (a) a security interest in goods; and
 - (b) a possessory security interest in a negotiable document of title, chattel paper, a security, an instrument and money,
- are governed by the law of the jurisdiction where the collateral is situated when the security interest attaches.

(2) A security interest in goods perfected pursuant to the law of the jurisdiction in which the goods are situated, at the time the security interest attaches but before the goods are brought into the Province, continues perfected in the Province if it is perfected in the Province

(a) not later than 60 days after the goods are brought into the Province;

(b) not later than 15 days after the secured party has knowledge that the goods have been brought into the Province; or

(c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

whichever is earliest.

(3) Notwithstanding subsection (2), a security interest in goods referred to in that subsection is subordinate to the interest of a buyer or lessee of the goods who acquires the interest without knowledge of the security interest and before it is perfected in the Province pursuant to Section 31 or 33.

(4) A security interest that is not perfected in accordance with subsection (2) may be otherwise perfected in the Province pursuant to this Act.

(5) Where a security interest referred to in subsection (1) is not perfected pursuant to the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into the Province, it may be perfected pursuant to this Act. 1995-96, c. 13, s. 6; 2010, c. 8, s. 118.

Removal from Province

7 (1) Subject to Section 8, where the parties to a security agreement that creates a security interest in goods in one jurisdiction understand when the security interest attaches that the goods will be kept in another jurisdiction, the validity, perfection and effect of perfection or non-perfection of the security interest are determined by the law of the other jurisdiction if the goods are removed to the other jurisdiction, for purposes other than transportation through the other jurisdiction, within 30 days after the security interest attaches.

(2) Where the other jurisdiction referred to in subsection (1) is not the Province and the goods are later brought into the Province, the security interest in the goods is deemed to be a security interest to which subsection 6(2) applies if it was perfected pursuant to the law of the other jurisdiction to which the goods were removed. 1995-96, c. 13, s. 7.

Perfection of other interests

8 (1) For the purpose of this Section and Sections 9 and 13, a debtor is located

(a) at the place of business of the debtor, if any;

(b) at the chief executive office of the debtor, if the debtor has more than one place of business; and

(c) at the principal residence of the debtor, if the debtor has no place of business.

(2) The validity, perfection and effect of perfection or non-perfection of

- (a) a security interest in an intangible;
- (b) a security interest in goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or are inventory leased or held for lease by the debtor to others; and
- (c) a non-possessory security interest in a negotiable document of title, chattel paper, an instrument or money,

are governed by the law, including the conflict of law rules, of the jurisdiction where the debtor is located when the security interest attaches.

(3) Where a debtor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a security interest perfected pursuant to the law that is applicable under subsection (2) continues perfected in the Province if it is perfected in the other jurisdiction

- (a) not later than 60 days after the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction;
- (b) not later than 15 days after the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or
- (c) before perfection ceases under the law of the first jurisdiction,

whichever is earliest.

(4) Where the law governing the perfection of a security interest under subsection (2) or (3) does not provide for public registration or recording of the security interest or of a notice relating to it, and where the collateral is not in the possession of the secured party, the security interest is subordinate to

- (a) an interest in an account payable in the Province; and
- (b) an interest in goods, a negotiable document of title, chattel paper, an instrument, or money if the interest was acquired when the collateral was situated in the Province,

unless the security interest is perfected pursuant to this Act before the interest referred to in clause (a) or (b) arises.

(5) A security interest referred to in subsection (4) may be perfected pursuant to this Act.

(6) Notwithstanding Section 7 and subsection (2), the validity, perfection and effect of perfection or non-perfection of a security interest in minerals or in an account resulting from the sale of the minerals at the minehead or well-head that

- (a) is provided for in a security agreement executed before the minerals are extracted; and

(b) attaches to the minerals on extraction or attaches to an account on sale of the minerals,

are governed by the law of the jurisdiction in which the minehead or wellhead is located. 1995-96, c. 13, s. 8; 2010, c. 8, s. 119.

Security interest in investment property

9 (1) The validity of a security interest in investment property is governed by the law at the time the security interest attaches

(a) of the jurisdiction where the certificate is located, if the collateral is a certificated security;

(b) of the issuer's jurisdiction, if the collateral is an uncertificated security;

(c) of the securities intermediary's jurisdiction, if the collateral is a security entitlement or a securities account; and

(d) of the futures intermediary's jurisdiction, if the collateral is a futures contract or a futures account.

(2) Except as otherwise provided in subsection (5), perfection, the effect of perfection or non-perfection and the priority of a security interest in investment property is governed by the law of

(a) the jurisdiction in which the certificate is located, if the collateral is a certificated security;

(b) the issuer's jurisdiction, if the collateral is an uncertificated security;

(c) the securities intermediary's jurisdiction, if the collateral is a security entitlement or a securities account; or

(d) the futures intermediary's jurisdiction, if the collateral is a futures contract or a futures account.

(3) For the purpose of this Section,

(a) the location of a debtor is determined by subsection 8(1);

(b) the issuer's jurisdiction is determined under subsection 44(1) of the *Securities Transfer Act*; and

(c) the securities intermediary's jurisdiction is determined under subsection 45(1) of the *Securities Transfer Act*.

(4) For the purpose of this Section, the following rules determine a futures intermediary's jurisdiction:

(a) where an agreement between the futures intermediary and futures customer governing the futures account expressly provides that a particular jurisdiction is the futures intermediary's jurisdiction the jurisdiction expressly provided for in the agreement is the futures intermediary's jurisdiction;

(b) where clause (a) does not apply and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the agreement is governed by

the law of a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;

(c) where neither clause (a) nor (b) applies and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the futures account is maintained at an office in a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;

(d) where none of the preceding clauses apply, the futures intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the futures customer's account is located; and

(e) where none of the preceding clauses applies, the futures intermediary's jurisdiction is the jurisdiction in which the chief executive office of the futures intermediary is located.

(5) The law of the jurisdiction in which the debtor is located governs perfection of a security interest in

(a) investment property by registration;

(b) investment property granted by a broker or securities intermediary if the secured party relies on attachment of the security interest as perfection; and

(c) a futures contract or futures account granted by a futures intermediary if the secured party relies on attachment of the security interest as perfection.

(6) A security interest perfected under the law of the jurisdiction designated in subsection (5) remains perfected until the earliest of

(a) 60 days after the day the debtor relocates to another jurisdiction;

(b) 15 days after the day the secured party knows the debtor has relocated to another jurisdiction; and

(c) the day that perfection ceases under the previously applicable law.

(7) A security interest in investment property that is perfected under the law of the issuer's jurisdiction, the securities intermediary's jurisdiction or the futures intermediary's jurisdiction, as applicable, remains perfected until the earliest of

(a) 60 days after a change of the applicable jurisdiction to another jurisdiction;

(b) 15 days after the day the secured party knows of the change of the applicable jurisdiction to another jurisdiction; and

(c) the day that perfection ceases under the previously applicable law. 2010, c. 8, s. 120.

Law of a jurisdiction

10 For the purpose of Section 9, a reference to the law of a jurisdiction means the internal law of that jurisdiction, excluding the conflict of law rules. 2010, c. 8, s. 120.

Applicable law

- 11 (1)** Notwithstanding Sections 6 to 9,
- (a) procedural issues that relate to the enforcement of the rights of a secured party against collateral, other than intangibles, are governed by the law of the jurisdiction in which the collateral is located when the rights are exercised;
 - (b) procedural issues that relate to the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and
 - (c) substantive issues that relate to the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and debtor.
- (2)** For the purpose of Sections 6 to 9, a security interest is deemed to be perfected pursuant to the law of a jurisdiction if
- (a) the secured party has complied with the law of that jurisdiction relating to the creation and continuance of a security interest; and
 - (b) the security interest has a status under the law of that jurisdiction in relation to the interests of other secured parties, buyers, creditors of the debtor and a trustee in bankruptcy of the debtor similar to the status of an equivalent security interest created and perfected pursuant to this Act. 1995-96, c. 13, s. 9; 2010, c. 8, s. 121.

PART II

VALIDITY OF SECURITY AGREEMENT
AND RIGHTS OF PARTIES**Effect of security agreement**

12 Except as otherwise provided in this or any other Act, a security agreement is effective according to its terms. 1995-96, c. 13, s. 10.

Enforceability against third party

- 13 (1)** Subject to Section 16, a security interest is enforceable against a third party only if
- (a) the collateral is
 - (i) not a certificated security and is in the possession of the secured party or another party on the secured party's behalf,
 - (ii) a certificated security in registered form and the security certificate has been delivered to the secured party

under Section 68 of the *Securities Transfer Act* under the debtor's security agreement, or

(iii) investment property and the secured party has control under subsection 2(2) in accordance with the debtor's security agreement; or

(b) the debtor has signed a security agreement that contains

(i) a description of the collateral by item or kind or by reference to one or more of the following:

- (A) "goods",
- (B) "chattel paper",
- (C) "investment property",
- (D) "document of title",
- (E) "instrument",
- (F) "money", and
- (G) or "intangible",

(ii) a description of collateral that is a security entitlement, securities account or futures account if it describes the collateral by those terms or as an "investment property" or if it describes the underlying financial asset or futures contract,

(iii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or

(iv) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except one or more of the following:

- (A) "goods",
- (B) "chattel paper",
- (C) "investment property",
- (D) "document of title",
- (E) "instrument",
- (F) "money", and
- (G) or "intangible".

(2) A secured party does not have possession of collateral for the purpose of clause (1)(a) if the collateral is in the apparent possession or control of the debtor or the debtor's agent.

(3) A description is inadequate for the purpose of subclause (1)(b)(i) if it describes the collateral as consumer goods or equipment without further describing the item or kind of collateral but, where the personal property to be excluded from a description of collateral under subclause (1)(b)(iii) is the consumer goods of the debtor, the excluded property may be described simply as consumer goods.

(4) A description of collateral as inventory is adequate for the purpose of clause (1)(b) only while it is held by the debtor as inventory.

(5) A security interest in proceeds is enforceable against a third party, whether or not the security agreement contains a description of the proceeds. 1995-96, c. 13, s. 11; 2010, c. 8, s. 122.

Right of debtor to copy

14 Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within 10 days after its execution and, if the secured party fails to do so after a request by the debtor, the Court may, on application by the debtor, order the delivery of the copy to the debtor. 1995-96, c. 13, s. 12.

Time of attachment of security interest

15 (1) A security interest, including a security interest in the nature of a floating charge, attaches when

(a) value is given;

(b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party; and

(c) except for the purpose of enforcing rights as between the parties to the security agreement, the security interest becomes enforceable within the meaning of Section 13.

(2) Notwithstanding subsection (1), where the parties have specifically agreed to postpone the time of attachment, the security interest attaches at the agreed time.

(3) For the purpose of clause (1)(b) and without limiting other rights which the debtor has in the goods, a lessee under a lease for a term of more than one year or a consignee under a commercial consignment has rights in the goods when the lessee or consignee obtains possession of them under the lease or consignment.

(4) For the purpose of clause (1)(b), a debtor has no rights in

(a) crops, until they become growing crops;

(b) the young of animals, until they are conceived;

(c) minerals, until they are extracted; and

(d) trees, other than crops, until they are severed.

(5) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(6) The attachment of a security interest in a futures account is also attachment of a security interest in the futures contracts carried in the futures account. 2010, c. 8, s. 123.

Attachment of a securities intermediary

16 (1) A security interest in favour of a securities intermediary attaches to a person's security entitlement if

(a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

(3) A security interest in favour of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if

(a) the security or other financial asset is

(i) in the ordinary course of business transferred by delivery with any necessary endorsement or assignment, and

(ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(b) the agreement calls for delivery against payment.

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery. 2010, c. 8, s. 123.

Security interest in after-acquired property

17 (1) Subject to Section 15 and subsection (2), a security agreement that provides for a security interest in after-acquired personal property attaches to that property in accordance with the terms of the agreement without any need for specific appropriation by the debtor.

(2) A security interest does not attach under an after-acquired property clause in a security agreement to after-acquired personal property that is

(a) crops that become growing crops more than one year after the security agreement has been entered into, except that a security interest in crops that is given in conjunction with a lease, agreement for sale or mortgage of land may attach, if the parties agree, to crops to be grown on the land concerned during the term of the lease, agreement for sale or mortgage; or

(b) consumer goods, other than an accession, unless the security interest is a purchase money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement. 1995-96, c. 13, s. 14.

Future advances

- 18** (1) A security agreement may secure future advances.
- (2) Unless otherwise agreed, an obligation owing to a debtor to make future advances is not binding on a secured party if
- (a) a notice of judgment against the debtor has been registered in the Registry;
 - (b) the collateral in which the secured party has a security interest includes non-exempt exigible personal property or attachable debts of the debtor within the meaning of the *Creditors Relief Act*; and
 - (c) the secured party has knowledge of the registration of the notice of judgment before making the advances. 1995-96, c. 13, s. 15.

Application of contract law

19 Where a seller has a purchase money security interest in goods, the law relating to contracts of sale governs the sale and the seller's performance obligations with respect to the goods, including any disclaimer, limitation or modification of those obligations. 1995-96, c. 13, s. 16.

Construction of acceleration clause

20 Where a security agreement provides that a secured party may accelerate payment or performance when the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the security agreement is to be construed to mean that the secured party has the right to do so only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy. 1995-96, c. 13, s. 17.

Duties and rights of secured party

- 21** (1) In this Section and Section 22, "secured party" includes a receiver.
- (2) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession and, unless otherwise agreed, in the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against other persons.
- (3) Unless otherwise agreed, where collateral is in the secured party's possession,
- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and in its preservation are chargeable to the debtor and are secured by the collateral;
 - (b) the risk of loss or damage, except if caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
 - (c) the secured party may hold as additional security any increase or profits, except money, resulting from the collateral;

(d) the secured party shall apply any increase or profits in the form of money resulting from the collateral, unless remitted to the debtor, immediately on its receipt in reduction of the obligation secured; and

(e) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

(4) Subject to subsection (2), a secured party may use the collateral

(a) in the manner and to the extent provided in the security agreement;

(b) for the purpose of preserving the collateral or its value; or

(c) in accordance with an order of the Court. 1995-96, c. 13, s. 18; 2010, c. 8, s. 124.

Collateral proceeds held by secured party

22 (1) Unless otherwise agreed by the parties and notwithstanding Section 21, a secured party having control under subsection 2(2) of investment property as collateral

(a) may hold as additional security proceeds received from the collateral;

(b) shall either apply money or funds received from the collateral to reduce the secured obligation or remit that money or those funds to the debtor; and

(c) may create a security interest in the collateral.

(2) Notwithstanding Section 21 and subsection (1), a secured party having control under subsection 2(2) of investment property as collateral may sell, transfer, use or otherwise deal with the collateral in the manner and to the extent provided in the security agreement. 2010, c. 8, s. 125.

Right to certain information

23 (1) The debtor, a creditor, a sheriff, a person with an interest in personal property of the debtor or an authorized representative of any of them may require a secured party, by a demand in writing, to send or make available the information or documentation referred to in subsection (3) to the person making the demand or, if the demand is made by the debtor, to any person at an address specified by the debtor.

(2) A demand made pursuant to subsection (1) must contain an address for reply and may be delivered to the secured party

(a) at the most recent address of the secured party that was registered as part of a financing statement that includes a description of personal property of the debtor; or

(b) at a more recent address that is the current address of the secured party if known by the person making the demand.

section (1): (3) Any or all of the following may be demanded pursuant to subsection (1):

(a) a copy of any security agreement providing for a security interest held by the secured party in the personal property of the debtor;

(b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness, as of the date specified in the demand;

(c) a written approval or correction of an itemized list of personal property attached to the demand indicating which items are collateral as of the date specified in the demand;

(d) a written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness, as of the date specified in the demand;

(e) sufficient information as to the location of the security agreement or a copy of it within the Province to enable a person entitled to receive a copy of the security agreement to inspect it within the Province.

(4) A person with an interest in personal property of the debtor may make a demand pursuant to subsection (1) only with respect to a security agreement providing for a security interest in the personal property in which the person has an interest.

(5) The secured party, on the demand of a person entitled to receive a copy of the security agreement referred to in clause (3)(a), shall permit the person to inspect the security agreement or a copy of it during regular business hours at the location referred to in clause (3)(e).

(6) Where a person makes a demand pursuant to subsection (1) for a written approval or correction of an itemized list referred to in clause (3)(c) and the secured party claims a security interest in all of the debtor's present and after-acquired personal property, in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or in all of a specified kind of the debtor's personal property, the secured party may indicate this instead of approving or correcting the itemized list.

(7) A secured party shall comply with a demand made pursuant to subsection (1) or (5) within

(a) 25 days after the demand is made, if the secured party is a trustee under a trust indenture; or

(b) 10 days after the demand is made, in the case of any other secured party.

(8) Where, without reasonable excuse, the secured party fails to comply with a demand made pursuant to subsection (1) or (5) within the time specified in subsection (7) or provides an incomplete or incorrect reply to a demand made pursuant to subsection (1), the person making the demand, in addition to any other remedy provided by this Act, may apply to the Court for an order requiring the secured party to comply with the demand.

(9) Where a person receiving a demand made pursuant to subsection (1) or (5) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, that person shall, within 15 days after receiving the demand, disclose the name and address of the immediate successor in interest and, if known, the latest successor in interest.

(10) Where, without reasonable excuse, the person receiving the demand fails to comply with subsection (9), the person making the demand, in addition to any other remedy provided in this Act, may apply to the Court for an order requiring the person receiving the demand to comply.

(11) On an application pursuant to subsection (8) or (10), the Court may make an order requiring the secured party or the person receiving the demand to comply with the demand or to disclose the information.

(12) On an application pursuant to subsection (8) or (10) or on a separate application, the Court may make

(a) any order that it considers necessary to ensure compliance with the demand;

(b) an order that, in the event of non-compliance with an order made on an application pursuant to subsection (8), the security interest of the secured party in relation to which the demand was made is unperfected or extinguished and the person making the demand may register a financing change statement discharging any registration related to that security interest.

(13) On an application pursuant to subsection (8) or (10), or on an application by the secured party referred to in subsection (8) or by the person receiving a demand referred to in subsection (9), the Court, subject to Section 79, may make

(a) an order exempting the secured party or person receiving the demand, in whole or in part, from complying with subsection (7) or (9), unless the demand is made by the debtor; or

(b) an order extending the time for compliance.

(14) Where a secured party replies to a demand made pursuant to subsection (1), the secured party and a successor in interest referred to in subsection (9) are estopped, for the purpose of this Act, as against the person making the demand, and any other person who can reasonably be expected to rely on the reply to the extent that the person relied on the reply, from denying

(a) the accuracy of any of the information referred to in clause (3)(b), (c) or (d) that is contained in the reply; or

(b) that the copy of the security agreement referred to in clause (3)(a) that is provided with the reply is a true copy of that security agreement.

(15) A successor in interest referred to in subsection (9) is not estopped pursuant to subsection (14) if

(a) the person making the demand knows the identity and address of the successor in interest; or

(b) before the demand, a financing change statement has been registered pursuant to Section 57 disclosing the successor in interest as the secured party.

(16) The person to whom a demand is made pursuant to this Section may require payment in advance of a fee in the amount prescribed for each demand, but the debtor is entitled to a reply without charge once every six months.

(17) A secured party who receives a demand that purports to be made by a person entitled to make the demand pursuant to subsection (1) may act as if the person is entitled to make the demand unless the secured party knows that the person is not entitled to make it. 1995-96, c. 13, s. 19.

PART III

PERFECTION AND PRIORITIES

Time of perfection

24 A security interest is perfected when

- (a) it has attached; and
- (b) all steps required for perfection pursuant to this Act have been completed,

regardless of the order of occurrence. 1995-96, c. 13, s. 20.

Perfection of interest in securities account

25 (1) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(2) Perfection of a security interest in a futures account also perfects a security interest in the futures contracts carried in the futures account. 2010, c. 8, s. 126.

Perfection on attachment

26 (1) A security interest arising in the delivery of a financial asset under Section 16 is perfected when it attaches.

(2) A security interest in investment property created by a broker or securities intermediary is perfected when it attaches.

(3) A security interest in a futures contract or a futures account created by a futures intermediary is perfected when it attaches. 2010, c. 8, s. 126.

Subordination of unperfected interest

27 (1) An unperfected security interest in collateral is subordinate to the interest of

- (a) a judgment creditor who has registered a notice of judgment in the Registry pursuant to Section 3 of the *Creditors Relief*

Act if the security interest is unperfected when the notice is registered;

(b) all persons entitled by the *Creditors Relief Act* or otherwise to participate in a distribution of personal property subject to the interest of a creditor referred to in clause (a); and

(c) a sheriff and a representative of creditors for the purpose of enforcing the rights of a creditor referred to in clause (a).

(2) An unperfected security interest in collateral is not effective against

(a) a trustee in bankruptcy if the security interest is unperfected at the time of the bankruptcy;

(b) a liquidator appointed pursuant to the *Winding-up and Restructuring Act* (Canada) if the security interest is unperfected when the winding-up order is made; or

(c) a creditor, assignee or sheriff who has registered a notice of claim in the Registry pursuant to Section 5 of the *Creditors Relief Act* for the purpose of any enforcement proceedings commenced pursuant to the enactments referred to in that Section if the security interest is unperfected at the time the notice of claim is registered.

(3) An unperfected security interest in collateral is subordinate to the interest of a transferee of the collateral if the transferee

(a) acquires the interest under a transaction that is not a security agreement;

(b) gives value; and

(c) acquires the interest without knowledge of the security interest and before the security interest is perfected.

(4) For the purpose of subsection (3), a purchaser of an instrument or a security or a holder of a negotiable document of title who acquires it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser or holder acquires the interest with knowledge that the transaction violates the terms of the security agreement creating or providing for the security interest. 1995-96, c. 13, s. 21.

Deemed damages

28 Where the interest of a lessor under a lease for a term of more than one year or of a consignor under a commercial consignment is not effective against a person under clause 27(2)(a) or (b) or where the leased goods are seized pursuant to judgment enforcement proceedings by a person entitled to priority under subsection 27(1), the lessor or consignor is deemed to have suffered damages, as against the lessee or consignee in an amount equal to

(a) the value of the leased or consigned goods at the time of the bankruptcy, winding-up order or seizure; and

(b) the amount of the loss, other than that referred to in clause (a), resulting from the termination of the lease or consignment. 1995-96, c. 13, s. 22.

Priority of purchase money security interest

29 (1) A purchase money security interest in collateral, other than an intangible, has priority over the interests of persons referred to in subsections 27(1) and (2) if it is perfected not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.

(2) Where goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor does not have possession of the goods for the purpose of subsection (1) until the debtor, or another person at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.

(3) A purchase money security interest in an intangible has priority over the interests of persons referred to in subsections 27(1) and (2) if it is perfected not later than 15 days after it attaches.

(4) A security interest in goods referred to in subclause (b)(iv) of the definition of “security interest” in Section 2 has priority over the interests of persons referred to in subsections 27(1) and (2) if it is perfected not later than 30 days after the sale of the goods. 1995-96, c. 13, s. 23.

Continuous perfection

30 (1) Where a security interest is originally perfected pursuant to this Act and is again perfected in some other way pursuant to this Act without an intermediate period when it is unperfected, the security interest is deemed to be perfected continuously for the purpose of this Act.

(2) A transferee of a security interest has the same priority in relation to perfection of the security interest as the transferor had at the time of the transfer. 1995-96, c. 13, s. 24.

Perfection by possession

31 (1) Subject to Section 24, possession of the collateral by the secured party, or on the secured party’s behalf by another person, perfects a security interest in

- (a) goods;
- (b) a negotiable document of title;
- (c) chattel paper;
- (d) an instrument; or
- (e) money.

(2) A secured party does not have possession of collateral for the purpose of subsection (1) if

- (a) the collateral is in the actual or apparent possession or control of the debtor or the debtor’s agent; or
- (b) possession is the result of seizure or repossession.

(3) Subject to Section 24, a secured party may perfect a security interest in a certificated security by taking delivery of the certificated security under Section 68 of the *Securities Transfer Act*.

(4) Subject to Section 24, a security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 68 of the *Securities Transfer Act*, and remains perfected by delivery until the debtor obtains possession of the security certificate. 1995-96, c. 13, s. 25; 2010, c. 8, s. 127.

Perfection by control of the collateral

32 (1) Subject to Section 24, a security interest in investment property may be perfected by control of the collateral under subsection 2(2).

(2) Subject to Section 24, a security interest in investment property is perfected by control under subsection 2(2) from the time the secured party obtains control and remains perfected by control until

- (a) the secured party does not have control; and
- (b) one of the following occurs:
 - (i) where the collateral is a certificated security, the debtor has or acquires possession of the security certificate,
 - (ii) where the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner, or
 - (iii) where the collateral is a security entitlement, the debtor is or becomes the entitlement holder. 2010, c. 8, s. 128.

Perfection by registration

33 Subject to Section 24, registration of a financing statement perfects a security interest in collateral. 1995-96, c. 13, s. 26.

Effect of delivery to debtor

34 (1) Where a security interest in an instrument or a certificated security is perfected under Section 31 and the secured party delivers the instrument or certificated security to the debtor for the purpose of

- (a) ultimate sale or exchange;
- (b) presentation, collection or renewal; or
- (c) registration of a transfer,

the security interest remains perfected notwithstanding Section 13 for the first 15 days after the collateral comes under the control of the debtor.

(2) Where a security interest in a negotiable document of title or in goods held by a bailee that are not covered by a negotiable document of title is perfected by possession pursuant to Section 31 and the secured party makes the document of title or goods available to the debtor for the purpose of

- (a) ultimate sale or exchange;

- (b) loading, unloading, storing, shipping or transshipping;
- or
- (c) manufacturing, processing, packaging or other dealing with goods in a manner preliminary to their sale or exchange,

the security interest remains perfected, notwithstanding Section 13, for the first 15 days after the collateral comes under the control of the debtor.

(3) On the expiry of the 15-day period referred to in subsection (1) or (2), a security interest referred to in those subsections is subject to the other provisions of this Act relating to the perfection of a security interest. 1995-96, c. 13, s. 27; 2010, c. 8, s. 129.

Goods in possession of bailee

35 (1) Subject to Section 24, a security interest in goods in the possession of a bailee is perfected by

- (a) possession of the goods by the bailee on the secured party's behalf pursuant to Section 31;
- (b) registration of a financing statement relating to the goods pursuant to Section 33;
- (c) the issue by the bailee of a document of title to the goods in the name of the secured party;
- (d) the deposit by a secured party to whom a non-negotiable receipt has been transferred of the transfer with the warehouse operator who issued the receipt in accordance with Section 22 of the *Warehouse Receipts Act*; or
- (e) perfection of a security interest in a negotiable document of title to the goods if the bailee has issued one.

(2) The issue of a negotiable document of title covering goods does not preclude any other security interest in the goods from arising during the period that the negotiable document of title is outstanding.

(3) A perfected security interest in a negotiable document of title covering goods takes priority over a security interest in the goods that is otherwise perfected after the goods become covered by the negotiable document of title. 1995-96, c. 13, s. 28.

Proceeds of collateral

36 (1) Subject to this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest

- (a) continues in the collateral unless the secured party expressly or impliedly authorizes the dealing; and
- (b) extends to the proceeds.

(2) Where a secured party enforces a security interest against both the collateral and the proceeds, the amount secured by the security interest in the collateral and the proceeds is limited to the market value of the collateral at the date of the dealing.

(3) The limitation of the amount secured by a security interest as provided in subsection (2) does not apply if the collateral is investment property.

(4) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected by registration of a financing statement pursuant to Section 33 that includes a description of

(a) the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;

(b) the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or

(c) the original collateral, if the proceeds consist of money, cheques or deposit accounts in a bank, credit union or similar financial institution.

(5) Where the security interest in the original collateral is perfected other than in a manner referred to in subsection (4), the security interest in the proceeds is a continuously perfected security interest for the first 15 days after the security interest in the original collateral attaches to the proceeds but becomes unperfected on the expiry of that period, unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances specified in this Act for original collateral of the same kind. 1995-96, c. 13, s. 29; 2010, c. 8, s. 130.

Reattachment after sale or lease

37 (1) Where a debtor sells or leases goods that are subject to a security interest under circumstances in which the buyer or lessee takes free of the security interest under clause 36(1)(a) or Section 38, the security interest reattaches to the goods if

(a) the goods are returned to, seized or repossessed by the debtor or a transferee of chattel paper created by the sale or lease; and

(b) the obligation secured remains unpaid or unperformed.

(2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or perfection must be determined as if the goods had not been sold or leased if

(a) the security interest was perfected by registration pursuant to Section 33 when the goods were sold or leased; and

(b) the registration is effective when the goods are returned, seized or repossessed.

(3) Where a sale or lease of goods creates an account or chattel paper that is transferred to a secured party, and the goods are returned to, seized or repossessed by the debtor or the transferee of the chattel paper, the transferee of the account or chattel paper has a security interest in the goods that attaches when the goods are returned, seized or repossessed.

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was perfected when the goods were returned, seized or repossessed, but becomes unperfected on the expiry of 15 days after the return, seizure or repossession, unless the transferee reg-

isters a financing statement relating to the security interest or takes possession of the goods by seizure, repossession or otherwise, before the expiry of that 15-day period.

(5) A security interest in goods that a transferee of an account has under subsection (3) is subordinate to a perfected security interest that reattaches under subsection (1) and to a security interest of a transferee of chattel paper that arises under subsection (3).

(6) A security interest in goods that a transferee of chattel paper has under subsection (3) has priority over

(a) a security interest in goods that reattaches under subsection (1); and

(b) a security interest in goods as after-acquired property that attaches on the return, seizure or repossession of the goods,

if the transferee of the chattel paper would have priority under subsection 40(6) as to the chattel paper over an interest in the chattel paper claimed by the holder of the security interest in the goods.

(7) A security interest in goods given by a buyer or lessee of the goods referred to in subsection (1), that attaches while the goods are in the possession of the buyer, lessee or debtor and that is perfected when the goods are returned, seized or repossessed, has priority over a security interest in the goods arising under this Section. 1995-96, c. 13, s. 30.

Rights of certain buyers and lessees

38 (1) In this Section,

“buyer of goods” includes a person who obtains vested rights in goods under a contract to which the person is a party, as a consequence of the goods becoming a fixture or accession to property in which the person has an interest;

“ordinary course of business of the seller” includes the supply of goods in the ordinary course of business as part of a contract for services and materials;

“seller” includes a person who supplies goods that become a fixture or accession under a contract with a buyer or under a contract with a person who is party to a contract with such a buyer.

(2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest given by the seller or lessor or arising under Section 36 or 37, whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

(3) A buyer or lessee of goods that are acquired as consumer goods takes free of a perfected or unperfected security interest in the goods if the buyer or lessee

(a) gave value for the interest acquired; and

(b) bought or leased the goods without knowledge of the security interest.

(4) Subsection (3) does not apply to a security interest in

(a) a fixture; or

(b) goods if the purchase price of the goods exceeds \$1,000 or if the market value of the goods, in the case of a lease, exceeds \$1,000.

(5) A buyer or lessee of goods who buys or leases the goods during any of the 15-day periods referred to in subsection 34(1) or (2), 36(5) or 37(4) or Section 63 takes free of the security interest referred to in those provisions if the buyer or lessee

(a) gave value for the interest acquired; and

(b) bought or leased the goods without knowledge of the security interest and

(i) in a case within subsection 34(1) or (2), 36(5) or 37(4), before the security interest was perfected by possession pursuant to Section 31 or by registration pursuant to Section 33, or

(ii) in a case within Section 63, before the registration of the security interest was amended in accordance with that Section or the secured party took possession of the collateral.

(6) A buyer or lessee of goods takes free of a security interest in the goods perfected by registration pursuant to Section 33 if

(a) the buyer or lessee bought or leased the goods without knowledge of the security interest; and

(b) in the registration relating to the security interest, the goods were not described by serial number entered into the field labelled for the receipt of serial numbers.

(7) Subsection (6) applies only to goods that are equipment and that are of a kind that are prescribed as serial numbered goods.

(8) A sale or lease under subsection (2), (3), (5) or (6) may be

(a) for cash;

(b) by exchange for other property; or

(c) on credit,

and includes the delivery of goods or a document of title under a pre-existing contract for sale but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability. 1995-96, c. 13, s. 31; 2003, c. 13, s. 2; 2009, c. 26, s. 2.

Rights of purchaser of a security

39 (1) A purchaser of a security, other than a secured party, who

- (a) gives value;
- (b) does not know that the transaction constitutes a breach of a security agreement granting a security interest in the security to a secured party that does not have control of the security; and
- (c) obtains control of the security,

acquires the security free from the security interest.

(2) A purchaser referred to in subsection (1) is not required to determine whether a security interest has been granted in the security or whether the transaction constitutes a breach of a security agreement.

(3) An action based on a security agreement creating a security interest in a financial asset, however framed, may not be brought against a person who acquires a security entitlement under Section 95 of the *Securities Transfer Act* for value and did not know that there has been a breach of the security agreement.

(4) A person who acquires a security entitlement under Section 95 of the *Securities Transfer Act* is not required to determine whether a security interest has been granted in a financial asset or whether there has been a breach of the security agreement.

(5) Where an action based on a security agreement creating a security interest in a financial asset could not be brought against an entitlement holder under subsection (3), it may not be asserted against a person who purchases a security entitlement, or an interest in it, from the entitlement holder. 2010, c. 8, s. 131.

Money and other instruments

40 (1) A holder of money has priority over a security interest in it perfected by registration pursuant to Section 33 or temporarily perfected under subsection 36(5) if the holder

- (a) acquired the money without knowledge that it is subject to the security interest; or
- (b) is a holder for value, whether or not that person acquired the money without knowledge that it is subject to the security interest.

(2) A creditor who receives an instrument drawn or made by a debtor and delivered in payment of a debt owing to the creditor by that debtor has priority over a security interest in the instrument whether or not the creditor has knowledge of the security interest in the instrument at the time of delivery.

(3) A purchaser of an instrument has priority over a security interest in the instrument perfected by registration pursuant to Section 33 or temporarily perfected under subsection 34(1) or 36(5) if the purchaser

- (a) gave value for the instrument;
- (b) acquired the instrument without knowledge that it is subject to a security interest; and

(c) took possession of the instrument.

(4) A holder to whom a negotiable document of title is negotiated has priority over a security interest in the document of title that is perfected by registration pursuant to Section 33 or temporarily perfected under subsection 34(2) or 36(5) if the holder

(a) gave value for the document of title; and

(b) acquired the document of title without knowledge that it is subject to a security interest.

(5) For the purpose of subsections (3) and (4), a purchaser of an instrument or a holder of a negotiable document of title who acquires it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquires the interest with knowledge that the transaction violates the terms of the security agreement creating or providing for the security interest.

(6) A purchaser of chattel paper who takes possession of it in the purchaser's ordinary course of business and for new value has priority over any security interest in the chattel paper that

(a) was perfected by registration pursuant to Section 33, if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest; or

(b) has attached to proceeds of inventory under Section 36, whatever the extent of the purchaser's knowledge. 1995-96, c. 13, s. 32; 2010, c. 8, s. 132.

Rights of protected purchaser

41 (1) This Act does not limit the rights that a protected purchaser of a security has under the *Securities Transfer Act*.

(2) The interest of a protected purchaser of a security under the *Securities Transfer Act* takes priority over an earlier security interest, even if perfected, to the extent provided in that Act.

(3) This Act does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under the *Securities Transfer Act*. 2010, c. 8, s. 133.

Priority of certain liens

42 A lien on goods that arises as a result of the provision, in the ordinary course of business, of materials or services in respect of the goods, has priority over a perfected or unperfected security interest in the goods unless the lien arises under an Act that provides that it is not to have such priority. 1995-96, c. 13, s. 33.

Transfers

43 (1) In this Section, "transfer" includes a sale, the creation of a security interest or a transfer under judgment enforcement proceedings.

(2) The rights of a debtor in collateral may be transferred consensually or by operation of law notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but a transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default. 1995-96, c. 13, s. 34.

Priority of certain security interests

- 44 (1) Subject to Section 36, a purchase money security interest in
- (a) collateral or its proceeds, other than intangibles or inventory, that is perfected not later than 15 days after the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier; or
 - (b) an intangible or its proceeds that is perfected not later than 15 days after the security interest in the intangible attaches,

has priority over any other security interest in the same collateral given by the same debtor.

(2) Subject to Section 36, a purchase money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor if

- (a) the purchase money security interest in the inventory is perfected when the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier;
- (b) the secured party gives a notice to any other secured party who has registered, before the registration of the financing statement relating to the purchase money security interest in the inventory, a financing statement where the collateral description in the financing statement includes the same item or kind of collateral or includes accounts;
- (c) the notice referred to in clause (b) states that the person giving the notice expects to acquire a purchase money security interest in inventory of the debtor, and describes the inventory by item or kind; and
- (d) the notice is given before the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier.

(3) A notice pursuant to subsection (2) may be given in accordance with Section 82 or by registered mail addressed to the address of the person to be notified that was registered as part of the financing statement referred to in clause (2)(b).

(4) A purchase money security interest in goods or, subject to Section 36, in their proceeds, taken by a seller, lessor or consignor of the collateral, that is perfected

- (a) in the case of inventory, when a debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier; and

(b) in the case of collateral other than inventory, not later than 15 days after a debtor, or another person at the request of a debtor, obtains possession of the collateral, whichever is earlier,

has priority over any other purchase money security interest in the same collateral given by the same debtor.

(5) A purchase money security interest in collateral as original collateral has priority over a purchase money security interest in the same collateral as proceeds, if it is perfected

(a) in the case of inventory, when a debtor, or another party at the request of a debtor, obtains possession of the collateral, whichever is earlier; and

(b) in the case of collateral other than inventory, not later than 15 days after a debtor, or another person at the request of a debtor, obtains possession of the collateral, whichever is earlier.

(6) Where goods are shipped by common carrier to a debtor or to a person designated by a debtor, the debtor does not have possession of the goods for the purpose of this Section until the debtor, or another person at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.

(7) A purchase money security interest in an item of collateral does not extend to or continue in the proceeds of the item after the obligation to pay the purchase price of the item or repay the value given for the purpose of enabling the debtor to acquire rights in it has been discharged.

(8) A perfected security interest in crops or their proceeds, given for value to enable a debtor to produce the crops and given while the crops are growing crops or during a period of six months immediately before the time the crops become growing crops, has priority over any other security interest in the same collateral given by the same debtor.

(9) A perfected security interest in fowl, cattle, horses, sheep, swine or fish or their proceeds given for value to enable the debtor to acquire food, drugs or hormones to be fed to or placed in the animals or fish has priority over any other security interest in the same collateral or its proceeds given by the same debtor other than a perfected purchase money security interest. 1995-96, c. 13, s. 35.

Priority rules

45 (1) Where this Act provides no other method for determining priority between competing security interests in the same collateral,

(a) priority between perfected security interests is determined by the order of the occurrence of

(i) the registration of a financing statement pursuant to Section 33 without regard to the time of attachment of the security interest,

(ii) possession of the collateral pursuant to Section 31 without regard to the time of attachment of the security interest, or

- (iii) perfection under Section 6, 8, 34, 37 or 87, whichever is earliest;
- (b) a perfected security interest has priority over an unperfected security interest; and
- (c) priority between unperfected security interests is determined by the order of attachment of the security interests.
- (2) For the purpose of subsection (1), a continuously perfected security interest must be treated at all times as if perfected by the method by which it was originally perfected.
- (3) For the purpose of subsection (1) and subject to Section 36, the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of a security interest in its proceeds.
- (4) A security interest in goods that are equipment and are of a kind that are prescribed as serial numbered goods is not registered or perfected by registration for the purpose of subsection (1), (7) or (8) or 44(1) unless a financing statement relating to the security interest that includes a description of the goods by serial number is registered with the serial number entered into the field labelled for the receipt of serial numbers.
- (5) Subject to subsection (6), the priority that a security interest has under subsection (1) applies to all advances, including future advances.
- (6) A perfected security interest has priority over the interest of a judgment creditor referred to in clause 27(1)(a) only to the extent of
- (a) advances made before the judgment creditor registers the notice of judgment referred to in clause 27(1)(a);
- (b) advances made before the secured party has knowledge of the registration of the notice of judgment referred to in clause 27(1)(a);
- (c) advances made in accordance with a statutory requirement, or a legally binding obligation owing to a person other than the debtor entered into by the secured party before acquiring the knowledge referred to in clause (b); and
- (d) reasonable costs and expenses incurred by the secured party for the protection, preservation, maintenance or repair of the collateral.
- (7) Where a registration lapses as a result of a failure to renew it or if a registration is discharged without authorization or in error, and the secured party re-registers in accordance with the regulations within 30 days after the lapse or discharge, the lapse or discharge does not affect the priority ranking of the security interest to which the lapsed or discharged registration relates as against a competing perfected security interest that immediately before the lapse or discharge had a subordinate priority ranking, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and before the re-registration.

(8) Where a debtor transfers an interest in collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer except to the extent that the security interest granted by the transferee secures advances made or contracted for

(a) after the expiry of 15 days from when the secured party who holds the security interest in the transferred collateral has knowledge of the information required to register a financing change statement in accordance with Section 63 disclosing the transferee as the new debtor; and

(b) before the secured party referred to in clause (a) takes possession of the collateral or registers a financing change statement in accordance with Section 63 disclosing the transferee as the new debtor.

(9) Subsection (8) does not apply if the transferee acquires the debtor's interest free of the security interest granted by the debtor. 1995-96, c. 13, s. 36; 2003, c. 13, s. 4; 2009, c. 26, s. 3.

Priority among conflicting security interests

46 (1) The rules in this Section govern priority among conflicting security interests in the same investment property.

(2) A security interest of a secured party having control of investment property under subsection 2(2) has priority over a security interest of a secured party that does not have control of the investment property.

(3) A security interest in a certificated security in registered form that is perfected by taking delivery under subsection 31(3) and not by control under Section 32 has priority over a conflicting security interest perfected by a method other than control.

(4) Conflicting security interests of secured parties each of which has control under subsection 2(2) rank according to priority in time of

(a) where the collateral is a security, obtaining control;

(b) where the collateral is a security entitlement carried in a securities account,

(i) the secured party's becoming the person for which the securities account is maintained, if the secured party obtained control under clause 25(1)(a) of the *Securities Transfer Act*,

(ii) the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account, if the secured party obtained control under clause 25(1)(b) of the *Securities Transfer Act*, or

(iii) where the secured party obtained control through another person under clause 25(1)(c) of the *Securities Transfer Act*, when the other person obtained control; or

(c) where the collateral is a futures contract carried with a futures intermediary, the satisfaction of the requirement for control specified in subclause 2(2)(d)(ii) with respect to futures contracts carried or to be carried with the futures intermediary.

(5) Notwithstanding subsection (4), a security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(6) Notwithstanding subsection (4), a security interest held by a futures intermediary in a futures contract or a futures account maintained with the futures intermediary has priority over a conflicting security interest held by another secured party.

(7) Conflicting security interests granted by a broker, securities intermediary or futures intermediary that are perfected without control under subsection 2(2) rank equally.

(8) In all other cases, priority among conflicting security interests in investment property is governed by Section 45. 2010, c. 8, s. 134.

Security interest in fixtures

47 (1) In this Section, “secured party” includes a receiver.

(2) Except as provided in Section 38 and subsections (3), (4) and (9), a security interest in goods that attaches before or when the goods become fixtures has priority with respect to the goods over a claim to the goods made by a person with an interest in the land.

(3) A security interest referred to in subsection (2) is subordinate to the interest of a person who acquires for value an interest in the land after the goods become fixtures, including an assignee for value of the interest of a person with an interest in the land at the time the goods become fixtures, if the interest is acquired without fraud and before notice of the security interest is registered pursuant to Section 61.

(4) A security interest referred to in subsection (2) is subordinate to the interest of a person with a registered mortgage of the land who, after the goods become fixtures,

(a) makes an advance under the mortgage, but only with respect to that advance; or

(b) obtains an order for sale, foreclosure or foreclosure and sale,

without fraud and before notice of the security interest in the fixtures is registered pursuant to Section 61.

(5) Where a notice of a security interest in fixtures has not been registered pursuant to Section 61 when a search is made of the records of the registry of deeds by or on behalf of a person with a registered mortgage of the land, any advance under the mortgage made on the same day that the search was made is deemed to have been made before registration of a notice pursuant to Section 61,

notwithstanding that the notice was registered on the same day that the search was made.

(6) The priority under this Section of a person with an interest in the land referred to in subsection (3) or of a person with a registered mortgage of land referred to in subsection (4) is not affected by priority rights in the land under the *Registry of Deeds Act*.

(7) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who has an interest in the land when the goods become fixtures and who

- (a) has not consented to the security interest;
- (b) has not disclaimed an interest in the goods or fixtures;
- (c) has not entered into an agreement entitling the person to remove the goods; or
- (d) is not otherwise precluded from preventing the debtor from removing the goods.

(8) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who acquires an interest in the land after the goods become fixtures if the interest is acquired without fraud and before notice of the security interest in the fixtures is registered pursuant to Section 61.

(9) A security interest in goods that attaches before, when or after the goods become fixtures is subordinate to the interest of a creditor of the debtor who causes a certificate of judgment affecting the land to be registered pursuant to the *Registry of Deeds Act* before notice of the security interest in the fixtures is registered pursuant to Section 61.

(10) The interest of a creditor of the debtor referred to in subsection (9) does not take priority over a purchase money security interest in goods that become fixtures if a notice of the security interest in the fixtures is registered pursuant to Section 61 not later than 15 days after the goods are affixed to the land.

(11) A secured party who has the right, under this Act, to remove goods from land shall exercise the right of removal in a manner that causes no unnecessary damage or injury to the land and to other property situated on it or that puts the occupier of the land to any greater inconvenience than is necessarily incidental to the removal of the goods.

(12) A person, other than the debtor, who has an interest in the land when the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damage to the interest of the person in the land caused during the removal of the goods, but is not entitled to reimbursement for diminution in the value of the land caused by the absence of the goods removed or by the necessity to replace them.

(13) A person entitled to reimbursement under subsection (12) may refuse permission to remove the goods until the secured party has given adequate security for the reimbursement.

- (14)** The secured party may apply to the Court for an order
- (a) determining the person entitled to reimbursement under this Section;
 - (b) determining the amount and kind of security to be provided by the secured party;
 - (c) specifying the depository for the security;
 - (d) authorizing the removal of the goods without the provision of security for reimbursement under subsection (13).

(15) Where the interest of a person with an interest in the land is subordinate to a security interest in the goods under this Section, the person with an interest in the land may, before the goods have been removed from the land by the secured party, retain the goods on payment to the secured party of the lesser of

- (a) the amount secured by the security interest in the goods that has priority over the interest of the person with the interest in the land; and
- (b) the market value of the goods were the goods to be removed from the land.

(16) A secured party who has a right to remove goods from land shall give to each person who appears by the records of the registry of deeds for the registration district in which the land is located to have an interest in the land, a notice of the intention of the secured party to remove the goods.

- (17)** A notice pursuant to subsection (16) must contain
- (a) the name and address of the secured party;
 - (b) a description of the goods to be removed;
 - (c) the amount required to satisfy the obligation secured by the security interest;
 - (d) the market value of the goods;
 - (e) a description of the land to which the goods are affixed; and
 - (f) a statement of intention to remove the goods unless the amount referred to in subsection (15) is paid on or before a specified date that is not less than 15 days after the notice is given pursuant to subsection (16).

(18) A notice pursuant to subsection (16) must be given at least 15 days before removal of the goods and may be given in accordance with Section 82 or by registered mail addressed to the address last known to the secured party of the person entitled to the notice.

(19) A person entitled to receive a notice pursuant to subsection (16) may apply to the Court for an order postponing removal of the goods from the land.
1995-96, c. 13, s. 37.

Security interest in crops

48 (1) In this Section, “secured party” includes a receiver.

(2) Except as provided in subsections (3), (4), (5) and (7), a security interest in crops has priority with respect to the crops over a claim to the crops made by a person with an interest in the land.

(3) A security interest in crops is subordinate to the interest of a person who acquires for value an interest in the land while the crops are growing crops, including an assignee for value of the interest of a person with an interest in the land while the crops are growing crops, if the interest is acquired without fraud and before notice of the security interest is registered pursuant to Section 61.

(4) A security interest in crops is subordinate to the interest of a person with a registered mortgage of the land who, after the crops become growing crops,

(a) makes an advance under the mortgage, but only with respect to that advance; or

(b) obtains an order for sale, foreclosure or foreclosure and sale,

without fraud and before notice of the security interest in the crops is registered pursuant to Section 61.

(5) Where a notice of a security interest in crops has not been registered pursuant to Section 61 when a search is made of the records of the registry of deeds for the registration district in which the lands are located by or on behalf of a person with a registered mortgage of the land, any advance under the mortgage made on the same day that the search was made is deemed to have been made before registration of a notice pursuant to Section 61, notwithstanding that the notice was registered on the same day that the search was made.

(6) The priority under this Section of a person with an interest in the land referred to in subsection (3) or of a person with a registered mortgage of the land referred to in subsection (4) is not affected by priority rights in the land under the *Registry of Deeds Act*.

(7) A security interest in crops is subordinate to the interest of a creditor of the debtor who causes a certificate of judgment affecting the land to be registered pursuant to the *Registry of Deeds Act* before notice of the security interest is registered pursuant to Section 61.

(8) The interest of a creditor of the debtor referred to in subsection (7) does not take priority over a purchase money security interest in the crops or a security interest in the crops referred to in subsection 44(8) if a notice of the security interest in the crops is registered pursuant to Section 61 not later than 15 days after the security interest in the crops attaches.

(9) Subsections 47(11) to (19) apply with necessary changes to the seizure and removal of growing crops from land. 1995-96, c. 13, s. 38; 2009, c. 26, s. 4.

Accessions

49 (1) In this Section,
“other goods” means goods to which an accession is installed or affixed;
“secured party” includes a receiver;
“the whole” means an accession and the goods to which the accession is installed or affixed.

(2) Except as provided in Section 38 and subsections (3), (4) and (7), a security interest in goods that attaches before or when the goods become an accession has priority with respect to the goods over a claim to the goods as an accession made by a person with an interest in the whole.

(3) A security interest referred to in subsection (2) is subordinate to the interest of a person who acquires for value an interest in the whole after the goods become an accession, including an assignee for value of the interest of a person with an interest in the whole after the goods become an accession, if the interest is acquired without knowledge of the security interest and before the security interest is perfected.

(4) A security interest referred to in subsection (2) is subordinate to the interest of a person with a security interest taken and perfected in the whole who

(a) makes an advance under a security agreement after the goods become an accession, but only with respect to that advance; or

(b) acquires the right to retain the whole in satisfaction of the obligation secured,

without knowledge of the security interest in the accession and before it is perfected.

(5) A security interest in goods that attaches after the goods become an accession is subordinate to the interest of a person who has an interest in the other goods when the goods become an accession and who

(a) has not consented to the security interest;

(b) has not disclaimed an interest in the goods or accessions;

(c) has not entered into an agreement entitling the person to remove the accession; or

(d) is not otherwise precluded from preventing the debtor from removing the accession.

(6) A security interest in goods that attaches after the goods become an accession is subordinate to the interest of a person who acquires an interest in the whole after the goods become an accession, if the interest is acquired without knowledge and before the security interest in the accession is perfected.

(7) Subject to subsection (8), a security interest in goods that attaches before, at the time or after the goods become an accession is subordinate to

the interest of a judgment creditor referred to in clause 27(1)(a) if the security interest is not perfected when a notice of judgment referred to in clause 27(1)(a) is registered.

(8) The interest of a judgment creditor referred to in clause 27(1)(a) does not take priority under subsection (7) over a purchase money security interest in goods that is perfected within 15 days after the goods become an accession.

(9) A secured party who has the right, under this Act, to remove an accession from the whole shall exercise the right of removal in a manner that causes no unnecessary damage or injury to the other goods or that puts the person in possession of the whole to any greater inconvenience than is necessarily incidental to the removal of the accession.

(10) A person, other than the debtor, who has an interest in the whole when the goods subject to the security interest become an accession is entitled to reimbursement for any damages to the interest of that person in the whole caused during the removal of the accession, but is not entitled to reimbursement for diminution in the value of the whole caused by the absence of the accession or by the necessity to replace it.

(11) A person entitled to reimbursement under subsection (10) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

(12) The secured party may apply to the Court for an order

- (a) determining the person entitled to reimbursement under this Section;
- (b) determining the amount and kind of security to be provided by the secured party;
- (c) specifying the depository for the security;
- (d) authorizing the removal of the accession without the provision of security for reimbursement under subsection (11).

(13) Where the interest of a person with an interest in the whole is subordinate to a security interest in the accession under this Section, the person with an interest in the whole may, before the accession has been removed from the whole by the secured party, retain the accession on payment to the secured party of the lesser of

- (a) the amount secured by the security interest entitled to priority; and
- (b) the market value of the accession were the accession to be removed from the other goods.

(14) The secured party who has a right to remove the accession from the whole shall give a notice of the secured party's intention to remove the accession to each person who

- (a) is known by the secured party to have an interest in the other goods or in the whole; and

(b) has registered a financing statement that includes the name of the debtor and a description of the other goods, or that includes the serial number of the other goods if the other goods are of a kind that are prescribed as serial numbered goods.

(15) A notice pursuant to subsection (14) must contain

- (a) the name and address of the secured party;
- (b) a description of the goods to be removed;
- (c) the amount required to satisfy the obligations secured by the security interest;
- (d) the market value of the accession;
- (e) a description of the other goods; and
- (f) a statement of intention to remove the accession unless the amount referred to in subsection (13) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (14).

(16) A notice pursuant to subsection (14) must be given at least 15 days before removal of the accession and may be given in accordance with Section 82 or by registered mail addressed to the address of the person to be notified that was registered as part of the financing statement referred to in clause (14)(b).

(17) A person entitled to receive a notice under subsection (14) may apply to the Court for an order postponing removal of the accession. 1995-96, c. 13, s. 39; 2009, c. 26, s. 5.

Goods becoming part of a product or mass

50 (1) A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product.

(2) Subject to subsections (4) and (6), where more than one perfected security interest continues in the same product or mass under subsection (1), and each was a security interest in separate goods, the security interests are entitled to share in the product or mass according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all security interests.

(3) For the purpose of Section 45, perfection of a security interest in goods that subsequently become part of a product or mass is also perfection of the security interest in the product or mass.

(4) For the purpose of subsection (2), the obligation secured by a security interest that continues in the product or mass under subsection (1) is limited to the market value of the goods when the goods become part of the product or mass.

(5) Any priority that a perfected security interest that continues in the product or mass under subsection (1) has over an interest in the product or mass

is limited to the market value of the goods when the goods become part of the product or mass.

(6) A perfected purchase money security interest in goods that continues in the product or mass under subsection (1) has priority over a non-purchase money security interest

(a) in the goods that continues in the product or mass under subsection (1); and

(b) in the product or mass, other than as inventory, given by the same debtor.

(7) A perfected purchase money security interest in goods that continues in the product or mass under subsection (1) has priority over any non-purchase money security interest in the product or mass as inventory given by the same debtor if

(a) the secured party with the purchase money security interest gives a notice to any secured party with a non-purchase money security interest in the product or mass who has registered, before the identity of the goods is lost in the product or mass, a financing statement that includes a description of the product or mass;

(b) the notice referred to in clause (a) states that the person giving the notice has acquired or expects to acquire a purchase money security interest in goods supplied to the debtor as inventory; and

(c) the notice is given before the identity of the goods is lost in the product or mass.

(8) A notice pursuant to subsection (7) may be given in accordance with Section 82 or by registered mail addressed to the address of the person to be notified that was registered as part of the financing statement referred to in clause (7)(a).

(9) This Section does not apply to a security interest in an accession to which Section 49 applies. 1995-96, c. 13, s. 40.

Subordination by secured party

51 (1) A secured party may subordinate, in a security agreement or otherwise, the secured party's security interest to any other interest.

(2) A subordination is effective according to its terms between the parties and may be enforced by a third party if the third party is the person or one of the class of persons for whose benefit the subordination was intended. 1995-96, c. 13, s. 41.

Intangibles and chattel paper

52 (1) In this Section,

“account debtor” means a person who is obligated under an intangible or chattel paper;

“assignee” includes a secured party and a receiver.

(2) Unless the account debtor on an intangible or chattel paper has made an enforceable agreement not to assert defenses or claims arising out of a contract, the rights of an assignee of the intangible or chattel paper are subject to

(a) the terms of the contract between the account debtor and the assignor and any defense or claim arising from the contract or a closely connected contract; and

(b) any other defense or claim of the account debtor against the assignor that accrues before the account debtor acquires knowledge of the assignment.

(3) A modification of or substitution for a contract made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the assignee's rights under the contract or the assignor's ability to perform the contract is effective against the assignee unless the account debtor has otherwise agreed.

(4) Subsection (3) applies

(a) to the extent that an assigned right to payment arising out of the contract has not been earned by performance; and

(b) notwithstanding that notice of the assignment has been given to the account debtor.

(5) Where the contract has been substituted or modified in the manner referred to in subsection (3), the assignee obtains rights corresponding to those of the assignor under the modified or substituted contract.

(6) Nothing in subsections (3) to (5) affects the validity of a term in an assignment agreement that provides that a modification or substitution referred to in those subsections is a breach of contract by the assignor.

(7) Where collateral that is either an intangible or chattel paper is assigned, the account debtor may make payments to the assignor

(a) before the account debtor receives notice of the assignment in accordance with subsection (8); or

(b) after the account debtor receives notice of the assignment if the account debtor requests the assignee to furnish proof of the assignment and the assignee fails to furnish proof within 15 days after the request.

(8) A notice of an assignment pursuant to subsection (7) must

(a) state that the amount payable or to become payable under the contract has been assigned and that payment is to be made to the assignee; and

(b) identify the contract under which the amount payable is to become payable.

(9) Payment by an account debtor to an assignee after the account debtor receives notice of the assignment in accordance with subsection (8) discharges the obligation of the account debtor to the extent of the payment.

(10) A term in a contract between a debtor on an account or chattel paper and an assignor that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due is binding on the assignor only to the extent that the assignor may be liable in damages for breach of the term, but is unenforceable against third parties. 1995-96, c. 13, s. 42.

PART IV

REGISTRATION

Personal Property Registry

53 (1) There is an electronic registry known as the Personal Property Registry for the purpose of registrations pursuant to this Act and pursuant to any other Act that provides for registration in the Registry.

(2) The Registrar must be appointed in accordance with the *Civil Service Act*.

(3) One or more deputy registrars must be appointed in accordance with the *Civil Service Act*.

(4) The Registrar shall supervise and administer the operation of the Registry and has such powers and duties as are set out in this Act or the regulations or any other Act that provides for registration in the Registry or the regulations pursuant to that Act.

(5) A deputy registrar has the same powers and duties as the Registrar, subject to the direction and supervision of the Registrar.

(6) The Registrar and deputy registrars may designate one or more persons to act on their behalf.

(7) When it is not practical, in the opinion of the Registrar, to provide access to the Registry or to provide one or more Registry services, the Registrar may refuse access to the Registry or otherwise suspend one or more of its services. 1995-96, c. 13, s. 43

Registration

54 (1) A person may register a financing statement in the Registry at an office of the Registry in accordance with the regulations.

(2) The Registrar may enter into an agreement with any person to provide access to the Registry on terms and conditions that the Registrar considers advisable and may vary the terms and conditions as the Registrar considers advisable.

(3) A person who has entered into an agreement with the Registrar pursuant to subsection (2) may register a financing statement in the Registry in accordance with the agreement and the regulations.

(4) Registration of a financing statement is effective from the time that a registration number, date and time is assigned to the registration in the Registry.

(5) A financing statement may be registered before or after a security agreement is made or a security interest attaches.

(6) A registration may relate to one or more than one security agreement.

(7) Except as otherwise provided in this Section, the validity of the registration of a financing statement is not affected by any defect, irregularity, omission or error in the financing statement unless the defect, irregularity, omission or error is seriously misleading.

(8) A registration is invalid if a search of the records of the Registry using the name, as prescribed, of any of the debtors required to be included in the financing statement other than a debtor who does not own or have rights in the collateral does not disclose the registration.

(9) Subject to subsections (12) and (13), a registration is invalid if a search of the records of the Registry by serial number, as prescribed, for collateral that is consumer goods of a kind that are prescribed as serial numbered goods does not disclose the registration.

(10) A registration disclosed other than as an exact match as a result of a search of the records of the Registry using the name of a debtor or serial number as prescribed does not mean that the registration is, by that fact alone, valid.

(11) In order to establish that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that anyone was actually misled by it.

(12) Failure to include a description of any item or kind of collateral in a financing statement does not affect the validity of the registration with respect to the description of other collateral included in the financing statement.

(13) An error in a description of any item or kind of collateral described by serial number in a financing statement does not affect the validity of the registration with respect to the description of other collateral included in the financing statement.

(14) The secured party or person named as secured party in a financing statement shall give to each person named as debtor in the statement, within 30 days after it is registered, a verification statement in accordance with the regulations, except where that person has waived in writing the right to receive it. 1995-96, c. 13, s. 44; 2003, c. 13, s. 5; 2009, c. 26, s. 6.

Taxes for registrations

55 (1) The following taxes are payable for registrations in the Registry:

- (a) to effect a registration where the period of time during which the registration is to be effective is 1 to 25 years:
initial registration fee..... \$26.50;
plus for each year of the period \$9.25 per year;
- (b) to effect a registration where the period of time during which the registration is to be effective is infinity \$623.00;
- (c) to renew a registration where the period of time for which the registration is to be extended is 1 to 25 years..... \$9.25 per year;
- (d) to renew a registration where the period of time for which the registration is to be extended is infinity \$623.00;
- (e) to amend a registration \$12.45;
- (f) to effect a global change of multiple registrations \$623.00.

(2) The taxes provided for in subsection (1) must be charged on completion of the registration.

(3) The Registrar may enter into an agreement with a person establishing an account with the Registry to enable taxes that are payable pursuant to subsection (1) to be charged on a continuing basis against the balance in the person's account. 2004, c. 3, s. 30; 2007, c. 9, s. 34; 2008, c. 2, s. 28; 2009, c. 5, s. 25; 2011, c. 8, s. 19; 2013, c. 3, s. 12; 2015, c. 6, s. 44.

Life of registration and amendment of statements

56 (1) Except as otherwise prescribed, a registration pursuant to this Act is effective for the period of time specified as part of the financing statement by which the registration is effected.

(2) A registration may be renewed by registering a financing change statement at any time before the registration expires and, except as otherwise prescribed, the period of time for which the registration is effective is extended by the renewal period specified as part of the financing change statement.

(3) An amendment to a registration may be effected by registering a financing change statement at any time during the period that the registration is effective and the amendment is effective from the time that the financing change statement is registered to the expiry of the registration being amended.

(4) Notwithstanding that an amendment of a registration is not specifically provided for in this Part, a financing change statement may be registered to amend the registration. 1995-96, c. 13, s. 45.

Registration of transfers

57 (1) Where a secured party with a security interest that is perfected by registration transfers the security interest or a part of it, a financing change statement may be registered to disclose the transfer.

(2) Where a financing change statement is registered pursuant to subsection (1) and an interest in part, but not all, of the collateral is transferred, the financing change statement must include a description of the collateral in which the interest is transferred.

(3) Where a secured party with a security interest that is not perfected by registration transfers the security interest, a financing statement may be registered in which the transferee is disclosed as the secured party.

(4) After registration of a financing change statement disclosing a transfer of a security interest, the transferee is the secured party for the purpose of this Part.

(5) A registration disclosing a transfer of a security interest may be registered before or after the transfer.

(6) Where a security interest has been subordinated by the secured party to the interest of another person, a financing change statement may be registered to disclose the subordination at any time during the period that the registration of the subordinated security interest is effective. 1995-96, c. 13, s. 46.

Removal of data from registration

58 Data in a registration may be removed from the records of the Registry

- (a) when the registration is no longer effective; or
- (b) on the registration of a financing change statement discharging or partially discharging the registration. 1995-96, c. 13, s. 47.

Registration not notice

59 Registration of a financing statement in the Registry by itself does not constitute notice or knowledge to any person of the existence or contents of the financing statement or of the existence of the security interest or the contents of any security agreement to which the registration relates. 1995-96, c. 13, s. 48.

Printed search result

60 (1) A person may search the records of the Registry and obtain a printed search result

- (a) at an office of the Registry; or
- (b) in accordance with an agreement entered into with the Registrar pursuant to subsection 54(2).

(2) A search pursuant to subsection (1) may be conducted according to

- (a) the name of the debtor;

- (b) the serial number of goods of a kind that are prescribed as serial numbered goods; or
- (c) a registration number.

(3) A printed search result that purports to be issued by the Registry is receivable as evidence and is, in the absence of evidence to the contrary, proof of the registration of any financing statement to which the search result relates, including

- (a) the date and time of registration of the financing statement; and
- (b) the order of registration of the financing statement as indicated by the registration number, date and time set out in the printed search result. 1995-96, c. 13, s. 49.

Registration of security interests in fixtures and crops

61 (1) In this Section,

“debtor” includes any person named as a debtor in a notice registered pursuant to this Section;

“secured party” includes any person named as a secured party in a notice registered pursuant to this Section.

(2) A security interest in a fixture under Section 47 and a security interest in a crop under Section 48 may be registered in a registry of deeds by submitting a notice in accordance with the regulations to that registry.

(3) On the submission of a notice pursuant to subsection (2) and on the payment of any prescribed fee, the registrar of deeds shall register it in that office.

(4) On the registration of a notice pursuant to subsection (3), every person dealing with the land to which the notice relates is deemed to have knowledge of the security interest referred to in the notice.

(5) The secured party or person named as secured party in a notice registered pursuant to subsection (3) shall give to each person named as a debtor in the notice, within 30 days after it is registered, a copy of the notice, except where that person has waived in writing the right to receive it.

(6) Where a notice registered pursuant to subsection (3) has not expired, notice of its renewal, amendment or discharge or notice of the transfer or subordination of the security interest to which it relates may be registered by submitting a notice in accordance with the regulations to the registry of deeds in which the notice is registered.

(7) On the submission of a notice pursuant to subsection (6) and on the payment of any prescribed fee, the registrar of the registry of deeds to which the notice is submitted shall register it in that office.

(8) Subsections 54(6), (7), (8), (12) and (14) and Sections 56 and 57 apply with necessary changes to the notices referred to in subsections (2) and (6).

(9) Where a notice registered pursuant to subsection (3) expires or a notice of its discharge is registered pursuant to subsection (7), it is of no effect and the appropriate registrar may cancel registration of the notice and any other notice that relates to the same security interest in the registry of deeds.

(10) The debtor named in a notice registered pursuant to subsection (3) or (7), and any person with a registered interest in the land to which the notice relates, may give a written demand to the secured party if

- (a) all of the obligations under the security agreement to which the notice relates have been performed;
- (b) the secured party has agreed to release part or all of the collateral described in the notice;
- (c) the description of the collateral contained in the notice includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor; or
- (d) no security agreement exists between the secured party and the debtor.

(11) A demand pursuant to subsection (10) may require that the secured party, within 30 days after the demand is given, submit for registration a notice pursuant to subsection (6)

- (a) discharging the registration of the notice, in a case within clause (10)(a) or (d);
- (b) amending or discharging the registration of the notice to reflect the terms of the agreement, in a case within clause (10)(b); or
- (c) amending the collateral description in the notice to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor, in a case within clause (10)(c).

(12) Where a secured party fails to comply with a demand made pursuant to subsection (10) within 30 days after it is given, or fails to give to the person giving the demand an order of the Court confirming that the registration need not be amended or discharged, the person making the demand may submit for registration the notice referred to in subsection (11) and the registrar shall register the notice.

(13) A demand pursuant to subsection (10) may be given in accordance with Section 82 or by registered mail addressed to the address of the secured party as it appears on the most recent notice registered pursuant to subsection (3) or (7).

(14) On application by the secured party, the Court may order that the registration be

- (a) maintained on any condition, and subject to Section 56, for any period of time; or
- (b) discharged or amended.

(15) Subsection (12) does not apply to a registration of a notice of a security interest provided for in a trust indenture if the notice states that the security agreement providing for the security interest is a trust indenture.

(16) In a case within subsection (15), where the secured party fails to comply with a demand made pursuant to subsection (10) within 15 days after it is made, the person making the demand may apply to the Court for an order directing that the registration be amended or discharged.

(17) No fee or expense may be charged by a secured party for compliance with a demand made pursuant to subsection (10) unless the charge was agreed to by the parties before the demand was given. 1995-96, c. 13, s. 50.

Discharge of registration

62 (1) In this Section,

“debtor” includes any person named as a debtor in a registered financing statement;

“secured party” includes any person named as a secured party in a registered financing statement.

(2) Where a registration relates exclusively to a security interest in consumer goods, the secured party shall discharge the registration within 30 days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiry of that 30-day period.

(3) The debtor, or any person with an interest in property that falls within the collateral description included in a registered financing statement, may make a written demand to the secured party if

(a) all of the obligations under the security agreement to which the financing statement relates have been performed;

(b) the secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement;

(c) the collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor; or

(d) no security agreement exists between the secured party and the debtor.

(4) A demand made pursuant to subsection (3) may require that the secured party, within 15 days after the demand is made, register a financing change statement

(a) discharging the registration, in a case within clause (3)(a) or (d);

(b) amending or discharging the registration so as to reflect the terms of the agreement, in a case within clause (3)(b); or

(c) amending the collateral description to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor, in a case within clause (3)(c).

(5) Where a secured party fails to comply with a demand made pursuant to subsection (3) within 15 days after it is made, or fails to give to the person making the demand an order of the Court confirming that the registration need not be amended or discharged, the person making the demand may register the financing change statement referred to in subsection (4).

(6) A demand made pursuant to subsection (3) may be given in accordance with Section 82 or by registered mail addressed to the address of the secured party that was registered as part of the financing statement.

(7) On application by the secured party, the Court may order that the registration be

(a) maintained on any condition, and subject to Section 56, for any period of time; or

(b) discharged or amended.

(8) Subsection (5) does not apply to the registration of a security interest provided for in a trust indenture if the registration discloses that the security agreement providing for the security interest is a trust indenture.

(9) In a case within subsection (8), where the secured party fails to comply with a demand made pursuant to subsection (3) within 15 days after it is made, the person making the demand may apply to the Court for an order directing that the registration be amended or discharged.

(10) No fee or expense may be charged by a secured party for compliance with a demand made pursuant to subsection (3) unless the charge was agreed to by the parties before the demand was given.

(11) Where there is no outstanding secured obligation, and the secured party is not committed to make advances, incur obligations or otherwise give value, a secured party having control of investment property under clause 25(1)(b) of the *Securities Transfer Act* or subclause 2(2)(d)(ii) of this Act shall, within 10 days after receipt of a written demand by the debtor, send to the securities intermediary or futures intermediary with which the security entitlement or futures contract is maintained a written record that releases the securities intermediary or futures intermediary from further obligation to comply with entitlement orders or directions originated by the secured party. 1995-96, c. 13, s. 51; 2010, c. 8, s. 135.

Transfer of collateral

63 (1) Where a security interest is perfected by registration and the debtor transfers all or part of the debtor's interest in the collateral with the prior consent of the secured party, the security interest in the transferred collateral is subordinate to

(a) an interest, other than a security interest in the transferred collateral, arising in the period from the expiry of the 15th day after the transfer to the time the secured party amends the registration

to disclose the name of the transferee of the interest in the collateral as the new debtor or takes possession of the collateral;

(b) a perfected security interest in the transferred collateral that is registered or perfected during the period referred to in clause (a); and

(c) a perfected security interest in the transferred collateral that is registered or perfected after the transfer and before the expiry of the 15th day after the transfer if, before the expiry of the 15 days,

(i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor, or

(ii) the secured party does not take possession of the collateral.

(2) Where a security interest is perfected by registration and the secured party has knowledge of

(a) information required to register a financing change statement disclosing the transferee as the new debtor, where all or part of the debtor's interest in the collateral is transferred; or

(b) the new name of the debtor, if there has been a change in the debtor's name,

the security interest, in the transferred collateral where clause (a) applies, and in the collateral where clause (b) applies, is subordinate to

(c) an interest, other than a security interest, in that collateral, arising in the period from the expiry of the 15th day after the secured party has knowledge of the information referred to in clause (a) or the new name of the debtor to the time the secured party amends the registration to disclose the name of the transferee as the debtor or to disclose the new name of the debtor, or takes possession of the collateral;

(d) a perfected security interest in the collateral that is registered or perfected in the period referred to in clause (c); and

(e) a perfected security interest in the collateral that is registered or perfected after the secured party had knowledge of the information referred to in clause (a) or the new name of the debtor and before the expiry of the 15th day referred to in clause (c), if, before the expiry of the 15 days,

(i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the collateral as the new debtor or to disclose the new name of the debtor, or

(ii) the secured party does not take possession of the collateral.

(3) This Section does not have the effect of subordinating a prior security interest deemed by Section 87 to be registered pursuant to this Act.

(4) Where the debtor's interest in part or all of the collateral is transferred by the debtor without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party acquires knowledge of the name of the most recent transferee of the collateral, the secured party is deemed to have complied with subsection (2) if the secured party registers a financing change statement not later than 15 days after acquiring knowledge of

- (a) the name of the most recent transferee of the collateral;
- and
- (b) the information required to register a financing change statement,

and the secured party need not register financing change statements with respect to any intermediate transferee. 1995-96, c. 13, s. 52.

Actions against Crown

64 (1) A person may bring action against the Crown in right of the Province to recover loss or damage suffered by that person because of an error or omission in the operation of the Registry if the loss or damage resulted from reliance on a printed search result issued by the Registry.

(2) The Crown in right of the Province is not liable directly or vicariously for loss or damage suffered by a person because of

- (a) verbal advice given by the Registrar, a deputy registrar or an officer, employee or agent respecting this Act or the regulations or any other Act that provides for registration in the Registry or the regulations pursuant to that Act or the operation of the Registry unless the person bringing the action proves that the Registrar, deputy registrar, officer, employee or agent was not acting in good faith; or
- (b) the failure of the Registry to effect a registration or to effect a registration correctly.

(3) No action for damages under this Section or Section 65 lies against the Crown in right of the Province unless it is commenced within

- (a) two years after the person entitled to bring the action first had knowledge of the loss or damage; or
- (b) 10 years after the date the printed search result was issued,

whichever is earlier.

(4) Notwithstanding the *Proceedings against the Crown Act*, no action may be brought against the Crown in right of the Province, the Registrar, a deputy registrar or an officer, employee or agent of the Registry for any error or omission of the Registrar, deputy registrar, officer, employee or agent of the Registry in respect of the discharge or purported discharge of any duty or function under this Act or the regulations or any other Act or the regulations pursuant to that Act, except as provided in this Section and in Section 65. 1995-96, c. 13, s. 53.

Action by trustee

65 (1) An action for recovery of damages pursuant to Section 64 brought by a trustee under a trust indenture or by a person with an interest in a trust indenture must be brought on behalf of all persons with interests in the same trust indenture, and the judgment in the action, except to the extent that it provides for a subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the Crown in right of the Province in respect of each error or omission.

(2) In an action brought by a trustee under a trust indenture or by a person with an interest in a trust indenture, proof that each person relied on the search result is not necessary if it is established that the trustee relied on the search result, but no person is entitled to recover damages under this Section if the person knows at the time of acquisition of an interest in the collateral that the search result relied upon by the trustee is incorrect.

(3) In proceedings under this Section, the Court may make any order that it considers appropriate in order to give notice to the persons with an interest in the same trust indenture.

(4) Subject to subsection 66(1), the Court may order payment of all or a portion of the damages awarded to identified persons with interests in the same trust indenture at any time after judgment, and the obligation of the Crown in right of the Province to satisfy the judgment is satisfied to the extent that payment is so made. 1995-96, c. 13, s. 54.

Recovery from Crown

66 (1) The total amount recoverable in a single action pursuant to Section 64, and the total amount recoverable for all claims in a single action pursuant to Section 65, must not exceed the amounts prescribed.

(2) Where damages are paid to a claimant under this Section, the Crown in right of the Province is subrogated to the rights of the claimant against any person indebted to the claimant whose debt to the claimant was the basis of the loss or damage in respect of which the claim was paid.

(3) Where the amount of the damages paid to a claimant is less than the value of the interest the claimant would have had if the error or omission had not occurred, the right of subrogation under subsection (2) does not prejudice the right of the claimant to recover in priority to the Crown in right of the Province an amount equal to the difference between the amount paid to the claimant and the value of the interest the claimant would have had if the error or omission had not occurred.

(4) The Minister of Finance and Treasury Board may, without action being brought, pay out of the General Revenue Fund the amount of a claim against the Crown in right of the Province when furnished with a report of the Registrar setting forth the facts and the opinion of the Registrar that the claim is just and reasonable.

(5) Where an award of damages has been made in favour of a claimant and the time for appeal has expired, or when an appeal is taken and is disposed of, in whole or in part, in favour of the claimant, the Minister of Finance and

Treasury Board shall authorize payment out of the General Revenue Fund, subject to subsection (1), of the amount specified in the judgment in the manner specified in the judgment, including the costs of the claimant if the judgment so provides. 1995-96, c. 13, s. 55.

PART V

DEFAULT RIGHTS AND REMEDIES

Application and interpretation of Part

- 67** (1) This Part does not apply to
- (a) a transaction referred to in subsection 4(2); or
 - (b) a transaction between a pledgor and a pawnbroker.
- (2) In this Section, “secured party” includes a receiver.
- (3) The rights and remedies in this Part are cumulative.
- (4) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in land and by a security interest to which this Act applies, the secured party may
- (a) proceed pursuant to this Part as to the personal property; or
 - (b) proceed as to both the land and the personal property in which case the secured party shall proceed as against the personal property in accordance with the secured party’s rights, remedies and obligations in respect of the land, as if the personal property were land, and this Part, except for subsections 70(3) to (7), does not apply.
- (5) Clause (4)(b) does not limit the rights of a secured party who has a security interest in the personal property taken before or after the security interest referred to in subsection (4).
- (6) A secured party referred to in subsection (5)
- (a) has standing in proceedings taken pursuant to clause (4)(b); and
 - (b) may apply to the Court for the conduct of a judicially supervised sale pursuant to clause (4)(b).
- (7) For the purpose of distributing the proceeds realized from the sale of both land and personal property where the purchase price is not allocated to each separately, the amount that is attributable to the sale of the personal property is that proportion of the total proceeds that the market value of the personal property at the time of the sale bears to the market value of the land and the personal property at the time of the sale.
- (8) A security interest does not merge merely because a secured party has reduced the claim to judgment. 1995-96, c. 13, s. 56.

Rights and remedies of secured party

- 68** (1) In this Section, “secured party” includes a receiver.
- (2) Subject to subsection (4), where the debtor is in default under a security agreement, the secured party has against the debtor only
- (a) the rights and remedies provided in the security agreement;
 - (b) the rights and remedies provided in this Part and Sections 47 to 49; and
 - (c) when in possession or control of the collateral, the rights and remedies provided in Sections 21 and 22.
- (3) Subject to subsection (4), where the debtor is in default under a security agreement, the debtor has against the secured party the rights and remedies provided
- (a) in the security agreement;
 - (b) by any other Act or rule of law not inconsistent with this Act; and
 - (c) in this Part and in Sections 21 and 22.
- (4) Except as provided in Sections 21, 22, 71, 72 and 74, no provision of Section 21 or 22 or Sections 69 to 79, to the extent that the provision gives rights and remedies to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise. 1995-96, c. 13, s. 57; 2010, c. 8, s. 136.

Rights of secured party and debtor

- 69** (1) In this Section, “secured party” includes a receiver.
- (2) Where the debtor is in default under a security agreement, the secured party may
- (a) notify a debtor on an intangible or chattel paper or an obligor on an instrument or security to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification;
 - (b) apply any money taken as collateral or paid to the secured party pursuant to clause (a) to the satisfaction of the obligation secured by the security interest; and
 - (c) subject to Section 71, take control of any proceeds to which the secured party is entitled under Section 36.
- (3) A secured party who enforces a security interest by giving notice in accordance with clause (2)(a) shall notify the debtor within 15 days after doing so.
- (4) A secured party may deduct reasonable collection expenses from
- (a) amounts collected from a debtor on an intangible or chattel paper or from an obligor under an instrument; or

- (b) money held as collateral. 1995-96, c. 13, s. 58.

Rights and duties of secured party on default

70 (1) In this Section,

“dependant” means a person living with a debtor who is wholly or substantially dependent on the debtor for financial support;

“secured party” includes a receiver.

(2) Subject to subsections (3) to (7), Sections 47 to 49, the *Bankruptcy and Insolvency Act* (Canada) and any other Act or rule of law requiring a secured party to give prior notice of the intention to enforce a security interest, if the debtor is in default under a security agreement,

(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral or otherwise enforce the security interest by any method permitted by law;

(b) the secured party may, if the collateral is goods of a kind that cannot be readily moved from the debtor’s premises or of a kind for which adequate storage facilities are not readily available, seize or repossess the collateral without removing it from the debtor’s premises in any manner by which a sheriff acting under an execution order may seize without removal, if the secured party’s interest is perfected by registration pursuant to Section 33;

(c) the secured party may, if clause (b) applies, dispose of the collateral on the debtor’s premises but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal; and

(d) the secured party may, if the collateral is a document of title, proceed either as to the document of title or as to the goods covered by it, and any method of enforcement that is available with respect to the document of title is also available, with necessary changes, with respect to the goods covered by it.

(3) Subject to subsection (7), a debtor may claim the following items of collateral to be exempt from seizure by a secured party:

(a) furniture, household furnishings and appliances used by the debtor or a dependent to a realizable value of \$5,000 or to any greater amount that may be prescribed;

(b) one motor vehicle having a realizable value of not more than \$6,500 at the time the claim for exemption is made, or not more than any greater amount that may be prescribed, if the motor vehicle is required by the debtor in the course of or to retain employment or in the course of and necessary to the debtor’s trade, profession or occupation or for transportation to a place of employment where public transportation facilities are not reasonably available;

(c) medical or health aids necessary to enable the debtor or a dependent to work or to sustain health;

(d) consumer goods in the possession and use of the debtor or a dependent if, on application, the Court determines that

(i) the loss of the consumer goods would cause serious hardship to the debtor or dependent, or

(ii) the costs of seizing and selling the goods would be disproportionate to the value that would be realized.

(4) A dependant may claim an item of collateral within clause (3)(a), (c) or (d) to be exempt from seizure but a claim may not be made by both a debtor and a dependant with respect to an item of the same kind.

(5) Where a claim for exemption is made pursuant to clause (3)(a) or (b) and the realizable value of the collateral for which the claim is made exceeds the maximum amount of the exemption specified in those clauses, the secured party may seize the collateral.

(6) A secured party who seizes collateral in the circumstances referred to in subsection (5) shall dispose of it in accordance with Section 71 and shall pay to the debtor an amount equivalent to the maximum amount of the exemption, whether or not the proceeds of the disposition exceed that maximum amount.

(7) Clauses (3)(a) to (c) and subsections (4) to (6) do not apply in relation to goods that are subject to a purchase money security interest held by the secured party against whom the claim to exemption is made. 1995-96, c. 13, s. 59.

Disposal of collateral by secured party

71 (1) In subsections (2), (7) and (15), “secured party” includes a receiver.

(2) After seizing or repossessing the collateral, a secured party may dispose of it in its existing condition or after repair, processing or preparation for disposition.

(3) The proceeds of the disposition of collateral must be applied consecutively to

(a) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party; and

(b) the satisfaction of the obligations secured by the security interest of the party making the disposition.

(4) Any surplus proceeds of the disposition of collateral must be dealt with in accordance with Section 72.

(5) Collateral may be disposed of

(a) by private sale;

(b) by public sale, including public auction or closed tender;

(c) as a whole or in commercial units or parts; or

(d) if the security agreement so provides, by lease.

(6) Where the security agreement so provides, the payment for the collateral being disposed of may be deferred.

(7) The secured party may delay disposition of the collateral, in whole or in part.

(8) Not less than 20 days before disposition of the collateral, the secured party shall give a notice to

(a) the debtor and any other person who is known by the secured party to be an owner of the collateral;

(b) each creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and

(i) who has registered, before the notice of disposition is given to the debtor, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods, or

(ii) whose security interest was perfected by possession when the secured party seized or repossessed the collateral;

(c) each judgment creditor whose interest in the collateral is subordinate to that of the secured party and who has registered, before the notice of disposition is given to the debtor, a notice of judgment that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods; and

(d) any other person with an interest in the collateral who has given a written notice to the secured party of that person's interest in the collateral before the notice of disposition is given to the debtor.

(9) A notice pursuant to subsection (8) must contain

(a) a description of the collateral;

(b) a statement of the amount required to satisfy the obligation secured by the security interest;

(c) a statement of the sum actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;

(d) a brief description of any default, other than non-payment, including the term of the security agreement, the breach of which constituted the default;

(e) a statement of the amount of the expenses referred to in clause (3)(a) or, where the amount has not been determined, a reasonable estimate;

(f) a statement that any person entitled to receive the notice may redeem the collateral on payment of the amount due under clauses (b) and (e);

(g) a statement that the debtor may reinstate the security agreement on payment of the sum actually in arrears exclusive of the operation of an acceleration clause in the security agreement, the curing of any other default and payment of the amount of the expenses due under clause (3)(a);

(h) a statement that the collateral will be disposed of and the debtor may be liable for a deficiency unless the collateral is redeemed or the security agreement is reinstated; and

(i) a statement of the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted, or the date after which any private disposition of the collateral is to be made.

(10) Where a notice pursuant to subsection (8) is given to a person other than the debtor, it need not contain the information in clauses (9)(c), (g) and (h) and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information in clauses (9)(c) and (g).

(11) Not less than 20 days before the disposition of the collateral, a receiver shall give a notice to

(a) the debtor and, where the debtor is a body corporate, a director of the body corporate;

(b) any other person who is known by the secured party to be an owner of the collateral;

(c) a person referred to in clause (8)(b);

(d) a creditor referred to in clause (8)(c); and

(e) any other person with an interest in the collateral who has given a written notice to the receiver of that person's interest in the collateral before the notice of disposition is given to the debtor.

(12) A notice pursuant to subsection (11) must contain

(a) a description of the collateral;

(b) a statement that the collateral will be disposed of unless it is redeemed; and

(c) a statement of the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted, or the date after which any private disposition of the collateral is to be made.

(13) A notice pursuant to subsection (8) or (11) may be given in accordance with Section 82 or, where it is to be given to a person who has registered a financing statement or a notice of judgment, by registered mail addressed to the address of that person that was registered as part of the financing statement or notice of judgment.

(14) The secured party may purchase the collateral or any part of it but only at public sale, including public auction or closed tender, and only for a price that bears a reasonable relationship to the market value of the collateral.

(15) Where a secured party disposes of collateral to a purchaser for value and in good faith who takes possession of it, the purchaser acquires the collateral, whether or not the requirements of this Section have been complied with by the secured party, free from

- (a) the interest of the debtor;
- (b) an interest subordinate to that of the debtor; and
- (c) an interest subordinate to that of the secured party,

and all obligations secured by the subordinate interests are deemed to be performed for the purpose of Sections 61 and 62.

(16) Subsection (15) does not affect the rights of a person with a security interest that is deemed by Section 87 to be registered pursuant to this Act if the person has not been given a notice pursuant to this Section.

(17) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or who is subrogated to the rights of the secured party has thereafter the rights and duties of the secured party, and the transfer of collateral is not a disposition of the collateral.

(18) Notice under subsection (8) or (11) need not be given if

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if not disposed of immediately after default;
- (c) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (d) the collateral is of a type that is customarily sold on an organized market that handles large volumes of transactions between many different sellers and many different buyers;
- (e) the collateral is money, other than a medium of exchange authorized by the Parliament of Canada as part of the currency of Canada;
- (f) for any other reason, the Court, on an application made without notice to any other person, is satisfied that a notice is not required; or
- (g) after default, every person entitled to receive a notice of disposition under subsection (8) or (11) consents in writing to the immediate disposition of the collateral. 1995-96, c. 13, s. 60.

Surplus and deficiency

- 72 (1) In this Section, “secured party” includes a receiver.

(2) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral pursuant to Section 69, or has disposed of it, the secured party shall account for any surplus and shall, subject to subsection (5) or the agreement otherwise of all interested persons, pay any surplus in the following order to

(a) a creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and

(i) who has registered, before the distribution of the surplus, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods, or

(ii) whose security interest was perfected by possession when the secured party seized or repossessed the collateral;

(b) a judgment creditor whose interest in the collateral is subordinate to that of the secured party and who has registered, before the distribution of the surplus, a notice of judgment that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods;

(c) any other person with an interest in the surplus who has given a written notice to the secured party of that person's interest before the distribution of the surplus; and

(d) the debtor and any other person who is known by the secured party to be an owner of the collateral.

(3) The priority of the claim of any person referred to in subsection (2) is not prejudiced by payment to anyone in accordance with that subsection.

(4) Within 30 days after receipt of a written request for an accounting from a person referred to in subsection (2), the secured party shall give to that person a written accounting of

(a) the amount received from the disposition of any collateral or any amount collected under Section 69;

(b) the manner in which the collateral was disposed of;

(c) the amount of expenses as provided in clause 21(3)(a), subsection 69(4) and clause 71(3)(a);

(d) the distribution of the amount received from the disposition or collection; and

(e) the amount of any surplus.

(5) Where there is a question as to who is entitled to receive payment under subsection (2), the secured party may pay the surplus into the Court and the surplus may not be paid out except on an application pursuant to Section 80 by a person claiming an entitlement to it.

(6) Unless otherwise agreed, or unless otherwise provided in this or any other Act, the debtor is liable to pay any deficiency to the secured party. 1995-96, c. 13, s. 61.

Taking collateral in satisfaction

73 (1) After default, the secured party may propose to take the collateral in satisfaction of the obligation secured by it and shall give notice of the proposal to

(a) the debtor or any other person who is known by the secured party to be an owner of the collateral;

(b) a creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and

(i) who has registered, before the notice of the proposal is given to the debtor, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods, or

(ii) whose security interest was perfected by possession when the secured party seized or repossessed the collateral;

(c) a judgment creditor whose interest in the collateral is subordinate to that of the secured party and who has registered, before the notice of the proposal is given to the debtor, a notice of judgment that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods; and

(d) any other person with an interest in the collateral who has given a written notice to the secured party of that person's interest before the notice of the proposal is given to the debtor.

(2) Where the interest in the collateral of any person entitled to a notice under subsection (1) would be adversely affected by the secured party's proposal, that person may give to the secured party a notice of objection within 15 days after the notice under subsection (1) is given.

(3) Subject to subsections (6) and (7), where a notice of objection is given pursuant to subsection (2), the secured party shall dispose of the collateral pursuant to Section 71.

(4) Where no notice of objection is given pursuant to subsection (2), the secured party

(a) is deemed, on the expiry of the 15-day period or periods referred to in subsection (2), to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it; and

(b) is entitled to hold or dispose of the collateral free from all rights and interests of the debtor, any person entitled to receive a notice under clause (1)(b) or (c) who has been given the notice and

any person entitled to receive a notice under clause (1)(d) whose interest is subordinate to that of the secured party,

and all obligations secured by such interests are deemed to have been performed for the purpose of Sections 61 and 62.

(5) A notice of a proposal pursuant to subsection (1) and a notice of objection pursuant to subsection (2) may be given in accordance with Section 82 or, where the notice is to be given to a person who has registered a financing statement or a notice of judgment, by registered mail addressed to the address of that person that was registered as part of the financing statement or notice of judgment.

(6) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within 10 days after the secured party's request, the secured party may proceed as if no objection had been made by that person.

(7) On application by a secured party, the Court may determine that an objection to the proposal of a secured party is ineffective because

(a) the person made the objection for a purpose other than the protection of an interest in the collateral or in the proceeds of a disposition of the collateral; or

(b) the market value of the collateral is less than the total amount owing to the secured party together with the estimated expenses recoverable under clause 71(3)(a).

(8) Where a secured party disposes of collateral to a purchaser for value and in good faith who takes possession of it, the purchaser acquires the collateral, whether or not the requirements of this Section have been complied with by the secured party, free from

(a) the interest of the debtor and the secured party; and

(b) any interest subordinate to that of the debtor and the secured party,

and all obligations secured by the subordinate interests are deemed to have been performed for the purpose of Sections 61 and 62.

(9) Subsection (8) does not affect the rights of a person with a security interest that is deemed by Section 87 to be registered pursuant to this Act if the person has not been given a notice pursuant to subsection (1). 1995-96, c. 13, s. 62; 2009, c. 26; 2009, c. 26, s. 7.

Redemption

74 (1) In subsection (2), "secured party" includes a receiver.

(2) At any time before the secured party has disposed of the collateral or contracted for its disposition pursuant to Section 71, or before the secured party is deemed to have irrevocably elected to retain the collateral under Section 73, any person entitled to receive a notice of disposition under subsection 71(8) or (11) may redeem the collateral, unless that person has otherwise agreed in writing after default, by tendering fulfillment of the obligations secured by the security interest,

together with a sum equal to the reasonable expenses referred to in clause 71(3)(a) to the extent that such expenses have actually been incurred by the secured party.

(3) Where more than one person elects to redeem pursuant to subsection (2), the priority of their rights to redeem is the same as the priority of their respective interests.

(4) At any time before the secured party has disposed of the collateral or contracted for its disposition pursuant to Section 71, or before the secured party is deemed to have irrevocably elected to retain the collateral pursuant to Section 73, the debtor, other than a guarantor or indemnitor, may reinstate the security agreement, unless the debtor has otherwise agreed in writing after default, by

(a) paying the sum actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;

(b) curing any other default by reason of which the secured party intends to dispose of the collateral; and

(c) paying a sum equal to the reasonable expenses referred to in clause 71(3)(a) to the extent that such expenses have actually been incurred by the secured party.

(5) Unless otherwise agreed, the debtor may not reinstate a security agreement

(a) more than twice, if the security agreement provides for payment in full by the debtor within 12 months after value was given by the secured party; or

(b) more than twice each year, if the security agreement provides for payment by the debtor during a period of time of more than one year after value was given by the secured party. 1995-96, c. 13, s. 63.

Powers of Court

75 (1) In this Section, “secured party” includes a receiver.

(2) On application by a debtor, a creditor of a debtor, a secured party, a sheriff or any person with an interest in the collateral, the Court may

(a) make any order, including a binding declaration of a right and injunctive relief, that is necessary to ensure compliance with this Part or Sections 21 and 47 to 49;

(b) give directions to any person regarding the exercise of rights or the discharge of obligations under this Part or Sections 21 and 47 to 49;

(c) relieve a person from compliance with the requirements of this Part or Sections 21 and 47 to 49;

(d) stay enforcement of rights provided in this Part or Sections 21 and 47 to 49; or

(e) make any order necessary to ensure protection of the collateral or of the interest of any person in the collateral. 1995-96, c. 13, s. 64.

Receiver

76 (1) A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, may provide for the receiver's rights and duties.

(2) A receiver shall

(a) take custody and control of the collateral in accordance with the security agreement or order under which the receiver was appointed, but unless appointed a receiver-manager or unless the Court orders otherwise, shall not carry on the business of the debtor;

(b) as soon as possible and not later than 10 days after becoming a receiver, register a notice in the Registry in accordance with the regulations disclosing the appointment and specifying an office in the Province where the records referred to in clause (d) shall be maintained;

(c) open and maintain, in the receiver's name as receiver, one or more accounts at a bank, credit union or similar financial institution for the deposit of all money coming under the receiver's control as receiver;

(d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor;

(e) unless a different interim period is ordered by the Court, prepare at least once in every six-month period after the date of the appointment financial statements of the receivership administration;

(f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver;

(g) on completion of the receiver's duties as receiver, prepare a final report and final statements of the financial accounts of the receivership administration and send copies immediately to the debtor and, where the debtor is a body corporate, to the directors of the debtor; and

(h) on termination of the receivership, discharge the registration made pursuant to clause (b).

(3) The debtor and, where the debtor is a body corporate, a director of the debtor, or the authorized representative of any of them, may require the receiver, by a demand in writing delivered to the receiver, to make available for inspection the records referred to in clause (2)(d) during regular business hours at the office of the receiver specified in accordance with clause (2)(b).

(4) The debtor and, where the debtor is a body corporate, a director of the debtor, a sheriff, a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of any of them, may require the receiver, by a demand in writing delivered to the receiver, to provide copies of the financial statements referred to in clause (2)(e) or the final report and final statements of the financial accounts referred to in clause (2)(g) or to make them availa-

ble for inspection during regular business hours at the office of the receiver specified in accordance with clause (2)(b).

(5) The receiver shall comply with a demand made pursuant to subsection (3) or (4) within 10 days after receipt of the demand.

(6) The receiver may require the payment in advance of a fee in the amount prescribed for each demand, but the sheriff and the debtor or, where the debtor is a body corporate, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.

(7) On application by an interested person, the Court may

- (a) appoint a receiver;
- (b) remove, replace or discharge a receiver, whether appointed by the Court or in accordance with a security agreement;
- (c) give directions on any matter relating to the duties of a receiver;
- (d) approve the accounts and fix the remuneration of a receiver;
- (e) make an order requiring a receiver or a person by or on behalf of whom the receiver is appointed to make good a default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve the person from any default on such terms as the Court thinks fit, notwithstanding anything contained in a security agreement or other document providing for the appointment of a receiver;
- (f) exercise with respect to receivers appointed in accordance with a security agreement the jurisdiction that it has over receivers appointed by the Court.

(8) The powers referred to in Section 75 and in subsection (7) are in addition to any other powers the Court may exercise in its jurisdiction over receivers.

(9) Unless the Court orders otherwise, a receiver is required to comply with Sections 71 and 72 only when the receiver deals with or disposes of the collateral other than in the course of operating the business of a debtor. 1995-96, c. 13, s. 65.

Limitation period

77 (1) In this Section, "secured party" includes a receiver.

(2) No proceedings to enforce security pursuant to this Part shall be taken by a secured party or a person claiming through the secured party but within 20 years next after the right to take the proceedings first accrued to the secured party, or if the right did not accrue to the secured party, then within 20 years next after the right first accrued to the person claiming through the secured party. 2014, c. 35, s. 29.

PART VI

GENERAL AND MISCELLANEOUS

Application of law and manner of exercising rights

78 (1) The principles of the common law, equity and the law merchant, except in so far as they are inconsistent with this Act, supplement this Act and continue to apply.

(2) All rights and obligations arising under this Act, any other applicable law or a security agreement must be exercised and discharged in good faith and in a commercially reasonable manner.

(3) A person does not act in bad faith merely because that person acts with knowledge of the interest of some other person. 1995-96, c. 13, s. 66.

Damages

79 (1) In this Section, “secured party” includes a receiver.

(2) Where a person fails, without reasonable excuse, to discharge any obligations imposed on that person by this Act, the person to whom the obligation is owed has the right to recover any loss or damage that was reasonably foreseeable as liable to result from the failure.

(3) Where a secured party fails, without reasonable excuse, to comply with obligations in

(a) subsection 54(14) or Section 61 or 62; or

(b) Section 21, 23, 71, 72 or 73 and the collateral is consumer goods,

the debtor, or, in a case of non-compliance with subsection 54(14) or Section 61 or 62, the person named as debtor in a financing statement, is deemed to have suffered damages not less than the amount prescribed.

(4) Where a debtor or other person with an interest in land or collateral causes the registration of a notice referred to in subsection 61(12) or registers a financing statement referred to in subsection 62(5) without authority under those subsections and without reasonable excuse, the secured party referred to in those subsections is deemed to have suffered damages not less than the amount prescribed.

(5) In an action for a deficiency, the debtor may raise as a defence the failure of the secured party to comply with obligations in Section 21, 23, 71 or 72, but non-compliance limits the right to the deficiency only to the extent that it has affected the debtor’s ability to protect the debtor’s interest in the collateral or has made the accurate determination of the deficiency impracticable.

(6) Where a secured party fails to comply with obligations in Section 21, 23, 71 or 72, the onus is on the secured party to show that the failure

(a) did not affect the debtor’s ability to protect the debtor’s interest in the collateral by redemption or reinstatement of the security agreement, or otherwise, if the collateral is consumer goods; and

(b) did not make the accurate determination of the deficiency impracticable.

(7) Except as otherwise provided in this Act, a provision in a security agreement or any other agreement is void if it purports to exclude an obligation or an onus imposed by this Act or purports to limit the liability of or the amount of damages recoverable from a person who has failed to discharge an obligation imposed by this Act. 1995-96, c. 13, s. 67.

Power of Court

80 On application by an interested person, the Court may make an order

- (a) determining questions of priority or entitlement to collateral;
- (b) directing an action to be brought or an issue to be tried;
- (c) extending or abridging, conditionally or otherwise, the time periods for compliance specified in Section 14, subsections 47(18), 49(16) and 54(14) or in Part V. 1995-96, c. 13, s. 68.

Appeal

81 An appeal lies to the Nova Scotia Court of Appeal from an order, judgment or direction of the Court made pursuant to this Act. 1995-96, c. 13, s. 69.

Manner of giving notice or demand

82 (1) A verification statement pursuant to subsection 54(14) and a notice or a demand given pursuant to this Act, other than a demand pursuant to Section 23, may be given to

- (a) an individual, by leaving it with the individual or by sending it by registered mail addressed to
 - (i) the individual by name at the individual's residence, or
 - (ii) where the individual is the sole proprietor of a business, the individual by name at the address of the business;
- (b) a partnership by
 - (i) leaving it with
 - (A) one or more of the partners or, where the partnership is a limited partnership, one or more of the general partners, or
 - (B) any person who has control or management of the partnership business when the notice or demand is delivered, or
 - (ii) sending it by registered mail addressed to
 - (A) the partnership,
 - (B) one or more of the partners or, where the partnership is a limited partnership, one or more of the general partners, or

- (C) any person who has control or management of the partnership business when the notice or demand is given,
- at the address of the partnership business;
- (c) a body corporate, other than a municipality, by
- (i) leaving it with an officer or director of the body corporate or person in charge of any office or place of business of the body corporate, or
- (ii) leaving it, or sending it by registered mail addressed to the body corporate, at its registered or head office,
- (d) a municipality by
- (i) leaving it with the mayor, deputy mayor, warden, deputy warden, clerk or any solicitor of the municipality, or
- (ii) sending it by registered mail addressed to the municipality, or to the mayor, deputy mayor, warden, deputy warden, clerk or any solicitor of the municipality, at the principal office of the municipality;
- (e) an unincorporated association by
- (i) leaving it with an officer of the association or person in charge of any office or premises occupied by the association, or
- (ii) sending it by registered mail addressed to an officer of the association at the address of the officer; and
- (f) the Crown in right of the Province in accordance with the *Proceedings against the Crown Act*.
- (2) A notice or demand sent by registered mail is deemed to be given
- (a) when the addressee actually receives the notice or demand; or
- (b) except when postal services are not functioning, on the expiry of 10 days after the date of registration,

whichever is earlier. 1995-96, c. 13, s. 70.

Conflict with other legislation

83 (1) Where there is a conflict between a provision of this Act and a provision for the protection of consumers in any other Act, the provision of that Act prevails.

(2) Except as otherwise provided in this or any other Act, where there is a conflict between a provision of this Act and a provision of any other Act other than an Act for the protection of consumers, the provision of this Act prevails. 1995-96, c. 13, s. 71.

Regulations

- 84** (1) The Governor in Council may make regulations
- (a) prescribing the kinds of goods the leases of which are not within the scope of this Act;
 - (b) prescribing duties and powers of the Registrar;
 - (c) respecting the Registry and its operation, including the location and hours of the offices of the Registry;
 - (d) respecting any matters relating to fees payable in relation to registrations, searches or any other matter under this Act or the regulations, including the amount of the fees and their manner of payment;
 - (e) respecting the data to be entered in the Registry to effect, renew, discharge or otherwise amend a registration authorized by this Act and any other matters relating to registrations under this Act;
 - (f) respecting the data to be entered in the Registry to effect, renew, discharge or otherwise amend the registration of interests or notices authorized by any other Act to be registered in the Registry and any other matters relating to those interests or notices and their registration, including the application of any provision of this Act or the regulations;
 - (g) respecting the form, content and manner of use of notices under this Act, including notices authorized to be registered in a registry of deeds by Section 61;
 - (h) respecting the description of collateral, including proceeds collateral, that is to be included in financing statements and financing change statements and prescribing the kinds of goods that may be described in part by serial number and the kinds of goods that must be described in part by serial number and the requirements of a description by serial number;
 - (i) respecting the time, place and all other matters relating to searches of the records of the Registry, including the method of disclosure and the form of search results;
 - (j) respecting any matters relating to the form, use and manner of obtaining or sending printed or electronic verification statements or notices of a registration;
 - (k) prescribing abbreviations, expansions or symbols that may be used in search results and in financing statements, financing change statements or other data authorized by this Act or the regulations to be entered in the Registry to effect a registration;
 - (l) respecting the length of time during which a registration is to be effective and the manner in which the period of time is to be specified;
 - (m) respecting re-registrations pursuant to subsection 45(7);
 - (n) prescribing, for the purpose of subsection 66(1), the maximum total amount recoverable in a single action pursuant to

Section 64 and the maximum total amount recoverable for all claims in a single action pursuant to Section 65;

(o) prescribing amounts for the purpose of subsections 23(16), 76(6), 79(3) and (4);

(p) respecting any matter relating to an agreement entered into by the Registrar pursuant to subsection 54(2), including the rights and obligations of the parties to such an agreement;

(q) respecting forms for the purpose of this Act and the regulations;

(r) prescribing any matter required or authorized by this Act to be prescribed;

(s) defining any word or expression used in this Act and not defined in this Act, and redefining, for the purpose of the registration of interests or notices authorized by any other Act to be registered in the Registry, any word or expression defined in this Act;

(t) 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) A regulation made pursuant to clauses (1)(e) to (h) may, where it so provides, be made retroactive in operation to a date not earlier than November 3, 1997.

(3) A regulation made pursuant to subsection (1) may be made in respect of different persons, transactions, classes of persons or classes of transactions.

(4) A power to make a regulation pursuant to this Section includes the power to make regulations in respect of any interests or notices that are authorized by or pursuant to any Act, other than this Act, to be registered in the Registry and the registration of such interests or notices, and this Section must be given effect, with necessary changes, to achieve this purpose.

(5) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*, 1995-96, c. 13, s. 72; 2003, c. 13, s. 6.

PART VII

TRANSITIONAL

Deemed references

85 (1) A reference to the former *Assignment of Book Debts Act*, the former *Bills of Sale Act*, the former *Conditional Sales Act* or the former *Corporations Securities Registration Act* in any enactment other than this Act or a regulation made pursuant to this Act or in any agreement or other writing that relates to a security interest is deemed to be a reference to this Act or to the corresponding provision of this Act.

(2) A reference to a bill of sale, chattel mortgage, conditional sales contract, fixed charge, floating charge, pledge or assignment of book debts or the like, or any derivative of those terms, or to any other agreement or transaction that creates or provides for a security interest in any enactment other than this Act or a regulation made pursuant to this Act, or in any agreement or other writing is deemed to be a reference to the corresponding kind of security agreement under this Act. 1995-96, c. 13, s. 73

Application of Act and applicable law

- 86** (1) In this Section and Section 87,
- “prior law” means the law in force immediately before November 3, 1997, and includes prior registration law;
- “prior registration law” means the *Assignment of Book Debts Act*, the *Bills of Sale Act*, the *Conditional Sales Act* and the *Corporations Securities Registration Act* as they read immediately before November 3, 1997.
- (2) Except as otherwise provided, this Act applies to
- (a) every security agreement entered into on or after November 3, 1997, including an agreement that renews, extends or consolidates an agreement entered into before November 3, 1997;
- (b) every security agreement entered before November 3, 1997, that has not been validly terminated in accordance with prior law before November 3, 1997;
- (c) every prior security interest that is not enforced or otherwise validly terminated in accordance with prior law before November 3, 1997; and
- (d) a receiver appointed before, on or after November 3, 1997.
- (3) Sections 13 and 14 do not apply to a security agreement referred to in clause (2)(b).
- (4) The validity of a prior security interest is governed by prior law.
- (5) The order of priorities
- (a) between prior security interests is determined by prior law, if all the competing security interests arose under security agreements entered into before November 3, 1997; and
- (b) between a prior security interest and the interest of a third party is determined by prior law, if the third party interest arose before November 3, 1997, and the security interest arose under a security agreement entered into before November 3, 1997.
- (6) Subject to subsection (3) and Section 87, the order of priorities

(a) between a security interest arising on or after November 3, 1997, and a prior security interest is determined by this Act; and

(b) between a security interest arising on or after November 3, 1997, and the interest of a third party arising before November 3, 1997, is determined by this Act.

(7) Notwithstanding the coming into force of this Act and the repeal of prior registration law, prior law is deemed to continue in force and registrations made pursuant to prior registration law remain searchable to the extent necessary to give effect to this Section and Section 87. 1995-96, c. 13, s. 74.

Deemed registration and perfection

87 (1) Except as otherwise provided in this Section, a prior security interest that immediately before November 3, 1997, was covered by an unexpired registration pursuant to prior registration law is deemed to have been registered and perfected pursuant to this Act as of the time of registration pursuant to prior registration law.

(2) Subject to this Act, the registered and perfected status of a prior security interest referred to in subsection (1) continues until the expiration of its registration pursuant to prior registration law or November 3, 2000, whichever is earlier, or, where the registration pursuant to prior registration law does not expire, until November 3, 2000, and may be further continued by registration pursuant to this Act if the prior security interest could have been perfected by registration pursuant to this Act had the security interest attached on or after November 3, 1997.

(3) A prior security interest is covered by an unexpired registration pursuant to prior registration law within the meaning of subsections (1) and (2) only if the requirements of prior registration law were complied with and regardless of whether or not the requirements for perfection of the security interest under this Act would have been met had the registration been made pursuant to this Act.

(4) A prior security interest that under prior law had the status of a perfected security interest without registration and without the secured party taking possession of the collateral is deemed to be perfected pursuant to this Act as of the time the security interest was created.

(5) The perfected status of a prior security interest referred to in subsection (4) continues only until November 3, 2000, but may be further continued by perfection pursuant to this Act if the prior security interest could have been perfected pursuant to this Act had the security interest attached on or after November 3, 1997.

(6) For the purpose of subsection (4), a prior security interest had the status of a perfected security interest under prior law if the secured party complied with prior law relating to the creation and continuance of the security interest and the security interest had a status under prior law similar to that of an equivalent security interest created and perfected pursuant to this Act in relation to the interest of other secured parties, buyers, creditors of the debtor or a trustee in bankruptcy of the debtor.

(7) A prior security interest in the form of an assignment of existing or future debts to which the former *Assignment of Book Debts Act* did not apply is deemed to be perfected

(a) for the purpose of subsection 27(1), as of the time the security interest was created; and

(b) for all other purposes under this Act, as of the time notice of the assignment is given to the account debtor.

(8) The perfected status of a prior security interest referred to in subsection (7) continues only until November 3, 2000, but may be continued by perfection pursuant to this Act if the prior security interest could have been perfected pursuant to this Act had the security interest attached on or after November 3, 1997.

(9) A prior security interest that, immediately before November 3, 1997, could have been but was not

(a) registered pursuant to prior registration law; or

(b) perfected pursuant to prior law through possession of the collateral by the secured party,

may be perfected pursuant to this Act if it is a security interest that could have been perfected pursuant to this Act had the security interest attached on or after November 3, 1997.

(10) A prior security interest that under this Act may be perfected by the secured party taking possession of the collateral is deemed to be perfected for the purpose of this Act when possession of the collateral is taken in accordance with Section 31 whether or not possession was taken before, on or after November 3, 1997, and notwithstanding that under prior law the security interest could not have been perfected by taking possession of the collateral.

(11) A prior security interest, that, immediately before November 3, 1997, is covered by an unexpired registration under prior registration law but that has the status of a perfected security interest under this Act without registration or the secured party taking possession of the collateral, remains perfected under this Act.

(12) A prior security interest, that, immediately before November 3, 1997, could have been, but was not, covered by a registration under prior registration law but that, under this Act, may be perfected without registration or the secured party taking possession of the collateral, is perfected under this Act if all the requirements for perfection of a security interest under this Act are met.

(13) Where the perfection of a prior security interest that is deemed registered or perfected under this Section is continued by registration pursuant to this Act,

(a) registration pursuant to this Act continues any registration or perfected status under prior law for the purpose of subsection 86(5); and

(b) the registration supersedes any registration or perfection under prior law. 1995-96, c. 13, s. 75.

Continued perfection

88 (1) The *Securities Transfer Act*, including amendments made to this Act by Sections 115 to 137 of Chapter 8 of the Acts of 2010, does not affect an action or proceeding commenced before September 8, 2010.

(2) No further action is required to continue perfection of a security interest in a security if

(a) the security interest in the security was a perfected security interest immediately before September 8, 2010; and

(b) the action by which the security interest was perfected would suffice to perfect the security interest under this Act.

(3) A security interest in a security remains perfected for a period of four months after September 8, 2010, and continues to be perfected after that four-month period where appropriate action to perfect the security interest under this Act is taken within that period if

(a) the security interest in the security was a perfected security interest immediately before September 8, 2010; and

(b) the action by which the security interest was perfected would not suffice to perfect the security interest under this Act.

(4) A financing statement or financing change statement may be registered under this Act within the four-month period referred to in subsection (3) to continue that perfection, or after that four-month period to perfect the security interest, if

(a) the security interest was a perfected security interest immediately before September 8, 2010; and

(b) the security interest can be perfected by registration under this Act. 2010, c. 8, s. 137.

CHAPTER P-19

**An Act Respecting
the Price of Petroleum Products**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Supervision of Act.....	3
No price change except in accordance with regulations.....	4
Prescribed wholesale prices.....	5
Maximum retail price.....	6
Minimum or maximum mark-up.....	7
Term or condition of no effect.....	8
Inquiries by Minister.....	9
Warrants and searches.....	10
Offence by wholesaler or controlled retailer and penalty.....	11
Offence and penalty.....	12
Acts of officers, agents or employee.....	13
Regulations.....	14

Short title

1 This Act may be cited as the *Petroleum Products Pricing Act*. 2005, c. 11, s. 1.

Interpretation

2 In this Act,

“business day” means a day other than a Saturday or a holiday;

“controlled retailer” means a retailer that owns or operates an establishment for the retail sale of a petroleum product where the establishment is owned, operated or controlled, directly or indirectly, by a wholesaler;

“mark-up” means the difference in price between the wholesale price to the retailer and the retail price to the consumer that a retailer charges for a petroleum product;

“Minister” means the Minister of Service Nova Scotia and, in Sections 9 and 10, includes a person designated by the Minister;

“petroleum product” means

(a) furnace oil, stove oil, propane or any liquid product whether or not distilled from petroleum, of a type used primarily for generating heat; or

(b) gasoline, diesel oil, propane or any liquid product whether or not distilled from petroleum, of a type used primarily in internal combustion engines or in glow-plug ignition system engines;

“prescribed” means prescribed by the regulations;

“price” means the consideration, whether wholly or partly in money or otherwise, payable for a petroleum product and includes any component of the consideration;

“retail price” includes all taxes;

“retailer” means a person who sells or keeps a petroleum product for sale directly to consumers;

“wholesale price” includes all taxes other than the tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada);

“wholesaler” means a person, other than a retailer, who sells or keeps a petroleum product for sale. 2005, c. 11, s. 2; 2014, c. 34, s. 34.

Supervision of Act

3 (1) The Minister has the general supervision and management of this Act and the regulations.

(2) The Minister may delegate the Minister’s powers and duties under Sections 9 and 10 to a person designated by the Minister. 2005, c. 11, s. 3.

No price change except in accordance with regulations

4 No wholesaler or retailer shall change the price of gasoline, diesel oil, furnace oil or any other prescribed petroleum product except in accordance with the regulations. 2005, c. 11, s. 4.

Prescribed wholesale prices

5 (1) Where a fixed wholesale price is prescribed for a petroleum product, no wholesaler shall charge a price for that petroleum product that is greater or less than that fixed wholesale price.

(2) Where a maximum or minimum wholesale price is prescribed for a petroleum product, no wholesaler shall charge a price for that petroleum product that is greater than that maximum wholesale price or less than that minimum wholesale price. 2005, c. 11, s. 5.

Maximum retail price

6 Where a maximum retail price is prescribed for a petroleum product, no retailer shall charge a price for that petroleum product that is greater than that maximum retail price. 2005, c. 11, s. 6.

Minimum or maximum mark-up

7 Where a minimum or maximum mark-up is prescribed for a petroleum product, no retailer shall charge a mark-up for that petroleum product that is less than the minimum mark-up or greater than the maximum mark-up, as the case may be. 2005, c. 11, s. 7.

Term or condition of no effect

8 Any term or condition in a contract that

- (a) permits a wholesaler or retailer to terminate the contract; or
- (b) causes or permits a wholesaler or retailer to reduce, limit or cease to supply a petroleum product or service,

as a result of an enactment that affects the price of a petroleum product, is of no force and effect. 2005, c. 11, s. 8.

Inquiries by Minister

9 (1) Where reasonably necessary to ensure compliance with this Act or the regulations, the Minister may

- (a) at all reasonable times, enter the premises of a wholesaler or retailer to determine whether the price being charged for a petroleum product is in accordance with this Act and the regulations;
- (b) inquire into all matters relating to the sale of a petroleum product;
- (c) require the production of books, records or other documents relating to the sale of a petroleum product and may examine those books, records or other documents or remove them for the purpose of making copies of them.

(2) Every wholesaler or retailer shall keep the books, records or other documents referred to in clause (1)(c) for a period of at least 72 months unless the Minister otherwise determines.

(3) A wholesaler or retailer may produce the books, records or other documents referred to in clause (1)(c) for inspection in a place of business outside of the Province at the expense of that wholesaler or retailer, including reimbursement of the Province for all reasonable expenses incurred in carrying out the inspection. 2005, c. 11, s. 9.

Warrants and searches

10 (1) Where

- (a) the Minister believes, on reasonable grounds, that a person is contravening or has contravened this Act or the regulations; or
- (b) entry onto premises has been refused or denied,

the Minister may apply to a judge of the Provincial Court or a justice of the peace for a warrant under subsection (2).

(2) Where, on an application under subsection (1), a judge of the Provincial Court or a justice of the peace is, by information on oath, satisfied that there are reasonable grounds for believing that this Act or the regulations are being contravened, the judge or justice of the peace may issue a warrant authorizing the Minister to do the things referred to in Section 9.

(3) The owner or person in charge of the premises and every person found therein shall give the Minister all reasonable assistance to enable the

Minister to carry out the Minister's duties and functions under this Section, and shall furnish the Minister with the information that the Minister may reasonably require.

(4) Notwithstanding subsection (1), the Minister may exercise the power of search without a warrant if the conditions for obtaining the warrant exist but, by reason of exigent circumstances, it is not practical to obtain a warrant.

(5) For the purpose of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant will result in the loss or destruction of evidence. 2005, c. 11, s. 10.

Offence by wholesaler or controlled retailer and penalty

11 (1) Every wholesaler or controlled retailer who increases the price of a petroleum product contrary to Section 4 is guilty of an offence and is liable, on summary conviction, to a fine of not more than \$500,000.

(2) Where an offence described in subsection (1) is committed by a person on more than one day or is continued for more than one day, each day on which the offence is committed or continued constitutes a separate offence. 2005, c. 11, s. 11.

Offence and penalty

12 (1) Except as provided by Section 11, every person who contravenes a provision of this Act or the regulations is guilty of an offence and is liable, on summary conviction, to a fine of not more than \$5,000.

(2) Where an offence described in subsection (1) is committed by a person on more than one day or is continued for more than one day, each day on which the offence is committed or continued constitutes a separate offence. 2005, c. 11, s. 12; 2018, c. 43, s. 26.

Acts of officers, agents or employee

13 The act, failure, neglect, omission or refusal of an officer, agent or other person acting for or employed by a wholesaler or a retailer, acting within the scope of that person's employment, is considered to be the act, failure, neglect, omission or refusal of the wholesaler or retailer. 2005, c. 11, s. 13.

Regulations

14 (1) The Governor in Council may make regulations

(a) requiring notice of changes in the price of petroleum products and prescribing or respecting the form and manner of the notice, including the requirement to include justification for an increase in the price of a petroleum product;

(b) respecting the frequency and timing of changes in the price of petroleum products;

- (c) dividing the Province into one or more zones and prescribing
 - (i) a fixed wholesale price or a maximum and minimum wholesale price,
 - (ii) a maximum retail price,
 - (iii) minimum and maximum retail mark-ups,for petroleum products for each zone;
- (d) respecting fees to be charged to wholesalers to cover the costs of administering this Act and the regulations;
- (e) respecting inspections and investigations of wholesalers and retailers;
- (f) prescribing information that a wholesaler or a retailer is required to provide to the Minister;
- (g) establishing or designating a board to administer this Act and the regulations, or any part of this Act and the regulations, and determining the powers and duties of that board;
- (h) appointing a consumer advocate and determining the powers and duties of the advocate;
- (i) prescribing additional penalties for a contravention of this Act or the regulations, including, notwithstanding any other enactment, the suspension or revocation of licences and permits;
- (j) exempting a petroleum product from the application of this Act or the regulations, or any part of the Act or the regulations;
- (k) delegating to any person or board any powers or duties under this Act or the regulations;
- (l) defining any word or expression used in this Act but not defined in this Act;
- (m) further defining any word or expression defined in this Act;
- (n) respecting any other matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) A regulation may apply to all wholesalers or retailers or to all petroleum products or to a class of wholesalers or retailers or to a class of petroleum products and there may be different regulations for different classes of such wholesalers or retailers or of such petroleum products.

(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*, 2005, c. 11, s. 14.

CHAPTER P-20

**An Act Respecting
Petroleum Resources**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Supervision of Act.....	3
Registrar.....	4
Personnel.....	5
Public Service Superannuation Act.....	6
Application of Act.....	7
Withdrawal of lands.....	8
Division of Nova Scotia lands.....	9
Vesting of petroleum.....	10
Authorization required.....	11
Consent to enter upon lands.....	12
Exploration licence.....	13
Exploration agreement.....	14
Production lease.....	15
Exploration licence or coal gas agreement required.....	16
Notice respecting coal gas agreement.....	17
Consent to dispose of coal gas.....	18
Determination of presence of coal gas.....	19
Disposal of petroleum right.....	20
Order.....	21
Deemed term of petroleum right.....	22
Further deemed term of petroleum right.....	23
Consent to enter upon lands.....	24
Expropriation.....	25
Regulations respecting expropriation.....	26
Regulations.....	27
Offence and penalty.....	28
Liability for offence by employee or agent.....	29
Offence by officer or agent of corporation.....	30

Short title

1 This Act may be cited as the *Petroleum Resources Act*. R.S., c. 342, s. 1.

Interpretation

2 In this Act, unless the context otherwise requires,
“coal gas” means methane occurring naturally in coal seams and associated strata and includes methane obtainable by methane extraction;
“Directorate” means the Nova Scotia Petroleum Directorate;
“methane extraction” means any process approved by the Minister by which methane gas is extracted or manufactured from coal;

“Minister” means the member of the Executive Council designated as the Minister for the purpose of this Act;

“petroleum” means, in addition to its ordinary meaning, any mineral oil or relative hydrocarbon and any natural gas, including coal gas, existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“prescribed” means prescribed by the regulations;

“Province” means the Crown in right of the Province;

“right” or “petroleum right” means an exploration licence, an exploration agreement, a production lease or a coal gas agreement granted pursuant to this Act or the regulations, and includes any right arising from an exploration licence, exploration agreement, production lease or coal gas agreement. R.S., c. 342, s. 2; 2000, c. 12, s. 10.

Supervision of Act

3 (1) The Minister has the general management and supervision of this Act and the regulations.

(2) Where any duty, power or authority is imposed or conferred on the Minister by this Act or the regulations, the Minister may delegate such duty, power or authority to whatever person the Minister considers advisable. R.S., c. 342, s. 3.

Registrar

4 (1) The Governor in Council may appoint a person to be Registrar and may determine that person’s remuneration.

(2) The Registrar shall perform such duties as are assigned by the Governor in Council, the Minister and this Act and the regulations.

(3) The Registrar shall have an office at such place as may be determined by the Governor in Council, where the Registrar shall keep such books, official maps and plans for the recording therein of petroleum rights and other documents as may be prescribed, and such books, official maps and plans and such other documents as are not prescribed to be confidential shall be open for inspection by an interested person during office hours on payment of the prescribed fee. R.S., c. 342, s. 4.

Personnel

5 (1) The officers, employees, agents and inspectors required for the purpose of this Act and the regulations must be appointed in accordance with the *Civil Service Act*.

(2) Notwithstanding subsection (1), the Minister, with the approval of the Governor in Council, may engage the services of such professional or technical persons and experts to advise the Minister as the Minister considers necessary for the efficient carrying out of this Act.

(3) The compensation paid to persons engaged pursuant to subsection (2) is as determined by the Governor in Council. R.S., c. 342, s. 5.

Public Service Superannuation Act

6 The Registrar and all officers, employees, agents and inspectors are employees within the meaning of the *Public Service Superannuation Act* and are entitled to all the benefits therein set forth. R.S., c. 342, s. 6.

Application of Act

7 This Act applies to all Nova Scotia lands, which means the land mass of Nova Scotia including Sable Island, and includes the seabed and subsoil off the shore of the land mass of Nova Scotia, the seabed and subsoil of the Continental shelf and slope and the seabed and subsoil seaward from the Continental shelf and slope to the limit of exploitability. R.S., c. 342, s. 7.

Withdrawal of lands

8 (1) The Governor in Council may, by order, for any purposes and under any conditions set out in the order, withdraw from the application of this Act or the regulations, or any part thereof,

- (a) such area of Nova Scotia lands;
- (b) any petroleum or coal gas in specified Nova Scotia

lands,

as specified in the order.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 342, s. 8.

Division of Nova Scotia lands

9 Nova Scotia lands must be divided into units as prescribed. R.S., c. 342, s. 9.

Vesting of petroleum

10 (1) All petroleum located in or under Nova Scotia lands is, and is deemed always to have been, vested in the Province and every grant made by the Crown is to be construed and held to reserve all the petroleum in the lands so granted.

(2) Petroleum rights may be granted pursuant to this Act, and upon their expiry are revested in the Province. R.S., c. 342, s. 10.

Authorization required

11 No person shall explore for, develop or produce petroleum unless authorized by this Act or the regulations. R.S., c. 342, s. 11.

Consent to enter upon lands

12 (1) No holder of a petroleum right may enter upon any Nova Scotia lands, including lands owned by the Province, to explore for or develop petroleum without the consent of the owner or lawful occupier of the surface of such lands.

(2) Where such consent cannot be obtained, the holder may apply to the Minister and the Minister may grant an order for entry upon such terms, including the payment of compensation, as the Minister considers appropriate.

(3) Such order must be made in accordance with the provisions of Section 21. R.S., c. 342, s. 12.

Exploration licence

13 (1) The Minister may grant an exploration licence, upon such terms and conditions as may be prescribed, to any person who applies in the prescribed manner.

(2) The holder of an exploration licence has a non-exclusive right to explore for petroleum in the manner prescribed and specified in the licence.

(3) Every exploration licence is for the term of one year and may be renewed for further periods of one year each at the discretion of the Minister and upon such terms and conditions as may be prescribed. R.S., c. 342, s. 13.

Exploration agreement

14 (1) The Minister may, in such manner as is prescribed, enter into exploration agreements for the exploration for petroleum in specified areas of Nova Scotia lands.

(2) In an exploration agreement the Minister may specify provisions for the use of Nova Scotia labour, goods and services and commitments to encourage Nova Scotia education and training, research and development.

(3) Every exploration agreement is for a term of three years and, subject to the regulations and the terms and conditions of the agreement, shall be renewed for such further periods as are prescribed.

(4) Annual rentals, reporting requirements and all other terms and conditions of exploration agreements are as prescribed or determined by the Minister.

(5) The holder of an exploration agreement has, subject only to the rights of any holder of an exploration licence or coal gas agreement, the exclusive right to explore for petroleum in the agreed area in the manner prescribed and specified in the agreement.

(6) Where no proposal is submitted or accepted in accordance with the regulations, the Minister may, in the manner prescribed, enter into an exploration agreement with any person on such terms and conditions as the Minister may determine. R.S., c. 342, s. 14.

Production lease

15 (1) A holder of an exploration agreement may apply to the Minister for a production lease of all or part of the area held pursuant to the holder's exploration agreement.

(2) The Minister shall, subject to the regulations, grant a production lease if the holder

(a) satisfies the Minister that petroleum can be commercially produced from the land the holder proposes to lease; and

(b) in the manner prescribed, prepares and receives approval for a development program relating to the proposed commercial production.

(3) Every production lease commences on the date on which commercial production begins and is for a term of 10 years.

(4) A production lease may be renewed at the option of the holder for one further term of 10 years if the holder has complied with the terms and conditions of this Act, the regulations and the lease.

(5) Further renewals may be granted by the Minister upon such terms and conditions as may be prescribed.

(6) Every production lease gives the lessee the right to produce petroleum from the leased area and to market that petroleum in the manner prescribed. R.S., c. 342, s. 15.

Exploration licence or coal gas agreement required

16 (1) Notwithstanding the provisions of this or any other Act, no holder of an exploration agreement or production lease, or any other person, may explore for, develop or produce coal gas unless the holder or other person is the holder of an exploration licence or a coal gas agreement.

(2) The Minister may in such manner as is prescribed, receive applications for and enter into coal gas agreements to explore for, develop or produce coal gas on specified Nova Scotia lands, even if any other petroleum right authorized by this Act or any right authorized by any other Act has been granted in respect of those specified lands.

(3) The manner of application, the terms and conditions of any coal gas agreement, coal gas royalties, fees and rentals and all other matters respecting the exploration for, development of and production of coal gas are as prescribed in the regulations. R.S., c. 342, s. 16.

Notice respecting coal gas agreement

17 (1) Before entering into a coal gas agreement in respect of specified lands, the Minister shall notify all holders of rights granted pursuant to this Act or the *Mineral Resources Act* that are held in respect of those specified lands or lands adjacent to those specified lands.

(2) The Minister shall give all such holders of petroleum, mineral and gas storage rights the opportunity to make representations concerning the proposed coal gas agreement.

(3) Upon entering into a coal gas agreement, the Minister may add to, vary or remove any terms or conditions of any such petroleum, mineral or

gas storage right in order to coordinate and maximize public benefit from petroleum and mineral resource development.

(4) Every decision to add to, vary or remove any terms or conditions of any such petroleum, mineral or gas storage right must be made in accordance with the provisions of Section 21. R.S., c. 342, s. 17.

Consent to dispose of coal gas

18 No operator of a coal mine shall dispose of any coal gas without the written approval of the Minister and the Minister may attach such terms and conditions to the Minister's approval, including terms and conditions for the conservation and utilization of coal gas, as are prescribed. R.S., c. 342, s. 18.

Determination of presence of coal gas

19 (1) Any person may apply to the Minister for, or the Minister may, on the Minister's own initiative, give notice for, a hearing to determine whether or not any particular natural gas in, on or under specified lands is coal gas, and such determination must be made in accordance with the provisions of Section 21.

(2) Such hearing may be held at the same time as any hearing respecting a proposed coal gas agreement. R.S., c. 342, s. 19.

Disposal of petroleum right

20 No person shall transfer, assign or otherwise dispose of a petroleum right except in the prescribed manner. R.S., c. 342, s. 20.

Order

21 (1) Except as otherwise provided in this Act, every order made pursuant to this Act or the regulations is final and conclusive.

(2) Before making any order that this Act or the regulations require or authorize to be made in accordance with this Section, the Minister shall give notice in writing to the persons affected of not less than 14 days, or such other period as the Minister considers appropriate in the circumstances, specifying the nature of the order proposed to be made.

(3) Where the Minister cannot in writing conveniently notify every person affected, or cannot identify with certainty the persons affected, the Minister shall give notice in such manner as the Minister considers appropriate in the circumstances.

(4) Within the period specified in the notice given under subsection (2) or (3), any person receiving the notice may, in writing, request a hearing and, on receipt of such request, the Minister shall appoint a time and place for a hearing and give notice thereof of not less than seven days, or such other period as the Minister considers appropriate in the circumstances, to the person who requested the hearing.

(5) Where a hearing is not requested within the period specified in the notice, the order is final and conclusive.

(6) Any person to whom notice is required to be given under subsection (2) or (3) may make representations and introduce documents and witnesses at any hearing held under this Section, and in making any order in respect of which the hearing has been held, the Minister

(a) shall consider any representations made and evidence introduced at the hearing;

(b) may adjourn the hearing as the Minister considers appropriate and may direct such inquiries and reports to be made by such persons as the Minister considers appropriate, and witnesses may be called and examined upon oath;

(c) shall make an order on the merits of the matter as the Minister considers them, and is not bound to follow any previous decisions; and

(d) shall, on request by any such person, publish or make available to that person the reasons for the order. R.S., c. 342, s. 21.

Deemed term of petroleum right

22 It is and is deemed to be a term of every petroleum right that the right is subject to this Act and the regulations as they may be amended from time to time. R.S., c. 342, s. 22.

Further deemed term of petroleum right

23 It is and is deemed to be a term of every petroleum right that the holder of the right acknowledges that the laws of the Province govern all matters relating to the right, and the holder acknowledges and submits to the jurisdiction of the Province. R.S., c. 342, s. 23.

Consent to enter upon lands

24 No holder of a production lease or a coal gas agreement may enter upon or occupy any Nova Scotia lands to produce petroleum without the written consent of the owner or lawful occupier of such lands. R.S., c. 342, s. 24.

Expropriation

25 (1) Where the consent required by Section 24 cannot be obtained, the holder of a production lease or a coal gas agreement may request the Minister to order that the land necessary for the production of petroleum according to the terms of the lease or agreement be vested in the holder.

(2) Where the Minister is satisfied that the land should be vested in the holder, the Minister shall issue an order vesting it in that person.

(3) A vesting order issued by the Minister must be filed at the appropriate registry of deeds and the filing thereof is deemed to be a deposit of expropriation documents pursuant to the *Expropriation Act*.

(4) Upon the filing of a vesting order by the Minister, the holder named in the order is and is deemed to be an expropriating authority within the meaning of the *Expropriation Act*.

(5) The *Expropriation Act* applies with necessary changes to any such expropriation.

(6) Notwithstanding Section 5 of the *Expropriation Act*, wherever the provisions of that Act conflict with the expropriation provisions of this Act, the expropriation provisions of this Act prevail.

(7) The holder of the production lease or coal gas agreement is deemed to be the statutory authority for the purposes of the *Expropriation Act*.

(8) The Minister is deemed to be the approving authority for the purposes of the *Expropriation Act*.

(9) In determining the value of the expropriated land, no value shall be given to any petroleum or mineral, or any right therein, in, upon or under the land. R.S., c. 342, ss. 24, 25.

Regulations respecting expropriation

26 (1) The Governor in Council may make regulations respecting

- (a) a request by a holder of a production lease for expropriation;
- (b) the matters and things necessary to satisfy the Minister that lands required by a holder of a production lease should be vested in the holder of that lease;
- (c) the contents of a vesting order;
- (d) generally, any matter relating to any proposed expropriation of land pursuant to this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 342, s. 26.

Regulations

27 (1) The Governor in Council may make regulations

- (a) respecting the division of Nova Scotia lands into units and official maps showing such division;
- (b) respecting the procedure for applying for exploration licences and renewals and the terms and conditions applicable to exploration licences and renewals;
- (c) respecting the procedures for entering into exploration agreements, the contents of exploration agreements and all other matters in relation to the negotiation and acceptance of exploration agreements;
- (d) respecting the procedures for the preparation, evaluation, acceptance, revision or rejection of development programs, including provisions for public hearings and the matters to be considered in development programs;

- (e) respecting the terms and conditions of petroleum rights;
- (f) respecting the nature and extent of employment of Nova Scotians by holders of petroleum rights and others performing work authorized by a petroleum right;
- (g) respecting the nature and extent of the supply of goods and services by Nova Scotians to holders of petroleum rights and others requiring goods and services pursuant to work or operations authorized by a petroleum right;
- (h) respecting the nature, scope and extent of education, training, research and development projects and programs, and the nature and extent of the financial and other obligations of holders of petroleum rights with respect thereto;
- (i) respecting the nature and amount of royalties payable in respect of produced petroleum;
- (j) respecting the nature and extent of participation by the Province in the production of petroleum;
- (k) respecting the procedure for applications for transfers, assignments or other dispositions of petroleum rights and the terms and conditions upon which the Minister may allow transfers, assignments or other dispositions;
- (l) respecting bonds to be given to the Province, conditioned upon the due performance by any person of any term or condition of any petroleum right or the due carrying out of any undertaking entered into in relation thereto;
- (m) respecting the procedure for application by holders of licences and leases granted pursuant to the former *Petroleum and Natural Gas Act* for exploration agreements and the criteria upon which the applications will be assessed;
- (n) respecting the exploration for, development of and production of coal gas, including the manner of application for and the terms and conditions of coal gas agreements, royalties, fees, rentals and all other matters relating thereto;
- (o) respecting the forms to be used under this Act and the regulations;
- (p) respecting the recording of documents and the terms and conditions under which documents may be inspected by any interested person;
- (q) respecting the delivery to the Minister of information and samples with respect to petroleum and petroleum rights and providing for the confidentiality of such information and samples;
- (r) respecting the assignment of functions, rights and duties under this Act to officers and employees in the Directorate or in any department of the public service;
- (s) respecting the delegation of any duty, power or authority imposed or conferred by this Act or the regulations to the member

of the Executive Council designated as the Minister for the purpose of the *Energy Resources Conservation Act*;

(t) respecting the causes for which petroleum rights may be suspended or cancelled and the procedure relating thereto;

(u) respecting the fees, rentals and other amounts payable to the Province with respect to exploration licences, exploration agreements, development programs, exploration renewals, holding renewals, appraisal renewals, production leases, the recording of documents or any services provided under this Act and the regulations, and the rate of interest to be paid for or on account of any unpaid fees, rentals or other amounts;

(v) respecting the nature and constitution of liens upon the property of the holders of petroleum rights as security for the payment of all fees, rentals, royalties and other amounts payable to the Province pursuant to this Act, to the regulations, to any order made thereunder or to the terms of any petroleum right;

(w) respecting the rate of production of petroleum generally or different rates of production of petroleum for different fields, different leased areas or different types of petroleum;

(x) respecting the marketing of petroleum;

(y) respecting the encouragement of the development of petroleum resources by decreasing the amount otherwise provided for of any rental, royalty or other obligation of a holder of a petroleum right;

(z) respecting contributions by holders of petroleum rights to a compensation fund from which persons who suffer loss as a result of activities undertaken pursuant to petroleum rights may be reimbursed;

(aa) respecting fees and financial security for permits, licences, agreements and leases and other approvals issued pursuant to this Act;

(ab) respecting cost recovery for services provided by the Minister, the Directorate or persons to whom are delegated any duty, power or authority pursuant to subsection 3(2);

(ac) respecting the appointment of inspectors and cost recovery for services provided by inspectors and the inspection of geophysical operations, wells and petroleum facilities;

(ad) respecting geophysical operations;

(ae) respecting the economic, orderly and efficient development of energy resources, including the construction, location and establishment of equipment, buildings, structures, wharves, docks and support facilities related to energy;

(af) respecting the prohibition against drilling wells to explore for, develop or produce petroleum without a permit, licence or approval;

(ag) respecting permits, licences or approvals to drill wells and the terms and conditions of permits, licences and approvals,

including the designation, identification, location, design, equipment, construction, operation, maintenance and abandonment of wells and associated structures;

(ah) respecting the most efficient methods for the production of energy resources, including enhanced recoveries;

(ai) respecting the adoption, incorporation or constituting as regulations, in whole or in part, of any relevant codes, rules or standards, as amended from time to time, prepared and published by the Canadian Standards Association or any similar association, with or without any modification or amendment;

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

(ak) generally for carrying into effect the provisions of this Act.

(2) The Governor in Council may exercise the authority in this Section and in Section 26 either generally or specifically, by location or territory, by class or kind, by reference to an individual or particular petroleum right.

(3) In the absence of regulations, the Governor in Council may authorize the Minister to enter into exploration agreements and production agreements and determine that the particular agreement is a regulation for the purpose of this Act.

(4) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. R.S., c. 342, s. 27; 2000, c. 12, s. 11; 2001, c. 15, s. 11.

Offence and penalty

28 (1) Every person who contravenes or fails to comply with

(a) any provision of this Act or the regulations; or

(b) any final order applicable to the person under this Act,

is guilty of an offence and liable on summary conviction to a penalty not exceeding \$100,000 or imprisonment for a term not exceeding two years.

(2) Where an offence is committed by a person under subsection (1) on more than one day or is continued by the person for more than one day, it is deemed to be a separate offence for each day on which the offence is committed or continued. R.S., c. 342, s. 28.

Liability for offence by employee or agent

29 In any prosecution for an offence under this Act it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the accused's knowledge or consent and that the accused exercised all due diligence to prevent its commission. R.S., c. 342, s. 29.

Offence by officer or agent of corporation

30 Where a corporation has committed an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence whether or not the corporation has been prosecuted. R.S., c. 342, s. 30.

CHAPTER P-21

An Act to Require a Permit for the Removal of Petroleum Resources from Nova Scotia

Table of Contents

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

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Application of Act.....	4
Minister.....	5
Permit.....	6
Application for permit.....	7
Powers of Minister.....	8
Appeal of Ministerial decision.....	9
Terms and conditions of permit.....	10
Transfer and amendment of permit.....	11
Cancellation or suspension of permit.....	12
Ministerial order.....	13
Further powers of Minister.....	14
Application of Utility and Review Board Act.....	15
Inspectors.....	16
Exemption from liability.....	17
Offences.....	18
Penalties, limitation periods and defences.....	19
Board regulations.....	20
Governor in Council regulations.....	21

Short title

1 This Act may be cited as the *Petroleum Resources Removal Permit Act*. 1999, c. 7, s. 1.

Purpose of Act

2 The purpose of this Act is to ensure the efficient and sustainable use of petroleum resources in the Province by requiring a permit to remove petroleum resources from the Province and thereby ensuring available feedstock to support a petrochemical industry in the Province. 1999, c. 7, s. 2.

Interpretation

- 3 (1)** In this Act,
- “Board” means the Nova Scotia Utility and Review Board;
 - “butane” means, in addition to its normal scientific meaning, a mixture mainly of butane that may ordinarily contain trace amounts of propane or condensate;
 - “coal gas” means the methane occurring naturally in coal seams and associated strata;

“condensate” means a mixture mainly of pentanes and heavier hydrocarbons that may be contaminated with sulphur compounds, that is recovered or is recoverable at a well from an underground reservoir and that is gaseous in its virgin reservoir state but is liquid at the conditions under which its volume is measured or estimated;

“ethane” means, in addition to its normal scientific meaning, a mixture mainly of ethane that may ordinarily contain trace amounts of methane or propane;

“gas” means raw gas, including coal gas or any constituent of raw gas or marketable gas, including condensate, propane, butane and ethane;

“marketable gas” means a mixture mainly of methane originating from raw gas, if necessary through the processing of the raw gas for the removal or partial removal of some constituents, that meets specifications for use as a domestic, commercial or industrial fuel or as an industrial raw material;

“methane” means, in addition to its normal scientific meaning, a mixture mainly of methane that may ordinarily contain trace amounts of ethane, nitrogen, helium or carbon dioxide;

“Minister” means the Minister of Natural Resources and Renewables;

“Nova Scotia lands” means Nova Scotia lands as defined in the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*;

“oil” means crude oil before and after it has been subjected to any refining or processing;

“permit” means a petroleum resources removal permit issued pursuant to this Act;

“petroleum resources” means oil and gas;

“propane” means, in addition to its normal scientific meaning, a mixture mainly of propane that may ordinarily contain trace amounts of ethane or butanes;

“Province” includes Nova Scotia lands;

“raw gas” means a mixture containing methane, other paraffinic hydrocarbons, nitrogen, carbon dioxide, hydrogen sulfide, helium and minor impurities, or some of them, that is recovered or is recoverable at a well from an underground reservoir and that is gaseous at the conditions under which its volume is measured or estimated.

(2) Any mixture containing a substantial amount of methane or ethane that is removed from the Province, regardless of the conditions under which it is removed from the Province, is deemed to be gas for the purpose of this Act. 1999, c. 7, s. 3.

Application of Act

4 This Act applies to petroleum resources produced in the Province. 1999, c. 7, s. 4.

Minister

5 (1) The Minister has the general supervision and management of this Act and the regulations.

(2) The Minister may designate a person to perform any of the duties or functions of the Minister under this Act.

(3) The Minister may establish and administer policies, programs, standards, guidelines, objectives, codes of practice, directives and approval processes under this Act. 1999, c. 7, s. 5.

Permit

6 (1) Subject to subsections (2) and (3), no person shall remove from the Province petroleum resources produced within the Province, except in accordance with a petroleum resources removal permit issued pursuant to this Act.

(2) A permit is not required to remove from the Province

- (a) coal gas;
- (b) methane;
- (c) oil; or
- (d) condensates,

unless a regulation is passed requiring a permit for the removal of one or more of the substances referred to in clauses (a) to (d).

(3) A permit is not required to remove small volumes of petroleum resources from the Province, up to limits prescribed by the regulations. 1999, c. 7, s. 6.

Application for permit

7 (1) An application for a permit or for an amendment to a permit must be made to the Minister and must contain the information prescribed by the regulations.

(2) Where a person

- (a) produces or has the right to produce petroleum resources in the Province;
- (b) appears to the Minister, on evidence that the Minister considers sufficient, to have made an arrangement
 - (i) to purchase or otherwise acquire property in petroleum resources in the Province, or
 - (ii) giving that person the exclusive right to dispose of a petroleum resource; or

(c) appears to the Minister, on evidence that the Minister considers sufficient, to have made an arrangement with the owner of petroleum resources produced in the Province to transport the petroleum resource to a place outside the Province,

and the person proposes to remove the petroleum resources, or cause them to be removed from the Province, that person shall apply to the Minister for a permit authorizing the removal of the petroleum resources from the Province.

(3) Subject to the *Freedom of Information and Protection of Privacy Act*, the application and information submitted to the Minister pursuant to this Section must be made available to the public by the Minister. 1999, c. 7, s. 7.

Powers of Minister

8 (1) Subject to subsection (2), upon receipt of an application pursuant to Section 7, the Minister may

- (a) require an applicant to submit any additional information the Minister considers necessary;
- (b) issue a permit to the applicant, subject to such terms and conditions as the Minister prescribes;
- (c) amend a permit previously issued to or held by the applicant, subject to such terms and conditions as the Minister prescribes;
- (d) refuse to issue a permit to the applicant;
- (e) cancel a permit previously issued to or held by the applicant; or
- (f) refer all or part of the application to alternative dispute resolution.

(2) The Minister shall not issue or amend a permit unless it is in the public interest to do so having regard to the purpose of this Act.

(3) Where the Minister is of the opinion that a permit should not be issued or amended because it is not in the public interest, a permit must not be issued and the Minister shall give public notice of the decision together with reasons.

(4) All decisions of the Minister made pursuant to clause (1)(a), (b), (c), (d) or (e) must be made public in the manner prescribed by the regulations. 1999, c. 7, s. 8.

Appeal of Ministerial decision

9 (1) A decision of the Minister pursuant to Section 8 may be appealed to the Board by an applicant within the time period prescribed by the regulations.

(2) The Board shall hear the appeal referred to in subsection (1) and, upon conclusion of the hearing, submit a report and recommendation to the Governor in Council.

(3) Upon receiving the report and recommendation referred to in subsection (2), the Governor in Council shall make the report public and may

- (a) refuse to issue or amend a permit;
- (b) issue or amend a permit, subject to the terms and conditions recommended by the Board;
- (c) issue or amend a permit, subject to such terms and conditions as may be prescribed by the Governor in Council; or
- (d) confirm the Minister's cancellation of the permit.

(4) A decision of the Governor in Council pursuant to subsection (3) must be made in the public interest and the decision, together with reasons, must be made public. 1999, c. 7, s. 9.

Terms and conditions of permit

10 (1) Where a permit is issued or amended, the terms and conditions must include the period for which the permit is operative, but that period must not exceed two years.

(2) Where a permit is issued or amended, the terms and conditions of the permit or amendment may include any or all of the following:

- (a) the point at which the permit holder may remove the petroleum resource from the Province;
- (b) the maximum annual quantities of the petroleum resource that may be removed from the Province during the interval set out in the permit;
- (c) the maximum daily quantities of the petroleum resource that may be removed from the Province;
- (d) the conditions under which the removal of the petroleum resource by the permit holder may be diverted, reduced or interrupted. 1999, c. 7, s. 10.

Transfer and amendment of permit

11 (1) No person shall transfer or assign a permit without the written approval of the Minister.

(2) A permit holder or proposed assignee of a permit may apply to the Minister for an amendment of the permit to show the proposed assignee as the permit holder.

(3) A transfer or assignment of a permit has no effect until the Minister makes the amendment referred to in subsection (2).

(4) The assignee of a permit that has been amended in accordance with this Section is subject to the duties, obligations and liabilities of the original permit holder and any further duties, obligations and liabilities that may be imposed by the Minister, and the assignor is relieved of the duties, obligations and liabilities under the permit. 1999, c. 7, s. 11.

Cancellation or suspension of permit

12 (1) Where the Minister believes on reasonable and probable grounds that a person has contravened or will contravene

- (a) this Act or the regulations; or
- (b) a term or condition of a permit,

the Minister may cancel or suspend the permit.

(2) The Minister shall forthwith on cancellation or suspension of a permit pursuant to subsection (1) give public notice, in writing, together with reasons for the cancellation or suspension to the permit holder.

(3) Where a permit is cancelled or suspended pursuant to subsection (1), the permit holder may, within 30 days of receipt of the notice pursuant to subsection (2), request an inquiry from the Board and the Board shall commence the holding of an inquiry within 10 clear days, exclusive of holidays, after the date of receipt of the request.

(4) At the conclusion of the inquiry referred to in subsection (3), the Board may

- (a) confirm the Minister's decision;
 - (b) order the continued suspension for a specified period;
- or
- (c) reinstate the permit, with or without conditions.

(5) A decision of the Board pursuant to subsection (4) and the reasons for the decision must be made public. 1999, c. 7, s. 12.

Ministerial order

13 (1) Where the Minister believes on reasonable and probable grounds that a person has contravened, or will contravene, any part of this Act or the regulations or any term or condition of any permit, the Minister may, whether or not the person has been charged or convicted in respect of the contravention, issue an order requiring the person to cease the specified activity.

(2) An order pursuant to subsection (1) remains in effect until it is revoked, in writing, by the Minister.

(3) A copy of an order made pursuant to subsection (1) must be served as prescribed by the regulations and must be made public.

(4) Where an order is served on a person to whom it is directed, that person shall comply with the order forthwith or, where a period for compliance is specified in the order, within the time period specified.

(5) Where the person to whom an order is directed does not comply with the order or a part of the order, the Minister may take whatever action the Minister considers necessary to carry out the terms of the order.

(6) An order issued by the Minister pursuant to subsection (1) may be appealed by the person named in the order to the Board within 30 days of

the date of the order and, at the conclusion of an appeal pursuant to this Section, the Board may affirm, rescind or vary the order of the Minister.

(7) The initiation of an appeal pursuant to subsection (6) does not act as a stay of compliance with the order pending the disposition of the appeal. 1999, c. 7, s. 13.

Further powers of Minister

14 The Minister may determine the manner in which petroleum resources are measured, monitored and reported for the requirements of this Act or the regulations. 1999, c. 7, s. 14.

Application of Utility and Review Board Act

15 (1) The *Utility and Review Board Act* and the regulations made pursuant to that Act apply with necessary changes to the matters arising under this Act and the regulations made pursuant to this Act, except where a contrary intention is expressed or necessarily implied in this Act or the regulations.

(2) In a proceeding before the Board, the Board may award such costs as the Board considers appropriate.

(3) A decision or order of the Board made pursuant to this Act or the regulations is final and conclusive and not open to question or review, but the Board may, where the Board considers it advisable to do so, reconsider any decision or order made and may vary or revoke any decision or order made by the Board. 1999, c. 7, s. 15.

Inspectors

16 (1) The Minister may appoint a person to be an inspector for the purpose of this Act.

(2) An inspector, in carrying out duties pursuant to this Act, has and may exercise in any part of the Province all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada).

(3) A permit holder shall forthwith, on request, permit an inspector to carry out an inspection of any place, other than a dwelling place, to which the permit relates.

(4) The owner or occupier of any place in respect of which an inspector is exercising powers or carrying out duties pursuant to this Section shall

(a) give the inspector all reasonable assistance to enable the inspector to exercise those powers and carry out those duties; and

(b) furnish all books, records and financial information relative to the exercising of those powers and the carrying out of those duties that the inspector may reasonably require. 1999, c. 7, s. 16.

Exemption from liability

17 Notwithstanding anything contained in this Act, no action for damages may be commenced or maintained and no cause of action lies against the Minister, a person designated by the Minister pursuant to subsection 5(2), the Board or

any member of the Board or an employee or agent acting under the direction of the Minister or the Board, if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith and, without restricting the generality of the foregoing, no person referred to in this Section is liable for damages caused by a system of inspection or the manner in which inspections are to be performed or the frequency, infrequency or absence of inspections. 1999, c. 7, s. 17.

Offences

18 A person who

(a) removes from the Province any petroleum resource produced in the Province and owned by that person, except pursuant to the authority contained in a permit that is not under suspension;

(b) knowingly removes from the Province any petroleum resource produced in the Province and not owned by that person, except pursuant to the authority of a permit that is not under suspension;

(c) as the owner, or the agent of the owner, of any petroleum resource produced in the Province, enters into or continues any arrangement under which the petroleum resource is removed from the Province otherwise than under the authority of a permit that is not under suspension; or

(d) contravenes

(i) a term or condition of a permit,

(ii) an order or direction of the Board made pursuant to this Act,

(iii) an order of the Minister made pursuant to Section 13, or

(iv) this Act or the regulations,

is guilty of an offence. 1999, c. 7, s. 19.

Penalties, limitation periods and defences

19 (1) A person who is guilty of an offence under this Act or the regulations is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years, or to both.

(2) Where an offence under this Act or the regulations is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed.

(3) Where a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the penalties provided for in this Section.

(4) In a prosecution for an offence under this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified

or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

(5) A prosecution for an offence under this Act or the regulations must be commenced within two years from the date on which the subject-matter of the prosecution arose.

(6) No person shall be convicted of an offence under this Act if the person establishes that the person

(a) exercised all due diligence to prevent the commission of the offence; or

(b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of that person innocent.
1999, c. 7, s. 20.

Board regulations

20 (1) The Board may make regulations respecting

(a) procedures and forms to be used in a proceeding before the Board;

(b) fees pertaining to a proceeding before the Board;

(c) the information to be provided in a proceeding before the Board;

(d) the provision of public notice;

(e) a matter considered necessary or advisable to carry out effectively the duties of the Board under this Act.

(2) The exercise by the Board of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1999, c. 7, s. 21.

Governor in Council regulations

21 (1) The Governor in Council may make regulations

(a) respecting the small volume exemption permitted under subsection 6(3);

(b) exempting from this Act a person who has signed a petrochemical supply agreement with the Province;

(c) for the purpose of subsection 6(2);

(d) respecting the consolidation of applications for a permit;

(e) respecting the information required on an application for a permit or an application for an amendment, transfer or assignment of a permit;

(f) respecting financial or other security to be provided by an applicant for a permit;

(g) respecting a review of applications, fees to be charged and the provision of public notice for the purpose of this Act;

- (h) respecting time periods for processing applications and filing appeals;
- (i) respecting the terms and conditions and time periods for issuing a permit pursuant to this Act;
- (j) respecting measuring, monitoring and reporting requirements under this Act;
- (k) respecting the confidentiality of records, returns and other information furnished pursuant to this Act and the communication of and access to those records, returns and information;
- (l) respecting the service of orders and notices issued pursuant to this Act;
- (m) respecting the appointment, duties and powers of inspectors under this Act;
- (n) respecting orders issued pursuant to Section 13;
- (o) respecting cost recovery for inspectors appointed pursuant to this Act;
- (p) vesting in the Board any authority and powers considered necessary or advisable for the purpose of enabling the Board to conduct and perform its duties pursuant to this Act;
- (q) defining any word or expression used but not defined in this Act;
- (r) considered necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

(3) Any regulations or any substantive amendment to the regulations become law only after the regulations or the amendments, as the case may be, have been subjected to such public review as the Minister considers appropriate.

(4) Within 30 days after the close of the time period for public review, the Minister shall prepare a report with recommendations of comments made during the public review and make the report available to the public. 1999, c. 7, s. 22; 1999 (2nd Sess), c. 14, s. 1; 2003, c. 13, s. 9.

CHAPTER P-22

**An Act Respecting
the Profession of Pharmacy**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Nova Scotia College of Pharmacists	
Continuation of body corporate.....	3
College managed by Council.....	4
Membership of Council.....	5
Councillors.....	6
Quorum.....	7
Absence of quorum of committee members.....	8
General meetings.....	9
Registrar.....	10
Bylaws.....	11
Standards of practice.....	12
Code of ethics.....	13
Registration and Licensing	
Register.....	14
Information.....	15
Issuance of certificates of registration and licenses.....	16
Registration appeal.....	17
Application by person licensed in other jurisdiction.....	18
Certificates of registration.....	19
Licence renewal.....	20
Responsibility on resignation.....	21
Pharmacies	
Operation of pharmacies.....	22
Licensing of pharmacies.....	23
Register of pharmacies.....	24
Accreditation.....	25
Pharmacy manager.....	26
Supervision of pharmacies.....	27
Pharmacy managers and owners.....	28
Responsibility of owner and manager.....	29
Responsibility for compliance with Act and regulations.....	30
Professional Responsibilities	
Practice of pharmacy.....	31
Responsibility of pharmacist.....	32
Practice of pharmacy technician.....	33
Conditions of practice.....	34
Delegation.....	35
Patient records.....	36
Dispensing interchangeable products.....	37
Duty to co-operate.....	38

Professional Accountability

Objects	39
Confidentiality	40
Non-compellability	41
Inspectors and investigators	42
Powers of inspector and investigator	43
Inspections and investigations	44
Powers of Registrar	45
Complaints	46
Processing complaints	47
Investigation Committee	48
Powers of Investigation Committee	49
Further powers of Investigation Committee	50
Reporting possible offences	51
Fitness to Practice Committee	52
Hearing Committee	53
Notice of hearing	54
Settlement proposal	55
Hearing Committee proceedings	56
Hearing Committee powers	57
Appeal	58
Reinstatement Committee	59
Reinstatement Committee powers	60
Committee powers	61
End of suspension	62
Registrar may appoint custodian of patient records	63
Custodian of patient records	64

Unauthorized Practice

Licence required	65
Further prohibitions	66
Onus of proof	67
Certificate as evidence	68
Multiple charges in one information	69
Offences and penalties	70
Injunction	71
Recovery of penalties	72
Liability of owner and manager	73
Certificate as prima facie proof	74

General

Exemption from liability	75
Application of Act to hospital pharmacies	76
Exemption of pharmacies operated by armed forces	77
Act does not prevent incorporation	78
Limitation period	79
Regulations without Governor in Council approval	80
Schedules	81
Regulations with Governor in Council approval	82
Regulations by Governor in Council	83

Short title

1 This Act may be cited as the *Pharmacy Act*. 2011, c. 11, s. 1.

Interpretation

2 In this Act,

“agent”, in relation to a patient, means a person who, with the authorization of a patient, acts for or on behalf of the patient in respect of a prescription or personal health information for the purposes of the patient, and not the purposes of the agent, if the pharmacy is reasonably satisfied that the agent has the authorization of the patient;

“alternative practice” means the authority for a registrant to lawfully carry out services more usually provided by other health professionals;

“assessment for incapacity” means an assessment by a healthcare professional licensed in the Province and with an expertise in assessing incapacity;

“bylaw” means a bylaw of the College;

“certified dispenser” means a person who was duly registered as a certified dispenser before August 1, 1962, and who has been continuously registered as a certified dispenser since that date;

“collaborative practice” means a relationship of a registrant with other regulated health professionals that enables healthcare providers in the relationship to work together to use their separate and shared knowledge and skills to provide optimum patient-centered care in accordance with the standards of practice and guidelines for collaborative practice approved by the College;

“College” means the Nova Scotia College of Pharmacists;

“competence assessment” means a process approved by the Registrar for assessing competencies;

“competencies” means the specific knowledge, skills and judgement required for a registrant to be considered competent in a designated role and practice setting;

“complaint” means a notice in writing alleging professional misconduct, conduct unbecoming, professional incompetence or incapacity or a violation of this Act or the regulations by a registrant;

“compounding” means the pharmaceutical preparation of two or more ingredients, at least one of which is a drug, into a drug product, that is considered to be within the professional practice of pharmacy;

“conduct unbecoming” includes any conduct that is

(a) contrary to the best interests of the public or the profession; or

(b) likely to harm the standing of the practice of pharmacy as a profession or to impair public confidence in the profession of pharmacy;

“continuing competence” means the ongoing ability of a registrant to apply the knowledge, skills and judgement required to practise safely and ethically in a designated role and setting;

“continuing competence program” means a program approved by the Council that focuses on promoting the maintenance and enhancement of the continuing competence of registrants throughout their careers;

“Council” means the Council of the College;

“councillor” means a member of the Council;

“Court” means the Supreme Court of Nova Scotia;

“device” means an article, instrument or apparatus used to

(a) prevent, diagnose, treat or mitigate a disease, disorder or abnormal physical or mental state or a symptom of any of them;

(b) restore, correct or modify organic functions;

(c) diagnose pregnancy; or

(d) administer a drug;

“direction” means instruction and management by a pharmacist of the performance of a task or activity;

“director” includes a director of a corporation, a member of the board of governors, board of management or board of directors of any other body corporate, and includes the chief executive officer or chief administrative officer of a body corporate and the administrator or senior official in charge of any individual premises;

“dispense” means the process of completing a prescription including its release to the patient;

“dispensary” means an area in which prescriptions are prepared and drugs are compounded or dispensed, and includes the area containing active patient records;

“drug” means a substance or combination of substances used, for use, or represented to be for use, in or on the body of a person or animal to

(a) prevent, diagnose, treat or mitigate a disease, disorder or abnormal physical or mental state or a symptom of any of them; or

(b) restore, correct or modify organic functions,

and includes any substance or combination of substances included in a prescription, prescribed by the regulations or incorporated in a schedule under this Act;

“Fitness to Practise Committee” means the Fitness to Practise Committee appointed pursuant to this Act;

“former Act” means Chapter 36 of the Acts of 2001, the *Pharmacy Act*;

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

“hospital pharmacy” means a pharmacy within the care and jurisdiction of a hospital as defined by the *Hospitals Act* that

(a) dispenses drugs to patients in the hospital for treatment and to registered outpatients for administration within the jurisdiction of the hospital, including dispensing drugs in small quantities to a

discharged patient or emergency outpatient to serve the patient until the patient can obtain medication from a community pharmacy and for patients on pass or other short leaves of absence; and

(b) does not dispense drugs to the general public, to hospital staff or to others outside the care and jurisdiction of the hospital;

“incapacity” means that a registrant suffers from a medical, physical, mental or emotional condition, disorder or addiction that renders the registrant unable to practise with reasonable skill or judgement or that may endanger the health or safety of patients;

“inspector” means an inspector appointed pursuant to this Act;

“intern” means a person registered with the College who is participating in a period of practice experience after having obtained a degree in pharmacy but before being registered and licensed to practise pharmacy;

“investigator” means a person designated by the Registrar to conduct, direct or assist in an investigation into a complaint;

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

“legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before any tribunal, board or commission or arbitration, in which evidence is or may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations;

“licensed” means in possession of a valid current licence from the College that is not suspended or revoked;

“licensing sanction” means

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

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

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

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

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

“patient records” include prescription records, medication profiles and patient profiles;

“pharmacist” means a person registered and licensed under this Act as a pharmacist;

“pharmacy” means that part of a place where scheduled drugs are sold by retail, whether by prescription or otherwise, including the dispensary and the professional service area, or another facility authorized by the regu-

lations, and includes a licensed pharmacy, a formerly licensed pharmacy and a pharmacy the licence or accreditation of which is suspended;

“pharmacy technician” means a person registered and licensed under this Act as a pharmacy technician;

“practice of pharmacy” means the services or restricted activities described in this Act provided by a pharmacist or by a registrant under the direction or supervision of a pharmacist pursuant to this Act;

“preceptor” means a person who is responsible for a person’s practice experience in accordance with the regulations;

“prescription” means an authorization, in writing or otherwise, communicated directly to a pharmacist or certified dispenser or other person authorized by the regulations, by a person authorized by law to prescribe drugs or devices, to dispense a specified drug or device for use by a designated individual or animal;

“professional accountability process” means the process of investigating and dealing with alleged professional misconduct, conduct unbecoming, professional incompetence, incapacity and offences against this Act or the regulations by registrants and pharmacy owners;

“professional competence” means the ability to apply the knowledge, skills and judgement required to practise safely and ethically in a designated role and practice setting;

“professional incompetence” means an apparent lack of knowledge, skill, judgement or professional competence in the care of a patient or delivery of services;

“professional misconduct” includes such conduct or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional, including

- (a) a breach of the standards of practice;
- (b) a breach of the code of ethics adopted by the College;
- (c) the provision of unsatisfactory patient care;
- (d) dispensing or selling drugs for an improper purpose;
- (e) jeopardizing the health or safety of patients or the public;
- (f) signing or issuing a certificate or similar document that the person signing or issuing knows or ought to know is false or misleading;
- (g) practising pharmacy while the ability to practise pharmacy is impaired;
- (h) any violation of the provisions of an Act of the Parliament of Canada or a regulation made thereunder or an enactment of the Province that could reasonably be considered to jeopardize the health or safety of any person or the quality of patient care;
- (i) failing to abide by the terms, conditions or limitations of a licence;

- (j) failing to exercise appropriate discretion in respect of the disclosure of confidential information;
- (k) falsifying records;
- (l) inappropriately using professional status for personal gain;
- (m) promoting for personal gain any drug, device, treatment, procedure, product or service that is unnecessary, ineffective or unsafe;
- (n) permitting the premises in which a pharmacy is located to be used for unlawful purposes;
- (o) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading; or
- (p) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact;

“professional service area” means that area of a pharmacy that is located outside and in close proximity to the dispensary where

- (a) patients receive pharmacy services; and
- (b) scheduled drugs may be provided for sale;

“public representative” means a person who is not a registrant who is appointed as a member of the Council or of a committee;

“registered student” means a student in pharmacy who has not graduated and is registered with the College;

“registrant” means a person registered with the College pursuant to this Act or the former Act, and includes a member of the College pursuant to the former Act, and also includes a licensed pharmacist or person who was a licensed pharmacist, a licensed pharmacy technician or person who was formerly a licensed pharmacist, a certified dispenser or person who was formerly a certified dispenser, a registered student or a person who was formerly a registered student, an intern or person who was formerly an intern and any pharmacist, pharmacy technician, certified dispenser, registered student or intern whose registration or licence is suspended;

“Registrar” means the Registrar of the College, and includes a Deputy Registrar;

“regulations” means regulations made by the Council or the Governor in Council pursuant to this Act;

“remedial agreement” means an agreement approved by the Fitness to Practise Committee setting out the terms and conditions to be met by a registrant to address issues of incapacity;

“respondent” means the person or pharmacy owner that is the subject of a complaint or the subject of a hearing;

“scheduled drug” means a drug or device listed in schedules to the regulations;

“sell” includes barter, distribute, supply, offer, expose, give away, advertise or possess for the purpose of selling, whether or not for consideration;

“standards” means the minimal professional practice expectations for any registrant in any setting or role, approved by Council, including any standards of practice and practice policies adopted by the Council, or otherwise inherent in the pharmacy profession;

“statutory committee” means the Investigation Committee, the Fitness to Practise Committee, the Hearing Committee, the Reinstatement Committee or the Registration Appeals Committee;

“supervision” means observation and direction by a person, who is physically present, of the performance of a task or activity;

“witness” includes every person who, in the course of a legal proceeding, is examined for discovery or is cross-examined upon an affidavit made by that person, answers any interrogatories or makes an affidavit as to documents or is called upon to answer any question or produce any document, whether under oath or not, and includes the Registrar, any employee of the College and any member of the Council or a committee of the College. 2011, c. 11, s. 2.

NOVA SCOTIA COLLEGE OF PHARMACISTS

Continuation of body corporate

3 (1) The Nova Scotia College of Pharmacists incorporated by the former Act is continued as a body corporate.

(2) The purpose of the College is to maintain standards of practice and professional accountability in the practice of pharmacy leading to optimal patient care.

(3) The College shall at all times, in the regulation of the practice of pharmacy,

- (a) act to protect the public interest;
- (b) exercise its powers and fulfill its responsibilities in the public interest; and
- (c) govern the practice of pharmacy in the interest of optimal health outcomes.

(4) The registrants of the College are those persons who were members of the College immediately before August 6, 2013, and those persons who become registrants pursuant to this Act.

(5) Subject to this Act, the College has the capacity and the rights, powers and privileges of a natural person.

(6) The College may acquire, lease, charge or dispose of real and personal property. 2011, c. 11, s. 3.

College managed by Council

4 (1) The powers of the College shall be exercised by the Council.

(2) The Council shall manage and conduct the business and affairs of the College.

(3) The Council shall determine the fees for registration, accreditation, reinstatement, licences and applications and the time when they are to be paid, and any fees for late or dishonoured payments or late filings.

(4) No action lies against any member of the Council or any committee appointed by the Council for anything done in good faith pursuant to this Act or the bylaws, regulations, policies or standards adopted pursuant to this Act. 2011, c. 11, s. 4.

Membership of Council

5 The Council consists of

(a) councillors elected pursuant to this Act from among the registrants of the College by the registrants of the College pursuant to the bylaws;

(b) the director of the pharmacy program at Dalhousie University, or a person named by the director, as a non-voting member; and

(c) persons who are not registrants of the College, appointed by the Council, following the process set out in the regulations, equal in number to one third of the number of councillors elected pursuant to clause (a), with any fraction rounded up to the next whole number, but in no case fewer than three. 2011, c. 11, s. 5.

Councillors

6 (1) A councillor serves for two years or until the councillor's successor is elected or appointed, as the case may be.

(2) An elected councillor who ceases to be a registrant ceases to be a councillor.

(3) A councillor who is not a registrant ceases to be a councillor if the councillor becomes a registrant.

(4) Councillors are eligible for re-election and reappointment.

(5) A councillor may resign at any time upon providing the Registrar with a resignation in writing. 2011, c. 11, s. 6.

Quorum

7 (1) A majority of voting councillors is a quorum.

(2) The Council may act even if there is a vacancy. 2011, c. 11, s. 7.

Absence of quorum of committee members

8 Whenever for any reason a quorum of members of any committee is not available for a meeting or hearing, the Council may, for the purpose of the meeting or hearing, appoint to the committee such additional members as are needed for a quorum. 2011, c. 11, s. 8.

General meetings

9 (1) The College may hold such general meetings of the registrants as the Council may determine.

(2) The quorum of a general meeting of the College is 20 registrants. 2011, c. 11, s. 9.

Registrar

10 (1) The Council shall appoint an employee of the College to be the Registrar of the College.

(2) The Registrar may appoint an employee of the College to be the Deputy Registrar who has the powers and duties of the Registrar in the absence or incapacity of the Registrar, or when acting under the direction of the Registrar.

(3) The Registrar is responsible for the administration of the College.

(4) The Registrar shall

(a) carry out the duties set out in this Act and the regulations;

(b) coordinate and direct the preparation of plans and programs to be submitted to the Council;

(c) be responsible for the preparation of the annual budget and its submission to the Council for adoption;

(d) be responsible for the administration of the budget after adoption;

(e) review the drafts of all proposed bylaws, regulations, standards and policies and make recommendations to the Council with respect to them; and

(f) carry out such additional duties and exercise such additional responsibilities as the Council may direct.

(5) The Registrar may

(a) attend all meetings of the Council and any committee of the College and make observations and suggestions on any subject under discussion;

(b) appoint, suspend and remove employees of the College;

(c) delegate any powers of the Registrar to an employee of the College. 2011, c. 11, s. 10.

Bylaws

11 The Council may pass bylaws not inconsistent with this Act respecting

(a) the division of the Province into electoral zones for the purpose of electing councillors;

(b) the number of councillors to be elected from each zone;

- (c) the conduct of elections of councillors;
- (d) the categories of registrants who have full voting privileges;
- (e) rules of order respecting council meetings, including the power to prescribe the terms on which meetings may be held other than in the physical presence of the councillors;
- (f) the structure and powers of committees;
- (g) remuneration and expenses of councillors and members of committees;
- (h) banking and financial affairs of the College. 2011, c. 11, s. 11.

Standards of practice

- 12** (1) The Council may adopt standards for the practice of pharmacy.
- (2) Registrants shall observe the standards in the practice of pharmacy.
- (3) Standards adopted pursuant to this Section are not regulations within the meaning of the *Regulations Act*. 2011, c. 11, s. 12.

Code of ethics

- 13** (1) The Council may adopt a code of ethics for the practice of pharmacy.
- (2) Registrants shall observe the code of ethics in the practice of pharmacy.
- (3) The code of ethics adopted pursuant to this Section is not a regulation within the meaning of the *Regulations Act*. 2011, c. 11, s. 13.

REGISTRATION AND LICENSING

Register

- 14** (1) The Registrar shall keep a register of all persons qualified to practise pharmacy pursuant to this Act.
- (2) No person shall practise pharmacy unless the person has a current licence to practise pharmacy.
- (3) A certificate from the Registrar or Deputy Registrar to the effect that a person has or does not have a current licence to practise pharmacy must be received in evidence in any court as proof of the facts stated, without further proof. 2011, c. 11, s. 14.

Information

- 15** (1) The Registrar shall, on request, and without fee, confirm whether a person is or is not licensed to practise pharmacy pursuant to this Act and whether there are any conditions on the licence.

(2) The Registrar may furnish to any person on request a list of the names and business contact information of those persons who are licensed pursuant to this Act.

(3) The Registrar may, consistent with the purpose and duties of the College, provide a department or agency of the Crown in right of the Province with such personal information concerning registrants as may be required to confirm the validity of prescriptions and dispensing or to protect the security of patient information. 2011, c. 11, s. 15.

Issuance of certificates of registration and licences

16 (1) The Registrar shall issue a certificate of registration and a licence to practise pharmacy to every applicant who meets the requirements to practise pharmacy pursuant to this Act and the regulations.

(2) No licence may be issued unless the applicant has the current capacity, professional competence and character to safely and ethically engage in the practice of pharmacy.

(3) A licence may be issued subject to such conditions as, in the opinion of the Registrar, are necessary for the protection of the public and appropriate patient care.

(4) A licence may be issued subject to any limitations that have been agreed in a settlement proposal or that have been imposed by the Hearing Committee.

(5) The Registrar shall advise an applicant in writing within a reasonable time whether registration or licensing has been granted or withheld and of any conditions that were imposed. 2011, c. 11, s. 16.

Registration appeal

17 Any person may appeal to the Registration Appeals Committee established pursuant to the regulations

(a) the decision of the Registrar to refuse to register or license that person; or

(b) conditions imposed on a licence by the Registrar. 2011, c. 11, s. 17.

Application by person licensed in other jurisdiction

18 A person who has been licensed to practise pharmacy in any other jurisdiction who applies for registration pursuant to this Act shall provide the Registrar with or authorize the Registrar to obtain complete records of complaints, discipline, competency and capacity matters from those other jurisdictions and the person's complete registration record in those jurisdictions. 2011, c. 11, s. 18.

Certificates of registration

19 (1) The Registrar shall provide every person entitled to be registered to practise pharmacy pursuant to this Act with a certificate of registration as set out in the regulations.

(2) A certificate of registration is not a licence to practise pharmacy. 2011, c. 11, s. 19.

Licence renewal

20 (1) Every person who is engaged in the practice of pharmacy shall, in each year, comply with the requirements of the regulations respecting licence renewal.

(2) The licence of a registrant who fails to comply with the requirements of the regulations respecting licence renewal is suspended and, while suspended, the registrant is not entitled to practise pharmacy.

(3) The licence of a registrant whose liability insurance coverage lapses during the licence year is suspended until the Registrar receives proof that the insurance coverage has been reinstated and, while it is suspended, the registrant is not entitled to practise.

(4) The Registrar may, at the expense of the registrant in default, take such steps to bring the suspension to the attention of the public and other affected parties as the Registrar considers necessary in the circumstances.

(5) A licence suspended pursuant to this Section must be renewed if the registrant complies with the requirements of the regulations. 2011, c. 11, s. 20.

Responsibility on resignation

21 A registrant whose application to resign from the register has been accepted by the Registrar continues to be responsible for the consequences of any matter arising before the acceptance of the resignation. 2011, c. 11, s. 21.

PHARMACIES

Operation of pharmacies

22 (1) No person shall operate a pharmacy unless the pharmacy is licensed pursuant to this Act.

(2) No person shall dispense drugs except in a licensed pharmacy, in a hospital pharmacy, or as permitted by another Act or by the regulations. 2011, c. 11, s. 22.

Licensing of pharmacies

23 (1) The Registrar shall issue a pharmacy licence with respect to a pharmacy if

(a) the owner and the manager each certify to the Registrar that the pharmacy complies with the requirements of the regulations and that to the best of their knowledge no registrant employed in the pharmacy lacks the capacity or professional competence to practise pharmacy safely;

(b) the manager of the pharmacy is a licensed pharmacist;

(c) the Registrar is satisfied that the pharmacy complies with the requirements of this Act and the regulations; and

(d) the fees prescribed by the Council are paid.

(2) A decision of the Registrar refusing to license a pharmacy may be appealed to the Registration Appeals Committee in accordance with the regulations.

(3) A pharmacy licence is renewable before the expiry of the current pharmacy licence upon compliance with subsection (1).

(4) Where the fees with respect to a pharmacy licence are not paid as required by the regulations, the pharmacy's licence is suspended until the fees are paid and, while the licence is suspended, the pharmacy shall not operate as a pharmacy.

(5) The Registrar may take such steps at the expense of the pharmacy in default to bring the suspension to the attention of the public and other affected parties as the Registrar considers necessary in the circumstances.

(6) A licence suspended pursuant to this Section must be renewed if the pharmacy complies with subsection (1). 2011, c. 11, s. 23.

Register of pharmacies

24 (1) The Registrar shall keep a register of all licensed pharmacies.

(2) The Registrar shall, on request, and without fee, confirm whether a place where drugs are sold or distributed is or is not a licensed pharmacy.

(3) The Registrar may furnish to any person, on request, a list of licensed pharmacies with addresses and contact information.

(4) A certificate from the Registrar or the Deputy Registrar to the effect that a pharmacy has or does not have a current licence as a pharmacy must be received in evidence in any court as proof of the facts stated, without further proof. 2011, c. 11, s. 24.

Accreditation

25 (1) Accreditation for a pharmacy in the name of the owner must be granted by the Registrar on confirmation that the pharmacy meets the requirements of the regulations.

(2) Accreditation terminates if the ownership of the pharmacy is changed.

(3) Accreditation is not a licence to operate a pharmacy. 2011, c. 11, s. 25.

Pharmacy manager

26 (1) A pharmacy licence must be issued with respect to an accredited pharmacy in the name of the pharmacist who is the manager of the pharmacy.

(2) Where the pharmacist in whose name the licence is issued ceases to be the manager or ceases to be a licensed pharmacist, the pharmacy licence terminates.

(3) A pharmacy may be issued a new pharmacy licence in the name of a new manager upon compliance with this Act and the regulations.

(4) The owner of a pharmacy may designate a pharmacist to act in the absence or disability of the pharmacy manager and shall notify the Registrar that the pharmacist has been so designated. 2011, c. 11, s. 26.

Supervision of pharmacies

27 (1) Every pharmacy must be under the supervision of a pharmacist or certified dispenser when open to provide pharmacy services to the public.

(2) Any part of the premises that may not be separated from the pharmacy by a physical barrier, as specified in the regulations, is part of the pharmacy for the purpose of this Section.

(3) Any part of the premises that may be separated from the pharmacy by a physical barrier, as specified in the regulations, is not part of the pharmacy for the purpose of this Section.

(4) No person who is not a pharmacist or certified dispenser may be in the pharmacy except in accordance with the regulations. 2011, c. 11, s. 27.

Pharmacy managers and owners

28 (1) The manager of every licensed pharmacy shall give the Registrar written notice of the names of the manager of the pharmacy, any pharmacist designated to act in the absence or disability of the manager and of all registrants employed in the pharmacy.

(2) The manager of every licensed pharmacy shall give the Registrar written notice of any changes in the names of registrants employed in the pharmacy.

(3) The manager of a pharmacy shall notify the Registrar in writing before ceasing to manage the pharmacy.

(4) The owner of a pharmacy shall notify the Registrar in writing before ceasing to own the pharmacy.

(5) The owner of a licensed pharmacy who becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors, shall forthwith notify the Registrar in writing.

(6) Where the owner of a licensed pharmacy dies, becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors, the manager of the pharmacy shall forthwith notify the Registrar in writing.

(7) A trustee in bankruptcy, liquidator, assignee or personal representative of a deceased owner shall not operate the pharmacy for the purpose of the

bankruptcy, insolvency, assignment or estate unless accreditation and a pharmacy licence have been obtained. 2011, c. 11, s. 28.

Responsibility of owner and manager

29 Neither an owner nor a pharmacy manager shall permit a registrant who does not have the capacity or professional competence to practise pharmacy to be in the pharmacy. 2011, c. 11, s. 29.

Responsibility for compliance with Act and regulations

30 (1) The pharmacist on duty in a pharmacy, the owner of a pharmacy and the manager of a pharmacy, and every director of a corporation that owns a pharmacy, are responsible for all activity in the pharmacy and for compliance with this Act and the regulations.

(2) Anything that would be an offence against this Act if committed by an individual is an offence by each of the directors severally and by the corporation that owns the pharmacy. 2011, c. 11, s. 30.

PROFESSIONAL RESPONSIBILITIES

Practice of pharmacy

- 31 (1)** The practice of pharmacy promotes
- (a) health, patient safety and the prevention and treatment of diseases, dysfunctions and disorders through drug and non-drug therapy; and
 - (b) public safety and drug security through the supervision and management of drug distribution systems.
- (2)** The primary responsibilities of a registrant are
- (a) to use the registrant's knowledge and skills, in collaboration with patients and other healthcare professionals, to meet the health and drug-related needs of patients to achieve, so far as possible, optimal patient outcomes and patient safety; and
 - (b) to manage drug distribution systems within the practice of pharmacy to maintain the quality and security of drugs for patient and public safety. 2011, c. 11, s. 31.

Responsibility of pharmacist

- 32 (1)** A pharmacist, in the practice of pharmacy, is responsible for
- (a) the interpretation, evaluation and validation of prescriptions;
 - (b) providing information and education respecting drug and non-drug therapy;
 - (c) compounding, preparing and dispensing drugs and devices accurately;
 - (d) taking all reasonable steps to ensure pharmaceutical and therapeutic appropriateness of drug therapy;

- (e) monitoring drug therapy;
- (f) identifying and assessing problems relating to drugs or devices and taking action to prevent or resolve these problems;
- (g) counselling patients respecting drug and non-drug therapy;
- (h) maintaining the security of, and protecting the integrity of, drugs and devices;
- (i) maintaining and preserving records for patients, drugs and devices;
- (j) preserving the confidentiality of patient information;
- (k) overseeing activities in the pharmacy;
- (l) ensuring the appropriate level of supervision and direction for employees of the pharmacy under the pharmacist's authority;
- (m) overseeing the management, operation and control of pharmacies;
- (n) overseeing the sale of drugs and devices;
- (o) complying with, and requiring compliance with, this Act, the regulations and other enactments related to the practice of pharmacy; and
- (p) undertaking such other professional services as are authorized by law.

(2) Subject to any requirements set out in the regulations, a pharmacist who has any additional qualifications set out in the regulations may

- (a) prescribe drugs and treatments;
- (b) order, receive, conduct and interpret tests and services needed to properly manage drug therapy;
- (c) directly administer drug therapy to patients; and
- (d) engage in collaborative or alternative practice.

(3) A pharmacist providing indirect patient care may be engaged in research, education, management, administration, regulation or policy or system development relevant to the practice of pharmacy. 2011, c. 11, s. 32.

Practice of pharmacy technician

33 The practice of a pharmacy technician is that part of the practice of pharmacy specified in the regulations. 2011, c. 11, s. 33.

Conditions of practice

34 (1) A pharmacy technician may practise pharmacy only under the direction of a pharmacist who is present in the pharmacy.

(2) An intern may practise pharmacy only under the direction of a pharmacist who is present in the pharmacy, including in a hospital pharmacy.

(3) A registered student may practise pharmacy only under the supervision of a pharmacist who is present in the pharmacy, including in a hospital pharmacy.

(4) A pharmacy technician, intern or registered student may practise pharmacy only if the technician, intern or student is satisfied that the required direction or supervision is being provided. 2011, c. 11, s. 34.

Delegation

35 (1) A pharmacist may delegate to a pharmacy technician, intern, registered student or other person such duties and responsibilities as are authorized by the regulations, subject to any conditions set out in the regulations.

(2) A pharmacist who delegates is responsible for taking reasonable steps to confirm the competence of the person to whom a duty or responsibility is delegated.

(3) No registrant shall perform any activity or accept any responsibility that the registrant is not licensed to or competent to perform. 2011, c. 11, s. 35.

Patient records

36 (1) A pharmacy shall collect, retain, maintain, correct, protect, use and disclose the information for a complete patient record in the manner and for the purpose specified in this Act and the regulations.

(2) A pharmacy shall not disclose any patient record to any person other than the patient, except as expressly provided in this Act, as consented to or directed by the patient or as required by law.

(3) No employee of a pharmacy shall disclose any patient record to any person except as expressly provided in this Act.

(4) A pharmacy shall disclose patient records to the person who is the subject of the record, to that person's agent or as directed by that person.

(5) A pharmacy shall disclose relevant information from patient records to

(a) another registrant for the purpose of dispensing a drug or device;

(b) a federal or Provincial government payment agency or an insurer that reimburses the cost of prescribed drugs, devices or pharmacy services for the purpose of making a payment;

(c) the Registrar, an inspector, an investigator and any person specifically authorized by the Registrar; and

(d) the regulatory body of a person entitled to write prescriptions, for the purpose of investigating the abuse or misuse of drugs or devices or the inappropriate or fraudulent prescription of drugs or devices, if the other regulatory body provides equivalent information to the College.

(6) A pharmacy may disclose relevant information from patient records to other health professionals, who have a duty of confidentiality, if the disclosure will, in the pharmacist's professional judgement, enhance optimal patient care and patient safety.

(7) Subject to any restrictions imposed by the regulations, a pharmacy may disclose relevant information from patient records for the purpose of scientific research, if the names of patients are not disclosed and the research is approved pursuant to any applicable federal or Provincial legislation.

(8) Any person who receives information from a patient record pursuant to this Section shall not disclose that information to any other person unless it is to be used for the purpose for which it was originally provided. 2011, c. 11, s. 36.

Dispensing interchangeable products

37 (1) Every registrant who dispenses a prescription, may select and dispense an interchangeable pharmaceutical product other than the one prescribed if the interchangeable pharmaceutical product is listed as interchangeable in a formulary of interchangeable drugs approved or issued by the Province or a department or agency of the Province.

(2) Where a drug is prescribed by its common, generic, chemical or proper name, the registrant who dispenses the prescription shall select and dispense a pharmaceutical product listed as interchangeable in a formulary of interchangeable drugs approved or issued by the Province or a department or agency of the Province. 2011, c. 11, s. 37.

Duty to co-operate

38 It is the duty of a registrant to co-operate with any professional accountability investigation, whether or not the registrant is the respondent, to provide any information requested by the Registrar, an investigator, the Investigation Committee, the Hearing Committee or the Reinstatement Committee, and to appear before the Investigation Committee, the Hearing Committee or the Reinstatement Committee when required to do so by the Registrar or any member of the committee. 2011, c. 11, s. 38.

PROFESSIONAL ACCOUNTABILITY

Objects

39 (1) In accordance with the purpose of the College, and in the public interest, the professional accountability process seeks to address complaints of professional misconduct, conduct unbecoming, professional incompetence, incapacity and offences against this Act or the regulations.

(2) No registrant or pharmacy owner shall engage in any acts that constitute professional misconduct, conduct unbecoming, professional incompetence, incapacity or an offence against this Act or the regulations. 2011, c. 11, s. 39.

Confidentiality

40 (1) All complaints received or under investigation, all information gathered in the course of the professional accountability process and all proceedings and decisions of the Investigation Committee, the Fitness to Practise Committee, the Hearing Committee, the Registration Appeals Committee and the Reinstatement Committee that are not open to or available to the public in accordance with this Act or the regulations must be kept confidential by anyone who possesses the information.

(2) Notwithstanding subsection (1), where it is consistent with the purpose of the College,

(a) the Registrar shall, on the recommendation of a statutory committee, disclose any information about possible criminal activity on the part of a registrant that is obtained during an investigation pursuant to this Act to a law enforcement agency;

(b) a statutory committee may authorize the Registrar to release specific information to a specific person, including the regulatory authority of another health professional, if the committee considers it to be in the public interest to do so;

(c) the Registrar may disclose information with respect to a complaint or a matter before the Fitness to Practise Committee to another pharmacy regulatory body if it is relevant and concerns the fitness of the registrant for membership in that other pharmacy regulatory body;

(d) the Registrar shall inform the manager of the pharmacy that employs the registrant, or the owner if the manager is the subject of the complaint, of the fact of and content of any complaint, and of the resolution of the complaint; and

(e) the Registrar may disclose information with respect to a complaint for the purpose of administration of this Act or to comply with the purpose of the College.

(3) Any patient record or patient information disclosed to the College is subject to the same provisions respecting confidentiality and non-disclosure set out in this Act as if the information continued to be held by the registrant or pharmacy.

(4) A decision of the Investigation Committee or the Hearing Committee is not admissible in a civil proceeding other than an appeal or a review pursuant to this Act. 2011, c. 11, s. 40.

Non-compellability

41 (1) A witness in any legal proceeding, whether a party to the proceeding or not, shall not answer any question as to any proceedings of a statutory committee, and shall not produce any report, statement, memorandum, recommendation, document or information prepared for the purpose of the professional accountability process, including any information gathered in the course of an investigation or produced for a statutory committee.

(2) Subsection (1) does not apply to documents or records that have been made available to the public by the College.

(3) Information disclosed pursuant to Section 40 is deemed not to have been made available to the public, and the provisions respecting confidentiality and non-disclosure set out in this Act continue to apply. 2011, c. 11, s. 41.

Inspectors and investigators

42 (1) The Registrar may appoint an inspector.

(2) The Registrar and the Deputy Registrar are inspectors.

(3) The Registrar may appoint an investigator to conduct, direct or assist in the investigation of a complaint. 2011, c. 11, s. 42.

Powers of inspector and investigator

43 (1) An inspector or an investigator may, at any reasonable time, without a court order,

(a) inspect the premises in which, and equipment and materials with which, a person practises pharmacy or carries out duties and procedures delegated by a pharmacist;

(b) inspect the inventory of drugs and devices within a pharmacy;

(c) inspect pharmacy records, including patient records;

(d) inspect the records of a registrant concerning the registrant's practice of pharmacy;

(e) inspect the records of a federal or Provincial government payment agency or an insurer that reimburses the cost of prescribed drugs, devices or other pharmacy services;

(f) observe, inspect or audit the practice of pharmacy or the carrying out of delegated duties and procedures in a pharmacy, including the carrying out of related duties and procedures by or on behalf of a pharmacist;

(g) remove a prescription file, drug, drug container, device, patient record or other record from a pharmacy for the purpose of copying or photographing it if it is impractical to make the copy or take the photograph at the pharmacy;

(h) remove a sample of a drug or other thing from a pharmacy for the purpose of analysing its composition;

(i) remove from a pharmacy

(i) drugs or devices the inspector considers unfit for sale,

(ii) drugs or devices for which the expiry date has passed, or

(iii) anything that in the opinion of the inspector is evidence of professional misconduct, conduct unbecoming,

professional incompetence, incapacity or a violation of this Act or the regulations.

(2) Where a drug or device has been removed under clause (1)(i), it may be disposed of as directed by the Hearing Committee or the Investigation Committee unless the Court has ordered otherwise.

(3) An inspector or an investigator shall provide the manager of the pharmacy with a receipt setting out all items removed from the pharmacy pursuant to subsection (1).

(4) An inspector or an investigator may exercise all of the powers granted by subsection (1) with respect to a hospital pharmacy if the Governor in Council, by regulation, provides that hospital pharmacies are regulated pursuant to this Act. 2011, c. 11, s. 43.

Inspections and investigations

44 (1) Any record required to be kept pursuant to this Act, the regulations or the bylaws is open to inspection at all reasonable times by an inspector or an investigator.

(2) An inspector or an investigator may enter any pharmacy or other shop or place in the performance of duties under this Act at all reasonable times without previous notice.

(3) Where a registrant or pharmacy does not co-operate with, misleads or obstructs an inspector or an investigator, the Registrar may suspend the registration and licence of the registrant or pharmacy until the fault is corrected. 2011, c. 11, s. 44.

Powers of Registrar

- 45 (1) The Registrar may require a registrant or pharmacy to
- (a) submit to an inspection or audit of the practice of the registrant by such qualified persons as the Registrar designates;
 - (b) submit to such examinations as the Registrar directs to determine whether the registrant is competent to practise pharmacy;
 - (c) submit to such examinations as the Registrar directs to determine whether the registrant is incapacitated;
 - (d) produce records and accounts kept with respect to the registrant's practice;
 - (e) submit to an inspection or audit of a pharmacy by such qualified persons as the Registrar directs;
 - (f) produce records and accounts kept with respect to a pharmacy.

(2) Where the registrant or pharmacy fails to comply with subsection (1), the Registrar may suspend or restrict the registration and licence of the registrant or pharmacy until the registrant or pharmacy complies. 2011, c. 11, s. 45.

Complaints

46 (1) A complaint may be initiated by any person, including the Registrar.

(2) A complaint may not be withdrawn by a complainant unless the Registrar or any committee to which the complaint has been referred consents.

(3) A complaint made after August 6, 2013, whether the conduct complained of occurred before or after August 6, 2013, shall be dealt with under this Act but, where the conduct took place before August 6, 2013, whether the conduct merits a penalty, and the penalty if any assessed, shall be determined pursuant to the former Act, as if this Act had not come into force. 2011, c. 11, s. 46, 84.

Processing complaints

47 The conduct, capacity, practice or professional competence of a registrant or pharmacy owner may be subject to the professional accountability process in accordance with the regulations

(a) upon receipt of a written complaint;

(b) upon receipt by the College of information that, in the opinion of the Registrar, calls the conduct, capacity, practice or professional competence of a registrant or pharmacy owner into question; or

(c) when a registrant is subject to a licensing sanction in another jurisdiction. 2011, c. 11, s. 47.

Investigation Committee

48 The Council shall appoint an Investigation Committee, which must include at least one public representative, to consider matters pursuant to this Act and the regulations as set out in the regulations. 2011, c. 11, s. 48.

Powers of Investigation Committee

49 (1) The Investigation Committee, acting in the public interest, with or without hearing a registrant, may direct the Registrar to

(a) suspend a licence to practise pharmacy;

(b) impose restrictions or conditions on a respondent's licence to practise pharmacy;

(c) where a registrant does not hold a current licence, suspend the ability of the registrant to obtain a licence; or

(d) suspend the licence of a pharmacy,

pending, during or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by the Investigation Committee or the Hearing Committee.

(2) The registrant or pharmacy must forthwith be served with a notice in writing, with reasons, of any decision made pursuant to subsection (1).

(3) A registrant or pharmacy that receives written notice pursuant to subsection (2) may request, in writing within 30 days, an opportunity to meet with the Investigation Committee.

(4) Where a request is received pursuant to subsection (3), the Investigation Committee shall

(a) provide an opportunity for the registrant to meet with the Committee as soon as possible after receipt of the written request; and

(b) after meeting with the registrant, confirm, vary or terminate the suspension, restrictions or conditions imposed pursuant to subsection (1).

(5) Where the Investigation Committee issues an interim suspension, conditions or restrictions on a respondent's licence, the Committee shall provide a copy of the decision to the complainant and the respondent and shall determine whether any aspects of the Committee's decision should be provided to other affected individuals, other jurisdictions, any past, present or intended employer of the respondent or the public.

(6) Where the Investigation Committee exercises any of its powers pursuant to subsection (1), the matter must be dealt with as a complaint pursuant to this Act and the regulations.

(7) Where the Investigation Committee exercises any of its powers pursuant to subsection (1) and has not determined that its actions should be terminated at the completion of its investigation and the matter has not been referred to the Fitness to Practise Committee, the matter must be referred to the Hearing Committee and the suspension, conditions or restrictions remain in force with such variations as the Investigation Committee may consider desirable until the decision of the Hearing Committee is rendered. 2011, c. 11, s. 49.

Further powers of Investigation Committee

50 (1) The Investigation 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;

(c) appoint a person to conduct an inspection of a pharmacy.

(2) The Investigation Committee may require the respondent to

(a) participate in a review of the respondent's practice by a qualified person or persons designated by the Committee, and authorize a copy of the review to be given to the Committee;

(b) complete a competence assessment or other assessment or examination the Committee directs to determine whether the respondent is competent to practise, and authorize the assessment or examination report to be given to the Committee;

(c) produce any records or documents kept about the respondent's practice requested by the Committee;

(d) submit to physical or mental examinations by a qualified person or persons designated by the Committee, and authorize the reports from the examinations to be given to the Committee;

(e) respond in writing to any questions forwarded by the Committee;

(f) appear in person before the Committee;

(g) submit representations, explanations and documentation relevant to the complaint,

and, where a respondent fails to comply with a direction of the Committee, the Committee may suspend or restrict the respondent's licence until the suspension or restriction is lifted, superseded or annulled by the Investigation Committee or the Hearing Committee.

(3) The Investigation Committee or an investigator may require the respondent, or any other registrant who may have information relevant to the investigation, to attend before the committee or the investigator to be interviewed.

(4) The Investigation Committee shall

(a) where it does not consider that the evidence that might reasonably be believed could support a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity, or a breach of this Act or the regulations,

(i) dismiss the complaint, or

(ii) counsel the respondent if the Committee determines the respondent could benefit from professional guidance;

(b) where it determines that the registrant has breached the standards of professional ethics or practice in circumstances that do not constitute professional misconduct, conduct unbecoming, professional incompetence or incapacity, caution the respondent;

(c) where it considers that the evidence that might reasonably be believed could support a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity or a breach of this Act or the regulations,

(i) with the respondent's consent, order that the respondent receive a reprimand and that the reprimand be communicated to the respondent, the complainant and any other person the Committee considers appropriate,

(ii) with the respondent's consent, impose conditions or restrictions, or both, on the respondent's licence, or

(iii) refer the matter, in whole or in part, to the Hearing Committee. 2011, c. 11, s. 50.

Reporting possible offences

51 (1) Where a registrant

(a) has been charged with, pleaded guilty to, been convicted or been found to be guilty of any offence in or out of Canada

that is inconsistent with the proper professional behaviour of a registrant, including a conviction under the *Criminal Code* (Canada), the *Food and Drug Act* (Canada), the *Controlled Drug and Substances Act* (Canada) or such other legislation as is set out in the regulations, unless a pardon has been issued;

(b) has been found guilty of a disciplinary finding in another jurisdiction;

(c) has had a licensing sanction imposed by another jurisdiction;

(d) is in breach of a settlement agreement;

(e) is in violation of a limitation on practice imposed pursuant to this Act; or

(f) is the subject of an investigation or disciplinary process in any jurisdiction,

or it is otherwise required pursuant to this Act or the regulations, the Registrar shall immediately refer the matter to the Hearing Committee with a summary of the matter to be addressed, and shall provide the person with a copy of the summary.

(2) The Hearing Committee shall hear such evidence as is offered by the registrant as to why the registrant should not be subject to disciplinary action.

(3) The Hearing Committee shall determine whether disciplinary action should be taken.

(4) Where the Hearing Committee determines that disciplinary action should be taken, it may take any of the actions authorized by this Act.

(5) For the purpose of this Section, a certificate of conviction is conclusive evidence that the person committed the offence stated in the certificate unless it is proved that the conviction has been quashed or set aside.

(6) When a registrant is the subject of any matter set out in subsection (1), the registrant shall immediately report the matter to the Registrar.

(7) A pharmacy manager shall report to the Registrar any matter set out in subsection (1) that, to the manager's knowledge, affects any employee of the pharmacy. 2011, c. 11, s. 51.

Fitness to Practice Committee

52 (1) The Council shall appoint a Fitness to Practise Committee, which must include at least one public representative, to consider cases where registrants may be incapacitated, when consistent with the objectives of the professional accountability process and if it is in the public interest to do so.

(2) Where

(a) a complaint concerns a registrant's incapacity;

(b) the investigation of a complaint raises the question of a registrant's incapacity;

(c) a person raises questions about the possible incapacity of a registrant to the College in the absence of a complaint; or

(d) a registrant self reports incapacity to the College,

the Registrar or the Investigation Committee may, where it is in the public interest to do so, and with the consent of the registrant, refer the matter to the Fitness to Practise Committee in accordance with the regulations.

(3) Where a matter is referred to the Fitness to Practise Committee, the matter must be addressed in accordance with this Act and the regulations.

(4) The Fitness to Practise Committee may refer a matter to the Investigation Committee in accordance with the regulations, in which case the matter is a complaint and must be dealt with as a complaint in accordance with this Act and the regulations. 2011, c. 11, s. 52.

Hearing Committee

53 (1) The Council shall appoint a Hearing Committee, which must include at least one public representative, to hear complaints pursuant to this Act and the regulations as set out in the regulations.

(2) No person on the Hearing Committee may concurrently serve on the Investigation Committee or the Fitness to Practise Committee. 2011, c. 11, s. 53.

Notice of hearing

54 (1) Where the Investigation Committee refers a matter to the Hearing Committee, the Hearing Committee shall fix a date, time and place for holding a hearing.

(2) A notice of hearing, containing such information as is required by the regulations, must be forwarded by the Registrar to the respondent and the complainant at least 30 days before the hearing. 2011, c. 11, s. 54.

Settlement proposal

55 Where the Investigation Committee refers a matter to the Hearing Committee, before the commencement of a hearing by the Hearing Committee, the College and the respondent may enter into a settlement proposal, and the proposal must be dealt with in accordance with the regulations. 2011, c. 11, s. 55.

Hearing Committee proceedings

56 (1) A proceeding held by the Hearing Committee must be conducted in accordance with the regulations.

(2) The Hearing Committee may

(a) determine its own procedure;

(b) issue subpoenas and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Committee considers necessary for the full consideration of the matter;

- (c) order pre-hearing procedures, including pre-hearing conferences that are held in private, and direct the times, dates and places of the hearing for those procedures;
 - (d) order that a hearing, parts of a hearing or pre-hearing conference be conducted using a means of telecommunication that permits the parties and the Committee to communicate simultaneously;
 - (e) administer oaths and solemn affirmations;
 - (f) receive and accept such evidence and information on oath, affidavit or otherwise as the Committee in its discretion sees fit, whether admissible in a court of law or not;
 - (g) prescribe the disclosure obligations of the parties before a hearing;
 - (h) compel, at any stage of a proceeding, any person to provide information or to produce documents or things that may be relevant to the matter before it;
 - (i) adjourn or postpone a proceeding from time to time;
 - (j) amend or permit the amendment of any document filed in connection with the proceeding, including the notice of hearing and particulars of any matter contained therein;
 - (k) make interim orders to affirm, amend or rescind any outstanding order of the Investigation Committee;
 - (l) approve or reject a settlement proposal.
- (3) The parties to a hearing are the College and the member complained of.
- (4) In a proceeding before the Hearing Committee, the parties have the right to
- (a) be represented by legal counsel or another representative;
 - (b) the opportunity to present evidence and make submissions, including the right to cross-examine witnesses; and
 - (c) receive written reasons for a decision within a reasonable time.
- (5) Each party must be given
- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
 - (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
 - (c) in the case of evidence of a witness, the identity of the witness.

(6) Where subsection (5) was not complied with, the Hearing Committee may, in its discretion, allow the introduction of evidence subject to such directions as the committee considers necessary to ensure that no party is prejudiced.

- (7) Upon the request of
- (a) any party to the hearing; or
 - (b) the chair of the Hearing Committee,

the Registrar shall issue a summons to a witness, including a party, for the purpose of procuring the attendance and evidence of the witness before the Committee, and the summons has the same effect as if it had been issued by a prothonotary of the Court.

(8) The Hearing Committee may order the respondent to do any one or more of the following:

- (a) submit to physical or mental examinations by a qualified person or persons designated by the Committee and authorize examination reports to be given to the Committee;
- (b) submit to a review of the respondent's practice by a qualified person or persons designated by the Committee and authorize a copy of the review to be given to the Committee;
- (c) submit to a competence assessment or other assessment or examination the Committee directs to determine whether the respondent is competent to practise pharmacy and authorize the assessment report or examination to be given to the Committee;
- (d) produce any records kept about the respondent's practice that the Committee considers appropriate;
- (e) submit to an inspection or audit of a pharmacy by a qualified person designated by the Committee;
- (f) produce records and accounts kept with respect to a pharmacy,

and, where a respondent fails to comply with a requirement under this subsection, the Committee may suspend the respondent's licence or ability to obtain a licence until the respondent complies.

(9) A respondent shall appear at the hearing.

(10) In the event of non-attendance by the respondent, the Hearing Committee, upon proof that the respondent was served with the notice of the hearing, may proceed with the hearing without further notice to the respondent, render its decision and take such other action as it is authorized to take pursuant to this Act and the regulations.

(11) Where the Hearing Committee has required a respondent 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 provide the respondent with a copy of any report it receives from the designated qualified person.

(12) Where the Hearing Committee has required a pharmacy to submit to an inspection or audit of the pharmacy by a qualified person designated by the Committee, the Committee shall provide the manager of the pharmacy with a copy of any report it receives from the designated qualified person. 2011, c. 11, s. 56.

Hearing Committee powers

57 (1) Where the Hearing Committee finds professional misconduct, conduct unbecoming, professional incompetence or incapacity on the part of a respondent, the Committee may do any one or more of the following in the Committee's disposition of the matter:

(a) revoke the respondent's registration or any licence, or both, held by the respondent and direct the Registrar to remove the respondent's name from the register;

(b) where a registration or licence is revoked, determine whether the registrant is entitled to apply for reinstatement of the licence, or whether the revocation is final;

(c) authorize the respondent to resign from the College or cease to be licensed and direct the Registrar to remove the respondent's name from the register once the respondent has resigned;

(d) suspend the respondent's licence for a specific period of time;

(e) suspend the respondent's ability to apply for a licence for a specified period of time;

(f) suspend the respondent's licence until any conditions the Committee orders are complied with;

(g) impose any restrictions or conditions, or both, on the respondent's licence;

(h) reprimand the respondent and direct that the reprimand be recorded in the records of the College;

(i) direct the respondent to pass a particular course of study or satisfy the Committee or any other committee established under this Act of the respondent's professional competence to practise;

(j) direct the respondent to undergo medical treatment;

(k) direct the respondent to obtain any counselling that the Committee considers appropriate;

(l) direct the respondent to pay a fine in an amount determined by the Committee;

(m) direct the respondent to pay all or part of the costs incurred by the College in the investigation and prosecution of the complaint;

(n) publish or disclose its findings in accordance with this Act and the regulations.

(2) In determining the disposition to be made under subsection (1), the Hearing Committee shall consider any relevant previous professional accounta-

bility decision respecting the respondent, including undertakings and consents whether as part of a settlement agreement or otherwise.

(3) Where a registrant fails to comply with an order of the Hearing Committee to pay a fine or to pay the costs of the College, except according to a payment arrangement approved by the Registrar and with which the registrant is in compliance, the Registrar shall suspend the registrant's licence until the registrant complies.

(4) Where the Hearing Committee determines that a registrant whose licence has been revoked may apply for reinstatement, the registrant may apply for reinstatement at any time after five years from the date of the Committee's decision. 2011, c. 11, s. 57.

Appeal

58 (1) A party 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 other party not later than 30 days after service of the decision of the Hearing Committee.

(3) The record on appeal from the findings of the Hearing Committee consists of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Committee certified by the Chair of the Committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply with all necessary changes to appeals to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the Hearing Committee takes effect immediately, unless the Court of Appeal grants a stay of its order. 2011, c. 11, s. 58.

Reinstatement Committee

59 (1) The Council shall appoint a Reinstatement Committee, which must include at least one public representative, to hear applications from former registrants showing cause why the former registrant should be reinstated.

(2) The Reinstatement Committee has all of the powers of the Hearing Committee.

(3) The Reinstatement Committee shall, in the circumstances set out in this Act and the regulations, review applications for reinstatement of a licence and perform such other duties as are set out in this Act and the regulations.

(4) Applications for reinstatement must proceed in accordance with the regulations. 2011, c. 11, s. 59.

Reinstatement Committee powers

60 (1) Where a registrant's licence has been reinstated, the Reinstatement Committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public.

(2) Where the Reinstatement Committee accepts a reinstatement application, the Committee may impose any restrictions and conditions it considers appropriate relating to the reinstatement of the applicant, and the applicant must satisfy all criteria required for a licence.

(3) An applicant for reinstatement is responsible for all of the applicant's own expenses incurred in the reinstatement application and proceeding, and is also responsible for all of the costs incurred by the College in the reinstatement application, whether the application is accepted, rejected or withdrawn.

(4) In a proceeding before the Reinstatement Committee, a registrant has the right to

- (a) be represented by legal counsel or another representative at the registrant's expense; and
- (b) a reasonable opportunity to present a response and make submissions.

(5) Where a registrant fails to pay the costs of the College, except according to a payment arrangement approved by the Registrar and with which the registrant is in compliance, the Registrar shall suspend the registrant's licence until the registrant complies. 2011, c. 11, s. 60.

Committee powers

61 A statutory committee

- (a) has the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*;
- (b) has the powers conferred by this Act and the regulations; and
- (c) subject to this Act and the regulations, sets its own procedure for meetings and hearings. 2011, c. 11, s. 61.

End of suspension

62 Where

- (a) the period of suspension of a registrant has expired;
- (b) the conditions imposed on the registrant have been satisfied; or
- (c) the restrictions imposed on the registrant have been removed,

the Registrar shall restore the licence to practise to the registrant in the form it existed before the imposition of the suspension, conditions or restrictions, if the registrant otherwise meets the criteria for the issuing of a licence or, where the licence has expired, the renewal of licence. 2011, c. 11, s. 62.

Registrar may appoint custodian of patient records

- 63** (1) Where a pharmacy
- (a) is closed;
 - (b) is operating without the supervision of a licensed pharmacist;
 - (c) ceases to have a licensed pharmacist as manager;
 - (d) makes an assignment in bankruptcy or for the benefit of creditors; or
 - (e) is struck off the register or is the subject of suspension of licence,

and adequate provision has not been made for patient records, the Registrar may appoint a custodian who is a licensed pharmacist to take such steps as may be necessary to preserve patient records and facilitate the transfer of prescriptions.

(2) The custodian appointed pursuant to this Section may enter the pharmacy and take all such steps as the custodian considers necessary for the protection of the public.

(3) The custodian shall keep and protect all patient records taken into custody and provide copies of the patient records, as may be appropriate, to the representatives of the patients, to the patients themselves or as directed by the patients, unless there are reasonable grounds to believe it would not be in the best interest of a patient to make that information available.

(4) The Council may authorize the custodian to employ professional assistance to carry out the custodian's duties, give directions to the custodian as to the disposition of patient records, make provision for the remuneration, disbursements and indemnification of the custodian and make provision for the discharge of the custodian either before or after completion of the responsibilities imposed upon the custodian.

(5) The owner or manager of a pharmacy in respect of which an order has been made pursuant to this Section may, after giving notice to the Council and to the custodian, apply to the Council to vary or set aside the order and to direct the custodian to place all or part of the patient records back into the possession of the pharmacy upon such terms as may be just.

(6) The owner or manager of a pharmacy in respect of which an order has been made pursuant to this Section may appeal any decision of the Council pursuant to subsection (5) to the Court, and the Court may make any decision or order that the Council could have made.

(7) This Section applies to a pharmacy whether or not it has a current licence. 2011, c. 11, s. 63.

Custodian of patient records

64 (1) A custodian shall give notice to patients, physicians and the general public that the custodian has possession of the patient records of a pharmacy.

(2) The notice required by subsection (1) must be given by newspaper advertisements and notices affixed to the pharmacy premises unless the Council directs that additional notice be given.

(3) The custodian shall report to the Council concerning the notices provided and action taken during the custodianship when required to do so by the Council.

(4) Upon receipt of a custodian's report required by subsection (3), the Council may discharge the custodian, or make any order it considers appropriate regarding any patient records remaining in the hands of the custodian.

(5) The custodian's compliance with an order of the Council discharges the custodian in respect of those patient records affected by the Council's order. 2011, c. 11, s. 64.

UNAUTHORIZED PRACTICE

Licence required

65 (1) Except as expressly provided by this Act or the regulations, a person who does not hold a valid licence pursuant to this Act shall not

- (a) practise or attempt to practise pharmacy;
- (b) sell the drugs or devices included in a schedule prescribed pursuant to this Act unless the sale is expressly authorized in the appropriate schedule and then only upon the conditions set out in the schedule; or
- (c) dispense or compound drugs.

(2) A person who does not hold a valid licence as a pharmacist shall not assume or use the title of "pharmacist", "druggist", "pharmaceutical chemist" or "apothecary" or words of like import, the designation PhC., R.Ph., or R. Pharm. or a similar abbreviation or any other words or abbreviations to imply that the person is a licensed pharmacist pursuant to this Act.

(3) No person who does not hold a valid licence as a pharmacy technician pursuant to this Act shall assume or use the title of "pharmacy technician", "registered pharmacy technician", "regulated pharmacy technician", "pharmacy technologist", "dispensary technician", "dispensary technologist" or words of like import, the designation R.Ph.T., R.P.T., Pharm. Tech. or a similar abbreviation or any other words or abbreviations to imply that the person is a licensed pharmacy technician pursuant to this Act.

(4) Nothing in this Act prevents any person from selling goods of any kind to any medical practitioner, dentist or veterinary surgeon, or other person authorized by law to prescribe drugs or devices, nor prevents the members of those professions supplying to their patients such medicines as they may require.

(5) Subsection (1) does not limit the authorized activities of any other health professional. 2011, c. 11, s. 65.

Further prohibitions

66 (1) A person shall not use any of the following designations in respect of a business that is not a licensed pharmacy or hospital pharmacy:

- (a) “pharmacy”, “drug store”, “drug department”, “drug sundries”, “drug mart”, “drugateria” or “apothecary”;
- (b) “drug”, “drugs”, “drug sundries”, “medication” or “medications”; or
- (c) “prescription” or “prescriptions”.

(2) A person shall not use any similar designation, suffix, prefix, word, title or designation, abbreviated or otherwise, with respect to premises that are not a licensed pharmacy.

(3) A person shall not use any form of expression that implies or appears to be calculated to lead the public to infer that a business may be licensed pursuant to this Act if the business is not so licensed. 2011, c. 11, s. 66.

Onus of proof

67 (1) Where a person has sold or otherwise disposed of or offered to sell or dispose of an article

- (a) that purports to be or to contain a drug; or
- (b) the container of which is marked to indicate that the contents are or include a drug,

the onus is on that person to establish that the article is not and does not contain a drug.

(2) Where a person has sold or otherwise disposed of, or offered to sell or dispose of, an article that the person has represented to be or to contain a drug, the article is conclusively deemed to be or to contain that drug.

(3) The presence on business premises of a scheduled drug is proof, in the absence of evidence to the contrary, that it is kept for dispensing or sale. 2011, c. 11, s. 67.

Certificate as evidence

68 (1) A certificate of analysis from an analyst appointed pursuant to the *Food and Drug Act* (Canada) stating that the analyst has analysed or examined a substance and stating the result of the analysis or examination is admissible in evidence in any proceeding under this Act, and is evidence of the statements contained in the certificate.

(2) Reasonable notice of an intention to introduce a certificate of analysis in evidence must be given to the person against whom it is to be used, together with a copy of the certificate. 2011, c. 11, s. 68.

Multiple charges in one information

69 Where a person is charged with more than one offence under this Act, it is lawful to include all the charges in one information. 2011, c. 11, s. 69.

Offences and penalties

70 (1) A person who

- (a) violates this Act or the regulations;
- (b) fails to comply with this Act or the regulations;
- (c) permits anything to be done that is a violation of this Act or the regulations; or
- (d) obstructs or hinders any person in the performance of duties pursuant to this Act or the regulations,

is guilty of an offence.

(2) A person who misleads, obstructs, harasses or physically or verbally abuses a person who is lawfully exercising powers under this Act, the regulations or the bylaws is guilty of an offence.

(3) A person who commits an offence under this Act is liable upon summary conviction to a penalty of not less than \$1,000 and not more than \$50,000 and, in default of payment, to imprisonment for a term of not more than one year.

(4) Every day during which an offence pursuant to subsection (1) continues is a separate offence.

(5) Where a penalty imposed pursuant to subsection (2) as a result of a prosecution by or on behalf of the College has not been recovered pursuant to the *Summary Proceedings Act*, the penalty may be recovered as a private debt with costs by action in the name of the Registrar.

(6) All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the College belong to the College and are to be paid to the Registrar. 2011, c. 11, s. 70.

Injunction

71 Where a person does or attempts to do anything contrary to this Act or the regulations, the College may apply to the Court for an injunction or other order and a judge of the Court may make any order that the justice of the case requires. 2011, c. 11, s. 71.

Recovery of penalties

72 (1) Any complaint or information for the recovery of any penalty under this Act may be laid or made by the Registrar or other person designated by the Council.

(2) A certificate purporting to be signed by the Registrar is proof of a designation pursuant to subsection (1). 2011, c. 11, s. 72.

Liability of owner and manager

73 The owner and the manager of a pharmacy are liable for every offence against this Act or the regulations committed by any person with the express or implied permission, consent, acquiescence or approval of the owner or the manager, as the case may be. 2011, c. 11, s. 73.

Certificate as prima facie proof

74 In any action or prosecution pursuant to this Act, a certificate purporting to be signed by the Registrar that a person is not a licensed pharmacist or that premises are not a licensed pharmacy is proof in the absence of evidence to the contrary that the person or premises are not licensed pursuant to this Act. 2011, c. 11, s. 74.

GENERAL

Exemption from liability

75 (1) No action for damages or other relief lies against the College, the Council, the persons on the Council, committees or subcommittees of the College or the Council, or the persons on the committees or subcommittees or the Registrar, officers, agents or employees of the College

(a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out the duties or obligations under this Act; or

(b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless the disclosure is made with malice.

(3) No registrant, member of the Council or of a committee or subcommittee of the College or the Council, or any officer, agent or employee thereof is personally liable for any of the debts or liabilities of the College, unless the person expressly agrees to be liable. 2011, c. 11, s. 75.

Application of Act to hospital pharmacies

76 Except as otherwise provided in this Act or as may be provided by the Governor in Council pursuant to this Act, this Act and the regulations do not apply to a hospital pharmacy or to the practice of pharmacy in a hospital. 2011, c. 11, s. 76.

Exemption of pharmacies operated by armed forces

77 This Act and the regulations do not apply to a pharmacy operated by, nor to a pharmacist employed by, the armed forces within the confines of an armed forces base and serving only armed forces personnel and their immediate families. 2011, c. 11, s. 77.

Act does not prevent incorporation

78 Nothing in this Act prevents the incorporation of a pharmacy or pharmacist, but every pharmacist continues to be personally responsible for compliance with this Act and the regulations notwithstanding any such incorporation. 2011, c. 11, s. 78.

Limitation period

79 No action may be brought against any person registered under this Act for negligence or malpractice by reason of professional services requested or

rendered, unless the action is commenced within one year from the date when, in the matter complained of, the professional services were rendered. 2011, c. 11, s. 79.

Regulations without Governor in Council approval

- 80 (1)** The Council may make regulations
- (a) prescribing entry-level competencies required to be demonstrated in order to be licensed as a registrant or class of registrant;
 - (b) determining language requirements, competence in jurisprudence and examinations required to be proven or taken before a person can be registered;
 - (c) respecting the time after graduation, practice experience or last practice within which a person must apply to be registered;
 - (d) respecting the definition of fields of specialization, the manner in which qualification for specialization may be attained and recognized by the College and requirements for continuing education and competency to retain a specialist designation;
 - (e) respecting categories of registration in the College, including any restrictions on the right to practise pharmacy attaching to particular categories, and any right to use a designation otherwise prohibited by this Act;
 - (f) determining the content of structured practical training programs, practice experience and structured practical experience;
 - (g) determining what is an acceptable program for the purpose of practice experience;
 - (h) determining what is an acceptable program to meet the requirements for continuing education;
 - (i) respecting standards for pharmacies;
 - (j) respecting requirements for pharmacy managers;
 - (k) respecting responsibilities of pharmacy managers;
 - (l) respecting opening, closing and transferring pharmacies;
 - (m) respecting the conditions under which and the times when persons who are not pharmacists or certified dispensers may be in a pharmacy;
 - (n) authorizing a pharmacist to delegate certain duties and setting conditions on any such delegation, pursuant to subsection 35(1);
 - (o) respecting standards for dispensing, including validation of prescriptions, labelling and packaging;
 - (p) determining the requirements for confirming continuing competency, quality assurance and effective practice;
 - (q) respecting pharmacy information and signage;
 - (r) respecting advertising;

- (s) respecting requirements to separate the pharmacy from adjacent areas;
- (t) respecting responsibilities of preceptors;
- (u) respecting supervised practice;
- (v) respecting the length of time for which a licence is valid;
- (w) respecting requirements for liability insurance coverage;
- (x) prescribing forms and procedures for the purpose of this Act or the regulations and the information, including personal information, that must be provided.

(2) In any regulation, the Council may adopt by reference, in whole or in part, any schedule, code, specification, examination, standard or formulary recognized by the Council and may also provide that it is adopted as amended from time to time, except such amendments as are expressly disallowed by the Council.

(3) In any regulation, the Council may prescribe different requirements for different classes of registrant.

(4) The exercise by the Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*.

(5) The Registrar shall file a certified copy of any regulation made pursuant to this Section with the Minister of Health and Wellness within 30 days after it is made. 2011, c. 11, s. 80.

Schedules

81 (1) The Council may, by regulation, prescribe the schedules required by this Act.

- (2) The Council may prescribe in the schedules
 - (a) the conditions under which any drug or substance named in the schedule may be sold or dispensed; and
 - (b) the manner in which prescriptions must be given in respect of any drug named in the schedule and the conditions under which the prescriptions may be given.

(3) The Council may in any schedule adopt by reference, in whole or in part, any schedule, code, specification, standard or formulary recognized by the Council, and may also provide that it is adopted as amended from time to time, except such amendments as are expressly disallowed by the Council.

(4) The exercise by the Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*.

(5) A certified copy of any regulation made pursuant to this Section must be filed with the Minister of Health and Wellness. 2011, c. 11, s. 81.

Regulations with Governor in Council approval

82 (1) Subject to the approval of the Governor in Council, the Council may make regulations

- (a) respecting requirements for registration and licensing as a pharmacist;
- (b) specifying the parts of the practice of pharmacy that constitute the practice of a pharmacy technician;
- (c) respecting requirements for registration and licensing as a pharmacy technician;
- (d) respecting requirements for continuing competence;
- (e) respecting rules for alternative or collaborative practice;
- (f) respecting requirements for practice experience for registrants;
- (g) respecting requirements for continuing education;
- (h) imposing conditions on the practice of pharmacy technicians, interns and registered students;
- (i) requiring the successful completion of remedial programs where a member has been shown to have less than the required level of professional competence or who is incapacitated;
- (j) authorizing the imposition of conditions or limitations on the licence of any registrant who has been shown to have less than the required level of professional competence or who is incapacitated;
- (k) specifying additional statutes for the purposes of clause 51(1)(a);
- (l) respecting the professional accountability process, policies and procedures, including
 - (i) establishing processes for receiving and responding to complaints or other information concerning the conduct, capacity, practice or professional competence of registrants,
 - (ii) establishing processes for investigating the conduct, capacity, practice or professional competence of a registrant,
 - (iii) prescribing the composition of a statutory committee, provided that a majority of the members of the committee are registrants,
 - (iv) determining the criteria for the chair and vice-chair of a statutory committee,
 - (v) determining the quorum for a statutory committee,
 - (vi) determining the manner in which the members of a statutory committee shall be notified of a meeting and the consequences, if any, of failing to receive notice,

- (vii) determining the means by which a statutory committee makes decisions,
- (viii) prescribing the circumstances in which a member of a statutory committee whose term has expired may remain as a member of the committee with respect to matters in which that member of the committee has been involved have concluded,
- (ix) establishing the processes, practices and procedures of a statutory committee,
- (x) prescribing the powers and functions of the Fitness to Practise Committee, and
- (xi) prescribing how to deal with a settlement proposal;
- (m) establishing a Registration Appeals Committee and prescribing the membership, power and procedures of the Committee;
- (n) respecting co-operative or collaborative regulation in common with the regulatory authority for another health profession;
- (o) respecting professional accountability in the context of collaborative or alternative practice;
- (p) respecting alternative pharmacies and the conditions applicable to them;
- (q) authorizing facilities that may be a pharmacy for the purpose of the definition of “pharmacy” in Section 2;
- (r) determining substances that are drugs for the purpose of the definition of “drug” in Section 2;
- (s) imposing restrictions or conditions on the disclosure of information from patient records for scientific research;
- (t) respecting patient record preservation and transfer;
- (u) limiting the disclosure of, and protecting, patient information;
- (v) respecting duties and reports required of a custodian of patient records;
- (w) respecting the disposition of patient records in the possession of a custodian;
- (x) authorizing a person or class of persons to receive a prescription by direct communication for the purpose of the definition of “prescription” in Section 2;
- (y) respecting the licensing of pharmacies;
- (z) respecting a process for the appointment of public representatives to the Council;
- (aa) respecting any matter or thing the Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) In any regulation, the Council may adopt by reference, in whole or in part, any schedule, code, specification, examination, standard or formulary recognized by the Council and may also provide that it is adopted as amended from time to time, except such amendments as are expressly disallowed by the Council.

(3) In any regulation, the Council may prescribe different requirements for different classes of registrant.

(4) The exercise by the Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. 2011, c. 11, s. 82.

Regulations by Governor in Council

- 83 (1) The Governor in Council may make regulations respecting
- (a) the circumstances under which pharmacists may prescribe drugs and treatments;
 - (b) the authorizing and regulating of pharmacists directly administering drug therapy to patients;
 - (c) the authorizing and regulating of pharmacists ordering, receiving, conducting and interpreting tests and services needed to properly manage drug therapy;
 - (d) the exemption of a named nursing home or residential-care facility licensed pursuant to the *Homes for Special Care Act* or a named institution operated by the Government of the Province or of Canada from this Act or the regulations;
 - (e) those provisions of this Act that apply to hospital pharmacies;
 - (f) the regulation of hospital pharmacies;
 - (g) the regulation of the practice of pharmacy in a hospital;
 - (h) defining of any word or expression used but not defined in this Act, including a special meaning applicable only to specific circumstances of practice;
 - (i) further defining any word or expression defined in this Act;
 - (j) any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) In any regulation passed pursuant to this Section, the Governor in Council may adopt by reference, in whole or in part, any schedule, code, specification, examination, standard or formulary, and may also provide that it is adopted as amended from time to time, except such amendments are expressly disallowed by the Governor in Council.

(3) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*, 2011, c. 11, s. 83.

CHAPTER P-23

**An Act Respecting
the Practice of Physiotherapy**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Effect of use of certain words	3
Nova Scotia College of Physiotherapists	
Objects and power.....	4
Annual meetings	5
Board	
Powers	6
Constitution and terms of office.....	7
Selection of Board members.....	8
Regulations of Board	9
Secret ballot.....	10
Destruction of ballots	11
Petition against election	12
Election	13
End of term of office.....	14
Executive Committee and officers.....	15
Committees	16
Chair of meetings	17
Register of the Nova Scotia College of Physiotherapists	
Registration	18
Entries to be made on Register	19
Provisional Registration	
Effect of provisional registration	20
Referral to Credentials Committee	21
Defined Register	
Method of maintaining Defined Register.....	22
Specialists Register	
Method of maintaining Specialists Register	23
Consequences of conviction.....	24
Prerequisites to registration.....	25
Change of address	26
Annual Fees	
Manner of payment and consequences of non-payment.....	27
Relicensing.....	28
Restrictions on licences.....	29

Annual List	
Publication of list.....	30
Privileges	
Surrender and preserving jurisdiction.....	31
Prohibitions	
Offence.....	32
Offence.....	33
Prohibition	34
Offence.....	35
Method of proof.....	36
Offence.....	37
Exemptions	
Exemptions from application of Act.....	38
Client Records	
Custodian.....	39
Injunction	
Circumstances for order.....	40
Discipline	
Method of initiating complaint.....	41
Power to employ assistance.....	42
Duty to maintain confidentiality.....	43
Power to investigate other matters.....	44
Prerequisites for action	45
Investigation Committee	
Composition of committee	46
Quorum.....	47
Duties of committee.....	48
Powers of committee	49
Notice of opportunity to appear.....	50
Appeal.....	51
Suspension or restriction on registration or licence.....	52
Hearing committee.....	53
Continuance of powers of former members	54
Settlement Agreement	
Method of dealing with proposed agreement	55
Investigation Committee and Non-members	
Investigation of non-member.....	56
Hearing Committee	
Composition and functions	57
Quorum.....	58
Powers of committee	59
Witnesses	60
Duty to appear and power of committee.....	61
Notice of hearing	62
Inadmissible evidence.....	63
Prohibition of communication	64

c. P-23	physiotherapy	3
Expert opinions.....		65
Access of public to hearing		66
Right to attend		67
Publication ban.....		68
Treatment of evidentiary material		69
Procedure at hearings		70
Inadmissibility of evidence in legal proceeding.....		71
Costs		
Contents of order for costs		72
Appeal		
Procedure on appeal		73
Reinstatement		
Procedure for making application		74
Peer Assessment		
Peer Assessment Committee		75
Witnesses		76
Application of certain Sections and regulations.....		77
Evidence		
Certificate of evidence.....		78
Effect of presence of name on document		79
Notices		
Service		80
Deemed day of service		81
Service on College.....		82
Limitations of Actions		
Exemption from liability		83
Further exemption from liability		84
Incorporation		
Professional corporations		85
Share holding in professional corporation.....		86
Qualification for directors and president.....		87
Permit for professional corporation.....		88
Restrictions on professional corporations		89
Deemed revocation of permit.....		90
Notification of change in professional corporation		91
Effect of relationship to corporation.....		92
Liability and restrictions on transfer		93
Status of relationships		94
Compellable witnesses		95
Certificate as evidence.....		96
Liability of directors and officers.....		97
Offences and penalties.....		98
General		
Publication of decisions.....		99
Regulations Act		100
Treatment of complaints under former Act		101

Short title

1 This Act may be cited as the *Physiotherapy Act*. 1998, c. 22, s. 1.

Interpretation

2 In this Act,

“Board” means the Board of the College;

“College” means the Nova Scotia College of Physiotherapists;

“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 49(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 a physiotherapist or professional incompetence, including incompetence arising out of physical or mental incapacity;

“former Act” means Chapter 344 of the Revised Statutes, 1989;

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

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

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

“mediation” means any form of alternative dispute resolution;

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

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

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

“physiotherapist” or “physical therapist” means a person who is licensed to practise physiotherapy pursuant to this Act;

“physiotherapy” or “physical therapy” means the application of professional physiotherapy knowledge, skills and judgement by a physiothera-

pist to obtain, regain or maintain optimal health and functional performance and includes

- (a) assessment of neuromusculoskeletal and cardiorespiratory systems and establishment of a physiotherapy diagnosis;
- (b) development, progression, implementation and evaluation of therapeutic exercise programs;
- (c) education of clients, caregivers, students and other health service providers;
- (d) manual therapy treatment techniques, including massage, proprioceptive neuromuscular facilitation and muscle energy techniques;
- (e) spinal and peripheral joint manipulation;
- (f) spinal and peripheral joint mobilization;
- (g) pain relief, including invasive acupuncture;
- (h) the administration of physical therapy related medications as prescribed by a physician;
- (i) the prescription, manufacture, modification and application of braces, splints, taping, mobility aids or seating equipment;
- (j) hydrotherapy, electrotherapy and the use of mechanical, radiant or thermal energy;
- (k) ergonomic evaluation, modification, education and counselling;
- (l) tracheal suctioning; and
- (m) such other aspects of physiotherapy as may be prescribed in regulations approved by the Governor in Council;

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

“prescribed” means prescribed by the regulations;

“Register” means the Register of the College kept pursuant to this Act;

“registered” means registered pursuant to this Act;

“Registrar” means the person holding the office of Registrar pursuant to this Act;

“spouse” means

- (a) a person married to another person;
- (b) a man and a woman who, not being married to each other, live together as husband and wife and have so lived for at least one year; or
- (c) as otherwise defined by the regulations. 1998, c. 22, s. 2.

Effect of use of certain words

3 The words “physiotherapist”, “physical therapist” or any like words or expressions implying a person recognized by law as a physiotherapist 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 March 22, 1999, or when used in any public document, includes a person registered in the Register who holds a licence. 1998, c. 22, s. 3.

NOVA SCOTIA COLLEGE OF PHYSIOTHERAPISTS

Objects and powers

4 (1) The Nova Scotia College of Physiotherapists constituted by the former Act is continued as a body corporate 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 physiotherapy 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 physiotherapy;

(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, from time to time, considers expedient;

(d) expend the money of the College in the advancement of its objects and the interests of the profession of physiotherapy 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. 22, 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. 22, s. 5.

BOARD

Powers

6 (1) There is a Board of the College constituted as provided in Section 7.

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

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

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

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

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

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

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

- (g) prescribing fees payable pursuant to this Act by applicants and members and, where the Board considers advisable, designating different classes of applicants and members and prescribing different fees for different classes;
 - (h) prescribing the fees and allowances of members of the Board and committees and providing for the payment of necessary expenses of the Board and committees;
 - (i) respecting the recognition of schools and examinations as prerequisites to registration and licensing;
 - (j) respecting the educational qualifications of applicants for registration as members;
 - (k) prescribing the seal of the College;
 - (l) providing for the execution of documents by the College;
 - (m) prescribing examinations to be written by applicants for registration;
 - (n) respecting residential qualifications of applicants for registration as members and associate members;
 - (o) prescribing forms and providing for their use;
 - (p) providing procedures not inconsistent with this Act for the making, amending and revoking of regulations;
 - (q) respecting the information to be included in the Register;
 - (r) prescribing a code of ethics, subject to approval by the College at an annual or special meeting;
 - (s) governing elections of members of the Board.
- (3) The Board may, with the approval of the Governor in Council, make regulations
- (a) respecting the registration and licensing of members;
 - (b) respecting continuing-competency requirements, including continuing-education requirements or practice-hour requirements of members for registration;
 - (c) respecting the limiting or qualifying of a member's licence, including procedures and interventions;
 - (d) respecting the evaluation of, and licensing requirements of, members and applicants for registration who have not practised physiotherapy 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 physiotherapy and any other

ancillary matters, and providing for the establishment of a committee or committees to deal with such matters;

(g) respecting the disciplining of members and the revocation or suspension of licences issued pursuant to this Act;

(h) respecting the reporting and publication of decisions in disciplinary matters;

(i) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practice;

(j) prescribing the records and accounts to be kept by members and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;

(k) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a licence so suspended;

(l) notwithstanding subsection 7(1), changing the number and characteristics of appointments to the Board;

(m) determining the procedure to be followed at hearings by a disciplinary committee;

(n) prescribing the type of professional liability insurance or other form of malpractice coverage a member shall hold;

(o) respecting supervised practice and the delegation of physiotherapeutic acts 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 89(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 physiotherapists,

(iv) a partnership of two or more professional corporations, or

(v) a partnership of one or more professional corporations and one or more individual physiotherapists,

may be known;

(y) prescribing the nature of communications with the public, including advertising, that may be undertaken by a member as a sole proprietor, a partnership or a professional corporation;

(z) prescribing access to the minute book records of a professional corporation by the Registrar;

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

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

(ac) respecting and governing such other subjects, matters and things as may be required to give effect to the objects of the College and this Act.

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

(5) A certificate purporting to be signed by the Registrar stating that a certain regulation of the College was, on a specified day or during a specified period, a duly enacted regulation of the College in full force and effect constitutes prima facie evidence in any court of that fact without proof that the person who signed it is the Registrar or that it is the Registrar's signature.

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

(7) A member of the Board, or of a committee of the Board or of the College, may participate in any meeting of the Board or committee of the Board or of the College, with the exception of the hearing committee when it is conducting a hearing, as the case may be, by telephone or other communications facilities that permit all persons participating in a meeting to communicate with each other, and a member participating in a meeting by such means is deemed to be present at the meeting.

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

(9) Where 10% of the membership of the College request in writing, whether by petition or otherwise, that a special general meeting be held, the Board shall hold such meeting within 15 working days of determining that 10% of the members have requested such a meeting. 1998, c. 22, s. 6.

Constitution and terms of office

7 (1) The Board consists of

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

(b) two persons appointed by the Governor in Council, both of whom are persons who

(i) are not members of the College, and

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

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

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

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

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

(c) two persons appointed by the Governor in Council, one for a term of one year and one 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 physiotherapy in the Province are eligible to vote in an election of the Board. 1998, c. 22, s. 7.

Selection of Board members

8 (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 shall 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. 22, s. 8.

Regulations of Board

9 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. 22, s. 9.

Secret ballot

10 Members of the Board shall be elected by secret ballot. 1998, c. 22, s. 10.

Destruction of ballots

11 The ballots used at an election may not be destroyed until all petitions pursuant to Section 12 in respect of the election have been decided and, until that time, the ballots must be retained by the Registrar together with all other papers in connection with the election. 1998, c. 22, s. 11.

Petition against election

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

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

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

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

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

the Board shall order that a new election be held. 1998, c. 22, s. 12.

Election

13 (1) The Registrar,

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

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

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

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

(3) Where an election is held pursuant to subsection (1) to fill a vacant Board position, the term of office for the vacant Board position is the remainder of the unexpired term of such position. 1998, c. 22, s. 13.

End of term of office

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

(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. 22, s. 14.

Executive Committee and officers

15 (1) The Board shall elect annually from its members a Chair, a Vice-chair, a Secretary and a Treasurer 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 a physiotherapist 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. 22, s. 15.

Committees

16 The Board may appoint annually such committees from among members of the Board or the College as the Board considers necessary to assist it in carrying out its duties pursuant to this Act. 1998, c. 22, s. 16.

Chair of meetings

17 (1) Subject to subsection (2), the Chair shall preside at all meetings of the Board and of the College.

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

(3) Except in the event of an equal number of votes being given for and against a resolution at any meeting, the Chair or other presiding officer may not vote. 1998, c. 22, s. 17.

REGISTER OF THE NOVA SCOTIA
COLLEGE OF PHYSIOTHERAPISTS

Registration

18 (1) The Board shall keep a Register in which must be entered the name, address and qualifications of all persons who are entitled pursuant to this Act to be registered in the Register.

(2) The name, address and qualifications of every person who, on March 22, 1999, is registered pursuant to the former Act, must be entered in the Register, but must continue under any stipulations or limitations attached to the person's previous registration.

(3) The Registrar shall issue a licence to every person who, on March 22, 1999, is registered pursuant to Section 5 of the former Act.

(4) Every licence issued pursuant to subsection (3) is subject to any conditions or limitations attached to the registration pursuant to the former Act. 1998, c. 22, s. 18.

Entries to be made on Register

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

- (a) has successfully completed the certification exam if prescribed by the regulations;
- (b) has successfully completed a physiotherapy program prescribed by the regulations;
- (c) satisfies the Board that the person possesses the qualifications required in the regulations for registration in the Register;
- (d) complies with this Act and the regulations and any conditions imposed by the Registrar and the Board; and
- (e) complies with Section 25.

(2) Upon receiving a direction from the Board pursuant to subsection (1), the Registrar shall

- (a) enter the name, address and qualifications of the person named in the direction in the Register; and
- (b) issue a licence to the person. 1998, c. 22, s. 19.

PROVISIONAL REGISTRATION

Effect of provisional registration

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

- (a) meets
 - (i) in a manner that would be satisfactory to the Board, the requirements for registration in the relevant register with such exceptions as may be prescribed by the regulations, and
 - (ii) the requirements of Section 25; and
- (b) has paid the prescribed fees,

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

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

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

(3) Subject to subsection (7), where the registration or licence of a person is varied or vacated pursuant to subsection (2), the Registrar shall give notice to such person forthwith in accordance with Section 80, 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 may not be varied or vacated until the Board has completed its consideration of the application. 1998, c. 22, s. 20.

Referral to Credentials Committee

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

- (a) may; or
- (b) where the applicant so requests in writing, shall,

refer the matter to the Credentials Committee.

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

(3) Where the person requests the opportunity to appear before the Credentials Committee, this request must be granted and the person may appear with legal counsel. 1998, c. 22, s. 21.

DEFINED REGISTER

Method of maintaining Defined Register

22 (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 in the register.

(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 physiotherapy; and

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

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

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

(b) complies with Section 25.

(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. 22, s. 22.

SPECIALISTS REGISTER

Method of maintaining Specialists Register

23 (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 physiotherapy;

(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 physiotherapy.

(3) The Board may direct the Registrar to enter in the Specialists Register the name, address, qualifications and specialty of any medical practitioner 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 25.

(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. 22, s. 23.

Consequences of conviction

24 Notwithstanding anything contained in this Act, where a person has been convicted or found to be guilty, by a court in or out of Canada, of any offence that is inconsistent with the proper professional behaviour of a physiotherapist, 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. 22, s. 24.

Prerequisites to registration

- 25 Any person who applies for registration pursuant to this Act shall
- (a) apply in the prescribed manner;
 - (b) satisfy the Board that that person is the person named in any diploma or documentation submitted in support of the application;
 - (c) satisfy the Board that that person is of good character;
 - (d) provide such information as the Board may require; and
 - (e) pay the prescribed fee. 1998, c. 22, s. 25.

Change of address

26 A member of the College who changes address shall promptly inform the Registrar who shall enter the change in the Register. 1998, c. 22, s. 26.

ANNUAL FEES

Manner of payment and consequences of non-payment

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

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

the prescribed annual registration or licence fee.

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

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

(4) The prescribed annual licence fees payable by members of the College pursuant to subsection (1) are determined by the Board. 1998, c. 22, s. 27.

Relicensing

28 (1) Where the licence or specialist's licence of a member has been suspended pursuant to subsection 27(2), or where there has been non-compliance with continuing competency requirements, or in any other case where the licence 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 physiotherapy 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 physiotherapy;

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

(e) that the person has paid all fees or any other amount owing to the College and such administrative fees as may be prescribed; and

(f) that the person has complied with continuing competency requirements,

the Registrar may issue a licence to such person and issue a specialist's licence to such person in the specialities 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 a 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. 22, s. 28.

Restrictions on licences

29 Every licence or specialist's licence issued pursuant to Section 28 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 27(2), unless the Board orders otherwise. 1998, c. 22, s. 29.

ANNUAL LIST

Publication of list

30 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. 22, s. 30.

PRIVILEGES

Surrender and preserving jurisdiction

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

(2) Where a member ceases to be a member for any reason, or where a person ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any disciplinary matter arising out of the person's conduct while a member or while registered. 1998, c. 22, s. 31.

PROHIBITIONS

Offence

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

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

is guilty of an offence. 1998, c. 22, s. 32.

Offence

33 (1) A member of the College who leaves the Province and practises physiotherapy 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 the requirements of subsection (1) where members have been absent from the Province for a period shorter than the maximum period prescribed in the regulations. 1998, c. 22, s. 33.

Prohibition

34 (1) Except as provided in this Act or the regulations, no person, other than a physiotherapist who holds a licence, shall

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

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

- (a) professional services rendered to any person in the practice of physiotherapy; or
- (b) physiotherapy appliances supplied to any person in the practice of physiotherapy,

unless registered and licensed at the time the services were provided or the appliances were rendered. 1998, c. 22, s. 34.

Offence

35 A person who knowingly furnishes false information in an application pursuant to this Act, or in any statement or return required to be furnished pursuant to this Act or the regulations is guilty of an offence. 1998, c. 22, s. 35.

Method of proof

36 (1) In a prosecution for an offence contrary to this Act or the regulations, the onus of proof that a person accused of an offence has the right to practise physiotherapy, 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 physiotherapy 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 physiotherapy on one occasion is sufficient to establish that a person has engaged in the practice of physiotherapy. 1998, c. 22, s. 36.

Offence

- 37 (1)** A person who violates
- (a) this Act, except for Sections 85 to 97;
 - (b) a regulation made pursuant to clause 6(3)(i) or (j); or
 - (c) a regulation made pursuant to clause 23(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. 22, s. 37.

EXEMPTIONS

Exemptions from application of Act

- 38** 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*;
- (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 who is registered pursuant to the *Nursing Act*;
- (n) the practice of occupational therapy by a person who is licensed pursuant to the *Occupational Therapists Act*;
- (o) the practice of optometry by a person who is licensed pursuant to the *Optometry Act*;
- (p) the practice of pharmacy by a person who is registered pursuant to the *Pharmacy Act*; or
- (q) the practice of psychology by a person who is licensed pursuant to the *Psychologists Act*. 1998, c. 22, s. 38.

CLIENT RECORDS

Custodian

39 (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 licence 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 physiotherapy; 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 a physiotherapist 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 physiotherapists 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, physiotherapists 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) Unless otherwise ordered pursuant to subsection (6), upon discharge of a custodian pursuant to subsections (6) and (9), the College shall take into permanent custody client records and assume the responsibilities of a custodian as provided in subsection (3).

(8) The College may destroy records after the passage of a minimum period of time as ordered by the court or as set by the regulations.

(9) The court may, upon the application of the College made either *ex parte* or on such notice as the court directs, remove a custodian from office and, where the court considers it expedient, appoint another custodian in the custodian's place, and may include in such order such further directions as are required in the circumstances.

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

(11) The court may give directions as to service of any notice required or order made pursuant to this Section.

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

(13) This Section applies with necessary changes to former members of the College. 1998, c. 22, s. 39.

INJUNCTION

Circumstances for order

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

(2) Where a person other than a member does or attempts to do anything contrary to this Act, the doing of such thing may be restrained by an injunction of the court at the instance of the Board. 1998, c. 22, s. 40.

DISCIPLINE

Method of initiating complaint

- 41** Complaints may be initiated by
- (a) any official body corporate or association;
 - (b) the Registrar; or
 - (c) any other person. 1998, c. 22, s. 41.

Power to employ assistance

42 The College or a disciplinary committee may employ, at the expense of the College, such legal or other assistance as it considers necessary for the purpose of the investigation of any disciplinary matter. 1998, c. 22, s. 42.

Duty to maintain confidentiality

43 Every person involved in the administration of this Act and any member of the Board, or a committee of the Board or the College, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding 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 41 to 74, 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. 22, s. 43.

Power to investigate other matters

44 A person or disciplinary committee investigating a disciplinary matter concerning a member may investigate any other disciplinary matter concerning the member that arises in the course of the investigation. 1998, c. 22, s. 44.

Prerequisites for action

- 45 (1)** Where a disciplinary committee
- (a) learns that the registration or licence of a member has been suspended or revoked for reasons of professional misconduct, conduct unbecoming or incompetence by another licensing or regulatory authority;
 - (b) has provided the member with such notice as it may prescribe of a hearing together with a copy of the relevant decision of the other licensing or regulatory authority; and
 - (c) has heard such evidence as is offered by the member, if any, at the hearing as to why the member should not be subject to disciplinary action,

the disciplinary committee may take any of the actions contemplated by clause 70(2)(e).

(2) Where a member has been convicted of an offence pursuant to the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or has been convicted of an offence as referred to in Section 24, the disciplinary committee may, by such notice as it prescribes, require the member to attend a hearing to establish why the member should not be subject to disciplinary action.

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

(4) When a disciplinary committee is conducting a hearing pursuant to this Section, it may, if it considers proper, take any of the actions contemplated by clause 70(2)(e). 1998, c. 22, s. 45.

INVESTIGATION COMMITTEE

Composition of committee

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

(2) An investigation committee shall be 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 physiotherapy or equivalent, who may be a member or former member of the Board.

(4) 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. 22, s. 46.

Quorum

47 Notwithstanding subsection 46(3), any two members of the committee constitute a quorum. 1998, c. 22, s. 46.

Duties of committee

48 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. 1998, c. 22, s. 46.

Powers of committee

49 (1) 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.

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

- (3)** 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.

(4) 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 physiotherapy;
- (d) produce records and accounts kept with respect to the member's practice.

(5) Where the member fails to comply with subsection (4), the committee may suspend or restrict the registration, licence or specialist's licence, or both, of the member until the member complies.

(6) Where the committee has, pursuant to clause (4)(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.

(7) The committee or person appointed to conduct an investigation pursuant to clause (3)(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 physiotherapy that arises in the course of the investigation.

- (8) 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, to 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.

(9) When making findings pursuant to clause (8)(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.

(10) The member and the complainant shall be advised in writing of the disposition of the committee. 1998, c. 22, s. 46; 2012, c. 48, s. 38.

Notice and opportunity to appear

50 Where the committee is considering a decision to counsel, caution or counsel and caution a member pursuant to clause 49(8)(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. 22, s. 46.

Appeal

51 (1) A member who has consented to a requirement for treatment or re-education pursuant to clause 49(8)(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) 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.

(4) 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. 1998, c. 22, s. 46.

Suspension or restriction on registration or licence

52 (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 shall 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. 22, s. 47.

Hearing committee

53 Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 52(1), subject to any disposition made pursuant to subsection 52(5), a hearing committee shall be appointed pursuant to subsection 57(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter. 1998, c. 22, s. 48.

Continuance of powers of former members

54 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. 22, s. 49.

SETTLEMENT AGREEMENT

Method of dealing with proposed agreement

55 (1) After an investigation committee refers a matter to a hearing committee pursuant to clause 49(8)(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 shall 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. 22, s. 50.

INVESTIGATION COMMITTEE
AND NON-MEMBERS**Investigation of non-member**

56 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. 22, s. 51.

HEARING COMMITTEE

Composition and functions

57 (1) A hearing committee shall 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 shall be composed of at least three persons of whom one member shall be appointed by the Board as the chair.

(3) The committee shall have as members

(a) at least one person who does not hold a degree in physiotherapy or equivalent, who is a member of the Board; and

(b) at least two members of the Board. 1998, c. 22, s. 52.

Quorum

58 Notwithstanding subsection (3), any two members of the committee constitute a quorum. 1998, c. 22, s. 52.

Powers of committee

59 (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. 22, s. 52.

Witnesses

60 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. 1998, c. 22, s. 52.

Duty to appear and power of committee

61 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 62(1), 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. 1998, c. 22, s. 52.

Notice of hearing

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

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

(3) The College shall place the notice as provided for in subsection (2) in such publications as it considers necessary in order to inform the public. 1998, c. 22, s. 52.

Inadmissible evidence

63 (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. 22, s. 53.

Prohibition of communication

64 No member of a hearing committee holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication, with the exclusion of communications where the sole purpose is to make administrative arrangements. 1998, c. 22, s. 54.

Expert opinions

65 Where a hearing committee obtains expert opinion regarding physiotherapy 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. 22, s. 55.

Access of public to hearing

66 (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. 22, s. 56.

Right to attend

67 Where a hearing committee makes an order pursuant to subsection 66(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. 22, s. 57.

Publication ban

68 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 may publish the identity of the witness or any information that could disclose the identity of the witness. 1998, c. 22, s. 58.

Treatment of evidentiary material

- 69 (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. 22, s. 59.

Procedure at hearings

70 (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 physiotherapy, 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

- that
- (i) where there is a guilty finding, may determine
 - (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 physiotherapy education and research 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, 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 in that clause, 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 shall 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. 22, s. 60.

Inadmissibility of evidence in legal proceeding

71 (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. 13.

COSTS

Contents of order for costs

72 (1) When a hearing committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the Board, in whole or in part.

(2) When a member is ordered to pay costs pursuant to subsection (1), the Board may make it a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Board may fix.

(3) For the purpose of this Section, “costs of the Board” include

(a) expenses incurred by the College, the Board, the investigation committee and the hearing committee;

(b) honoraria paid to members of the investigation committee and the hearing committee; and

(c) solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint. 1998, c. 22, s. 61.

APPEAL

Procedure on appeal

73 (1) The member complained against may appeal on any point of law from the findings of the hearing committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of a hearing committee consists of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the hearing committee certified by the chair of the hearing committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply with necessary changes to appeals to the Nova Scotia Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the 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. 22, s. 62.

REINSTATEMENT

Procedure for making application

74 (1) A person whose licence or specialist's licence has been revoked by a resolution of a hearing committee pursuant to subclause 70(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) may not be made earlier than

(a) two years after the revocation; and

(b) six months after the previous application.

(3) The Board, upon

(a) being satisfied that the interest of the public has been adequately protected;

(b) being satisfied as to the intention of such person to practise physiotherapy 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 physiotherapy 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 70(2)(e)(i),

upon such terms and conditions as the Board may direct. 1998, c. 22, s. 63.

PEER ASSESSMENT

Peer Assessment Committee

75 (1) In this Section and in Sections 76 and 84,

“assessment” means an assessment pursuant to a peer-assessment program established pursuant to this Section;

“assessors” means the assessors appointed by the Peer Assessment Committee pursuant to subsection (4).

(2) The Board shall establish a Peer Assessment Committee in accordance with the regulations.

(3) The Board may, by regulation or otherwise,

(a) authorize the Peer Assessment Committee to do or cause to be done on behalf of the parties any or all such things as the parties thereto are otherwise empowered to do and consider necessary for the development and administration of a peer-assessment program, subject to the approval of the Board;

(b) provide for the financing of the operations of the Peer Assessment Committee and for cost-sharing arrangements;

(c) provide for the preparation of an annual budget and its approval by the Board;

(d) provide for the incorporation of the Peer Assessment Committee if considered advisable to achieve the objectives of the Committee; and

(e) do such other things as may be necessary or desirable to provide for the administration of the Peer Assessment Committee and for its operations.

(4) The Peer Assessment Committee may appoint members of the College or persons licensed as physiotherapists in other provinces as assessors for the purpose of the application of the peer-assessment program to members of the College.

(5) Subject to the approval of the Board, the Peer Assessment Committee shall develop and administer a peer-assessment program that includes

(a) the assessment of the standards of practice of members, including

(i) standards for the clinical assessment and care of clients, and

(ii) standards for the maintenance of records of care administered to clients;

(b) the selection and education of assessors;

(c) communication with physiotherapists;

(d) budgetary and expense arrangements;

(e) the preparation of assessment reports;

(f) the development of policy and procedures of the Peer Assessment Committee and their delegation to subcommittees, assessors or employees as the Committee considers appropriate; and

(g) such further activities, including the establishment of other committees or subcommittees, for the better administration of the peer-assessment program.

(6) Every member whose standards of practice are the subject of an assessment shall co-operate fully with the Peer Assessment Committee and assessors.

(7) Without limiting the generality of the co-operation required by subsection (6), a member shall

(a) permit assessors to enter and inspect the premises where the member engages in the practice of medicine;

(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.

(8) Upon completion of an assessment, an assessor shall report to the Peer Assessment Committee, which may

(a) receive the report of the assessor and make no recommendations to the member assessed; or

(b) confer with the member assessed and make any remedial recommendations to the member as the Committee considers appropriate, and direct the member to comply with the recommendations.

(9) Costs incurred by the member in implementing the remedial recommendations made by the Peer Assessment Committee are payable by the member and are not the responsibility of the Committee, the Board or the College.

(10) Where an assessor or a member of the Peer Assessment Committee learns, in the course of an assessment, that a member of the College may be guilty of a disciplinary matter, the assessment shall be terminated, the member shall be advised and the matter shall be referred to the College to be dealt with as a complaint.

(11) The assessor or a member of the Peer Assessment Committee shall not provide any information to the College, except the information necessary to identify the nature of the complaint.

(12) Nothing in this Section prevents any other person from providing evidence of a disciplinary matter relating to a member.

(13) Each year the Peer Assessment Committee shall prepare and publish a report on its activities for the preceding year. 1998, c. 22, s. 64.

Witnesses

76 (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, 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 shall not provide evidence against a member in a disciplinary matter with respect to information given by the member to the assessor or a member of the Peer Assessment Committee in the course of an assessment of the member unless the member has knowingly given false information during the assessment or the disciplinary matter.

(6) Nothing in subsection (5) prevents any other person from providing evidence against a member in a disciplinary matter with respect to the information given by the member in the course of the member's assessment. 1998, c. 22, s. 65.

Application of certain Sections and regulations

77 Sections 41 to 74 and 78 to 100 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. 22, s. 66.

EVIDENCE

Certificate of evidence

78 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 of the Registrar's signature. 1998, c. 22, s. 67.

Effect of presence of name on document

79 The presence of the name of any person in a document purporting for any year to be an annual list published by the Registrar pursuant to Section 30 is prima facie evidence in any court of the fact that a person whose name so appears is or was registered and licensed at the time of publication of such annual list. 1998, c. 22, s. 68.

NOTICES

Service

80 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. 22, s. 69.

Deemed day of service

81 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 80 is proof of service. 1998, c. 22, s. 70.

Service on College

82 Service of any document on the College may be made by service on the Registrar. 1998, c. 22, s. 71.

LIMITATIONS OF ACTIONS

Exemption from liability

83 Where a physiotherapist voluntarily renders first aid or emergency treatment without the expectation of monetary compensation to a person outside of a hospital or physiotherapist's office, or in any other place not having proper and necessary medical facilities, that physiotherapist is not liable for the death of such person, or damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such first aid or emergency treatment, unless it is established that such injuries were, or such death was caused, by conduct on the part of the physiotherapist that, if committed by a person of ordinary experience, learning and skill, would constitute negligence. 1998, c. 22, s. 72.

Further exemption from liability

84 (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 49(4)(d). 1998, c. 22, s. 73.

INCORPORATION

Professional corporations

85 Subject to this Act and the regulations, a professional corporation may engage in the practice of physiotherapy and physiotherapists may be employed by a professional corporation for the purpose of engaging in the practice of physiotherapy. 1998, c. 22, s. 74.

Share holding in professional corporation

86 (1) A majority of the issued shares of a professional corporation must be legally and beneficially owned by one or more physiotherapists.

(2) A majority of the issued voting shares of a professional corporation must be legally and beneficially owned by one or more physiotherapists.

(3) Subject to subsections (1) and (2), the spouse or child of a physiotherapist or approved health professional or any other person may own, beneficially or legally, shares of a professional corporation.

(4) Notwithstanding subsection (2), a person resident in Canada may hold legal title to issued shares of a professional corporation solely as trustee for the exclusive benefit of a physiotherapist, or the spouse or child of a physiotherapist, or a group of such individuals if no one other than a physiotherapist, or the spouse or child of a physiotherapist, acts as such a trustee without the written consent of the Registrar. 1998, c. 22, s. 75.

Qualification for directors and president

87 (1) A majority of the directors of a professional corporation must be physiotherapists.

(2) The president of a professional corporation must be a physiotherapist. 1998, c. 22, s. 76.

Permit for professional corporation

88 A professional corporation shall not engage in the practice of physiotherapy unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations. 1998, c. 22, s. 77.

Restrictions on professional corporations

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

(2) Notwithstanding subsection (1), no professional corporation shall be registered as a physiotherapist 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 86 and 87 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 physiotherapy for or on behalf of the professional corporation are physiotherapists; 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 physiotherapy must not be carried on by or be deemed to be carried on by clerks, secretaries and other persons employed by the professional corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by a physiotherapist. 1998, c. 22, s. 78.

Deemed revocation of permit

90 (1) Where a professional corporation practises physiotherapy only through the services of one physiotherapist and that physiotherapist dies, retires, becomes incompetent or is no longer licensed under this Act, or is suspended under this Act, the permit of such professional corporation is deemed to be revoked and such professional corporation shall cease to practise physiotherapy.

(2) Where a professional corporation practises physiotherapy through the services of more than one physiotherapist and such professional corporation ceases to fulfill any requirement prescribed in subsection (3) by reason of

- (a) the death of a physiotherapist;
- (b) the incompetency of a physiotherapist;
- (c) the revocation of the licence of a physiotherapist pursuant to this Act;
- (d) the suspension of the licence of a physiotherapist pursuant to this Act; or
- (e) the retirement from practice by a physiotherapist,

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 physiotherapist, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise physiotherapy 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 89(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. 22, s. 79.

Notification of change in professional corporation

91 Where the shares of a professional corporation engaged in the practice of physiotherapy 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. 22, s. 80.

Effect of relationship to corporation

92 The relationship of a physiotherapist 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 physiotherapist. 1998, c. 22, s. 81.

Liability and restrictions on transfer

93 (1) All persons who carry on the practice of physiotherapy 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 physiotherapy 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 physiotherapy.

(2) No owner of voting shares of a professional corporation shall pledge, hypothecate, enter into a voting trust, proxy or any other type of agreement vesting in any other person who is not a physiotherapist the authority to exercise the voting rights attached to any or all of the owner's shares. 1998, c. 22, s. 82.

Status of relationships

94 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between a physiotherapist and a client.

(2) The relationship between a professional corporation and a client of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between a physiotherapist and a client.

(3) All rights and obligations pertaining to communications made to or information received by a physiotherapist apply to the shareholders, directors, officers and employees of a professional corporation. 1998, c. 22, s. 83.

Compellable witnesses

95 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 1998, c. 22, s. 84.

Certificate as evidence

96 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 physiotherapy 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. 22, s. 85.

Liability of directors and officers

97 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. 22, s. 86.

Offences and penalties

98 (1) Every person who contravenes Sections 85 to 97 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 85 to 97 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. 22, s. 87.

GENERAL

Publication of decisions

99 (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. 22, s. 88.

Regulations Act

100 All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*. 1998, c. 22, s. 89.

Treatment of complaints under former Act

101 (1) For greater certainty,

(a) a complaint made pursuant to the former Act shall continue to be proceeded with in accordance with this Act as nearly as circumstances permit; and

(b) in respect of that complaint, a discipline committee appointed pursuant to the former Act and its regulations and bylaws is deemed to be an investigation committee appointed pursuant to this Act.

(2) Nothing in subsection (1) precludes a complaint made pursuant to the former Act being investigated by an investigation committee appointed pursuant to this Act and, in such case, a discipline committee appointed pursuant to the former Act ceases to have any jurisdiction respecting that complaint. 1998, c. 22, s. 90.