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Revised Statutes of Nova Scotia

2023

CHAPTER T-1

An Act to Regulate Tanning Beds

Table of Contents

Short title

1 This Act may be cited as the *Tanning Beds Act*. 2010, c. 44, s. 1.

Purpose of Act

2 The purpose of this Act is to protect the health of Nova Scotians, and in particular young persons, by restricting their access to tanning equipment in tanning facilities in light of the risks associated with the use of tanning equipment. 2010, c. 44, s. 2.

Interpretation

3 In this Act,

"employee" of an owner includes any servant or agent of the owner;

"enforcement officer" means a person designated pursuant to this Act as an enforcement officer, and includes a member of a municipal police force within the meaning of the *Police Act* and a member of the Royal Canadian Mounted Police;

"Minister" means the Minister of Environment and Climate Change;

"owner" means a person, firm, corporation or unincorporated body that owns or operates a tanning facility;

"tanning equipment" means ultraviolet or other lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation and equipment containing such lamps, including ballasts, starters, reflectors, acrylic shields, timers and airflow cooling systems;

"tanning facility" means any location, place, area, structure or business that provides customers access to tanning equipment in exchange for compensation. 2010, c. 44, s. 3; 2021, c. 6, s. 54.

Enforcement officers

4 The Minister may designate persons or classes of persons to act as enforcement officers for the purpose of this Act and the regulations. 2010, c. 44, s. 4.

No access to person under 19

5 **(1)** No owner or employee of an owner shall sell access to tanning equipment to a person under the age of 19 years.

(2) It is not a defence to a prosecution pursuant to subsection (1) for the owner or other person to show that the person under the age of 19 years appeared to be above that age.

(3) An owner or an employee of an owner shall require a person appearing to the owner or employee to be under the age of 19 years to provide proof of age before selling access to tanning equipment to that person and to carry out such procedures as may be prescribed by the regulations. 2010, c. 44, s. 5.

Signage

6 **(1)** An owner shall display signs in such form and manner and disclosing such information relating to the sale of access to tanning equipment and the effect of tanning on health as may be prescribed by the regulations.

(2) No person shall display or permit the display of any sign or material promoting or advertising the sale of or otherwise respecting the use of tanning equipment except as prescribed by the regulations. 2010, c. 44, s. 6.

Powers of enforcement officer

7 For the purpose of enforcing this Act and the regulations, an enforcement officer may

(a) make test purchases of accessing the use of tanning equipment;

(b) investigate any complaint of a contravention of this Act or the regulations and examine an owner or employee of an owner to determine if a contravention has occurred;

(c) from time to time and at all reasonable times, enter upon a tanning facility's premises of an owner or any other person if it is reasonably necessary to do so in order to determine whether this Act and the regulations are being complied with;

(d) do any other thing for the purpose of enforcing this Act and the regulations. 2010, c. 44, s. 7.

No action lies

8 No action lies against a person by reason of that person reporting a contravention or alleged contravention of this Act or the regulations unless the reporting is done falsely and maliciously. 2010, c. 44, s. 8.

Offence and penalties

9 **(1)** Every owner who contravenes or whose employee contravenes subsection 5(1) is guilty of an offence and liable on summary conviction to

(a) for a first offence, a fine not exceeding $2,000;

(b) for a second offence, a fine not exceeding $5,000; or

(c) for a third or subsequent offence, a fine not exceeding $10,000.

(2) Upon conviction of an owner, or an employee of an owner, for a contravention of subsection 5(1), the judge shall make an order prohibiting the owner or a successor to the owner's business, or an employee of the owner or the successor, from selling access to tanning equipment from the premises at which the contravention took place or any premises to which the business is moved for

(a) in the case of a first offence, seven consecutive days;

(b) in the case of a second offence, not less than three consecutive months and not more than six consecutive months; or

(c) in the case of a third or subsequent offence, not less than 12 consecutive months and not more than 24 consecutive months.

(3) Subject to subsections (1) and (2), every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding $2,000. 2010, c. 44, s. 9.

Regulations

10 **(1)** The Governor in Council may make regulations

(a) prescribing any matter that this Act authorizes to be prescribed by the regulations;

(b) incorporating and adopting by reference, in whole or in part, a written standard, rule, regulation, guideline, code or document as it reads on a prescribed day or as it is amended from time to time;

(c) defining any word or expression used in this Act and not defined in this Act;

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

(e) respecting any matter that the Governor in Council considers necessary or advisable to carry out the intent and purpose of this Act.

(2) A regulation may apply to all owners or to a class of owners and there may be different regulations for different classes of owners.

(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*. 2010, c. 44, s. 10.

CHAPTER T-2

An Act to Authorize the Government of Nova Scotia to Enter into an Agreement with the Government of Canada with Respect to the Collection of Individual and Corporation Income Tax

Table of Contents

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

Short title

1 This Act may be cited as the *Tax Collection Agreement (1961) Act*. R.S., c. 458, s. 1.

Agreement

2 **(1)** The Minister of Finance and Treasury Board, representing the Crown in right of the Province, is authorized to make, enter into and carry out an agreement with the Crown in right of Canada, under which, and upon such terms as may be agreed upon, the Minister of National Revenue for Canada and the Deputy Minister of National Revenue for Taxation of Canada may exercise in the place and stead of or as agent for the Minister of Finance and Treasury Board such of the powers and duties conferred or imposed upon the Minister of Finance and Treasury Board under the *Income Tax Act* as may be specified in the agreement, and thereupon the said Minister and the said Deputy Minister are authorized and empowered to carry out and exercise such duties and powers.

(2) Where any such agreement is entered into, then, subject to the provisions of the agreement,

(a) all returns, information, additional information, letters, accounts, invoices, statements, financial or otherwise, books or other documents or evidence, required to be delivered, produced or furnished to the Minister of Finance and Treasury Board under the said Act or any regulations thereunder, shall be delivered, produced or furnished to the said Deputy Minister;

(b) the Minister of Finance and Treasury Board may pay any expenses that may be incurred in carrying out the terms of the said agreement. R.S., c. 458, s. 2.

3 Each Act, or any provision, Section, subsection or clause of an Act enumerated in Appendix "A" to the Agreement appended as a Schedule to

Chapter 7 of the Acts of 1957, declared by Section 5 of the said Act to be inoperative, continues to be inoperative until such time as the Governor in Council by proclamation declares that the said Act, or any provision, Section, subsection or clause thereof, is operative, and thereupon the said Act or any provision, Section, subsection or clause thereof, so declared to be operative, is in full force and effect. R.S., c. 458, c. 3.

CHAPTER T-3

An Act Respecting Collective Bargaining for Teachers

Table of Contents

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

Short title

1 This Act may be cited as the *Teachers Collective Bargaining Act.* R.S., c. 460, s. 1.

Interpretation

2 In this Act,

"bargaining agent" means the Union acting on behalf of the teachers

(a) in collective bargaining; or

(b) as a party to a professional agreement with their employer;

"Board" means the Labour Board;

"collective bargaining" means negotiating with a view to the conclusion of a professional agreement or the renewal or revision thereof, as the case may be;

"conciliation board" means a board of conciliation and investigation appointed by the Minister in accordance with Section 46;

"conciliation officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

"contract out" means make a contract or agreement in accordance with which a significant part of the work regularly done by the teachers of an employer is to be done by some other person or persons;

"dispute" means any dispute or difference or apprehended dispute or difference between an employer and one or more teachers, or the bargaining agent acting on behalf of the teachers, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by

the employer or by the teacher or teachers or as to privileges, rights and duties of the employer or the teacher or teachers;

"education entity" means an education entity as defined in the *Education Act*;

"employer" means

(a) the Minister of Education and Early Childhood Development in respect of

(i) the salaries of teachers, including substitute teachers,

(ii) allowances for supervisory personnel,

(iii) group life insurance for teachers,

(iv) medical care plans for teachers,

(v) the terms and conditions of employment that are of a general nature relating to teachers employed throughout the Province,

(vi) any other matters that are ancillary to or incidental to the foregoing or that may be necessary to their implementation,

(vii) subject to subclause (viii) and subsections 13(2) and (3), any other matters except those matters coming within clause (b), and

(viii) any matter coming within clause (b) agreed upon by the Minister of Education and Early Childhood Development and the Union pursuant to subsection 13(2) and designated by the Minister pursuant to subsection 13(3);

(b) the education entity in respect of

(i) sick leave for teachers,

(ii) sabbatical leave for teachers,

(iii) educational leave for teachers,

(iv) pay periods for teachers,

(v) such of the terms and conditions of employment or any other matters, not included in a professional agreement with the Minister of Education and Early Childhood Development, that are provided for in a professional agreement with any education entity in effect immediately prior to June 1, 2001;

"lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of teachers done to compel the teachers, or to aid another employer to compel the teachers, to agree to terms or conditions of employment;

"manager" means a teacher as defined in the *Education Act* who

(a) is employed by an education entity or the Minister of Education and Early Childhood Development; and

(b) holds, including in an acting capacity, a position with greater supervisory responsibility than a department head, including a position as regional executive director of education, superintendent of schools, director, subsystem supervisor, coordinator, principal or vice-principal,

but does not include a teacher acting as a teacher-in-charge in accordance with a professional agreement or the holder of a teaching permit issued by the Minister of Education and Early Childhood Development;

"mediation officer" means a person appointed as such by the Minister;

"Minister" means the Minister of Labour, Skills and Immigration;

"parties", with reference to the appointment of, or proceedings before, an arbitration board or a conciliation board, means the parties who are engaged in the collective bargaining or the dispute in respect of which the arbitration board or conciliation board is or is not to be established;

"professional agreement" means a signed agreement in writing between an employer, on the one hand, and the bargaining agent of the teachers on behalf of the teachers, on the other hand, containing terms or conditions of employment of teachers that include provisions with reference to rates of pay and hours of work;

"public school" means any public school established or maintained pursuant to the *Education Act*;

"regulation" means regulation of the Governor in Council pursuant to this Act;

"rule" means a procedural rule of the Board;

"school system" means all the schools under the jurisdiction of an education entity;

"strike" includes a cessation of work, or refusal to work or continue to work, by teachers, in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other teachers in compelling their employer to agree to terms or conditions of employment;

"teacher" means a teacher as defined in the *Education Act* who is employed by an education entity but does not include a manager or the holder of a teaching permit issued by the Minister of Education and Early Childhood Development;

"Union" means the Nova Scotia Teachers' Union as continued by the *Teaching Profession Act*. R.S., c. 460, s. 2; 1995-96, c. 1, s. 154; 2001, c. 20, s. 1; 2010, c. 37, s. 127; 2018, c. 1, s. 5.

Trade Union Act and Labour Board Act

3 Except where inconsistent with this Act or the regulations, the provisions of the *Labour Board Act* and the *Trade Union Act* relating to the constitution, powers, procedures and practices of the Board apply to and with respect to the Board when acting pursuant to this Act. R.S., c. 460, s. 3; 2010, c. 37, s. 128.

Who may sign certain documents

4 For the purpose of this Act, an application to the Board or any notice or any professional agreement may be signed, if it is made, given or entered into

(a) by an employer, who is the Minister of Education and Early Childhood Development, by the Minister or the Deputy Minister of Education and Early Childhood Development, or by the person or persons authorized for this purpose by the Governor in Council;

(b) by an employer, who is an education entity other than the Conseil scolaire acadien provincial, by the regional executive director of education for the education entity, or by the person or persons authorized for this purpose by the regional executive director of education;

(c) by an employer, who is the Conseil scolaire acadien provincial, by the Chair and the Secretary of the Conseil, or by the person or persons authorized for this purpose by resolution duly passed at a meeting of the Conseil;

(d) by the Union, by the President and Executive Secretary thereof, or by the person or persons authorized for this purpose by resolution duly passed at a meeting of the Executive of the Union. R.S., c. 460, s. 4; 2010, c. 37, s. 129; 2018, c. 1, s. 6.

Notice and service

5 (1) For the purpose of this Act, and of any proceedings taken pursuant to this Act, any notice or other communication sent through Canada Post is presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) A document may be served or delivered for the purpose of this Act or any proceedings pursuant to this Act in the manner prescribed by regulation or rule. R.S., c. 460, s. 5.

Certificate of Minister as prima facie evidence

6 A certificate purporting to be signed by the Minister or the Deputy Minister of Labour, Skills and Immigration or by an official in the Minister's Department stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act and, if so received or given, the date upon which it was so received or given is prima facie evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same. R.S., c. 460, s. 6.

Irregularity in proceedings

7 No proceedings pursuant to this Act, including arbitration or other proceedings in accordance with Section 29 are invalid by reason of any defect in form or any technical irregularity. R.S., c. 460, s. 7.

Not compellable witness

8 Notwithstanding any other enactment or law, a conciliation officer or any persons employed in the Department of Labour, Skills and Immigration shall not be compelled or required to give in evidence before any court, body or person having authority to receive as evidence any information of any kind obtained by the

conciliation officer or other person for the purpose of this Act or in the course of the conciliation officer's or other person's duties pursuant to this Act. R.S., c. 460, s. 8; 2010, c. 37, s. 130; 2018, c. 1, s. 7.

Regulations

9 The Governor in Council may make regulations as to the time within which anything authorized by this Act must be done, and also as to any other matter or thing that appears to the Governor in Council necessary or advisable to the effective working of this Act. R.S., c. 460, s. 9.

Personnel

10 There may be employed any officers, clerks and employees who are necessary for the administration of this Act. R.S., c. 460, s. 10.

Administration expenses

11 Any money required for the administration of this Act, or for the carrying out of any of the provisions of this Act, must, in the absence of any vote of the Assembly available therefor, be paid out of the General Revenue Fund. R.S., c. 460, s. 11; 2018, c. 1, s. 8.

Composition of Union

12 (1) Every teacher as defined by this Act is a member of the Union for the purpose of this Act.

(2) For the purpose of this Act, the Union consists of those persons who are teachers as defined by this Act.

(3) Any manager who, immediately before August 1, 2018, was a member of the Union for the purpose of this Act ceases to be a member on that date. R.S., c. 460, s. 12; 2018, c. 1, s. 9.

Agreement by Minister and Union

13 (1) The Union is the exclusive bargaining agent for the teachers with the employer.

(2) The Minister of Education and Early Childhood Development and the Union may agree in writing that specific matters referred to in clause (b) in the definition of "employer" in Section 2, including, for greater certainty, specific terms and conditions of employment or other matters under subclause (b)(v) in the definition of "employer" in Section 2, are the subject of bargaining between the Minister of Education and Early Childhood Development and the Union.

(3) Upon receipt of a copy of an agreement made pursuant to subsection (2), the Minister shall, by order, designate the matters referred to in the agreement as matters that thereafter are to be the subject of bargaining between the Minister of Education and Early Childhood Development and the Union and the designation by the Minister is a regulation within the meaning of the *Regulations Act*.

(4) Upon the Minister making an order pursuant to subsection (3), the matters referred to in the agreement are the subject of bargaining between the Minister of Education and Early Childhood Development and the Union and cease

to be matters that may be the subject of bargaining between an education entity and the Union and, for the purpose of this Act, the Minister of Education and Early Childhood Development is the employer in respect of those matters.

(5) Notwithstanding clause 20(f) of the *Interpretation Act*, the Minister may not rescind, revoke, amend or vary an order made pursuant to subsection (3). R.S., c. 460, s. 13; 2001, c. 20, s. 2; 2018, c. 1, s. 10.

Manager may perform teacher duties

14 Notwithstanding any professional agreement, a manager may perform the duties of a teacher. R.S., c. 460, s. 14; 2018, c. 1, s. 11.

Minister may engage adviser for negotiations

15 The Minister of Education and Early Childhood Development may engage the services of such persons as the Minister of Education and Early Childhood Development considers fit, particularly representatives from the Nova Scotia Federation of Municipalities, to advise and assist the Minister of Education and Early Childhood Development in any negotiations respecting collective bargaining with the Union. R.S., c. 460, s. 16; 2018, c. 1, s. 12.

Notice to commence bargaining where no agreement

16 Where the Union is the bargaining agent of the teachers and no professional agreement with their employer binding on or entered into on behalf of the teachers is in force,

(a) the bargaining agent may, on behalf of the teachers, by notice in writing, require their employer to commence collective bargaining; or

(b) the employer may, by notice in writing, require the bargaining agent to commence collective bargaining. R.S., c. 460, s. 17.

Notice where agreement in force

17 Either party to a professional agreement may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of the agreement, by notice in writing, require the other party to the agreement to commence collective bargaining. R.S., c. 460, s. 18.

Arbitration

18 (1) Where the Union and an education entity are unable to reach agreement with respect to those matters for which an education entity is entitled to bargain as an employer as defined by this Act either the Union or the education entity shall give notice in writing to the other that it desires the matter to be referred to an arbitration board composed of three persons.

(2) The party giving the notice referred to in subsection (1) shall in and with the notice give the name of a person to act as its nominee on the arbitration board and request that the other party name a person to act as its nominee on the board.

(3) The party to whom notice is given pursuant to subsections (1) and (2) shall within seven days of the receipt of such notice appoint a person to be

its nominee on the arbitration board and shall within the said seven days notify in writing the other party of the name of the person so appointed.

(4) Where a party fails to appoint a member to the arbitration board and give notice thereof as required by subsection (3) the Minister, on the application of the party who has appointed a member pursuant to subsection (2), shall within seven days appoint a person to act on the arbitration board as the nominee of the party who has failed to appoint a member.

(5) The two members appointed pursuant to subsections (2), (3) and (4) shall within seven days after the day on which the second of them is appointed, appoint a third person to be a member and chair of the arbitration board.

(6) Where the two members fail or neglect to make an appointment as required by subsection (5), the Minister, on the application of either party, shall within seven days appoint a third person to be a member and chair of the arbitration board.

(7) The decision of a majority of the arbitration board is the decision of the arbitration board.

(8) Every decision of the arbitration board must be signed by the chair and the chair shall transmit it to the parties to be implemented and it is binding upon the parties.

(9) The education entity shall pay the fees and expenses of the member appointed to the arbitration board by or on behalf of the education entity, the Union shall pay the fees and expenses of the member appointed to the arbitration board by or on behalf of the Union and the education entity and the Union shall each pay one half of the fees of, and expenses incurred by, the chair of the arbitration board. R.S., c. 460, s. 19; 2000, c. 4, s. 78; 2018, c. 1, s. 13.

Dispute between Union and education entity

19 (1) The provisions of this Act authorizing a teacher to strike or authorizing the Union to declare or authorize a strike of teachers do not apply to disputes between the Union and education entities and if as a result of a dispute between the Union and the education entity there is any discontinuance or cessation of all or any part of the normal work or activity carried on by the education entity and the teachers on whose behalf the Union is the bargaining agent such discontinuance or cessation of work or activity is and is deemed to be a lockout or strike prohibited by this Act and Section 39 applies to that discontinuance or cessation with necessary changes.

(2) All or any cessation of work by teachers in a dispute between the Union and an education entity or between teachers and an education entity is a strike that is prohibited by this Act. R.S., c. 460, s. 20; 2018, c. 1, s. 14.

Effect of notice to commence bargaining

20 Where notice to commence collective bargaining has been given pursuant to Section 16 or 17 or in accordance with a professional agreement that provides for the revision of a provision of the agreement,

(a) the Union and the employer shall without delay, but in any case within 20 clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude and sign a professional agreement; and

(b) the employer shall not, without consent by the bargaining agent or by the Board, increase or decrease rates of wages or alter any other term or condition of employment of the teachers in relation to whom notice to bargain has been given until

(i) a new professional agreement has been concluded, or

(ii) the bargaining agent and the employer or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a professional agreement, and either

(A) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and 14 days have elapsed from the date on which the report of the conciliation officer was made to the Minister, or

(B) a conciliation board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the conciliation board was received by the Minister. R.S., c. 460, s. 21.

Failure to comply with Section 20

21 (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to the collective bargaining has failed to comply with Section 20, the Minister may refer the complaint to the Board.

(2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection (1), the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to the collective bargaining to do the things that, in the opinion of the Board, are necessary to secure compliance with Section 20, and may order an employer to pay to any teacher compensation not exceeding a sum that, in the opinion of the Board, is equivalent to the remuneration that would, but for a failure to comply with clause 20(b), have been paid by the employer to the teacher. R.S., c. 460, s. 22.

Conciliation officer instructed to confer with parties

22 Where a notice to commence collective bargaining has been given in accordance with Section 20 and

(a) collective bargaining has not commenced within the time prescribed by this Act;

(b) collective bargaining has commenced and either party thereto requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to conclude a professional agreement or a renewal or revision thereof and the request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining; or

(c) in any other case in which, in the opinion of the Minister, it is advisable so to do,

the Minister may instruct a conciliation officer to confer with the parties engaged in collective bargaining. R.S., c. 460, s. 23.

Report of conciliation officer

23 (1) Where a conciliation officer has, pursuant to this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, the conciliation officer shall, within 14 days after being so instructed or within any longer period that the Minister may from time to time allow, make a report to the Minister setting out

(a) the matters, if any, upon which the parties have agreed;

(b) the matters, if any, upon which the parties cannot agree; and

(c) any other matter that in the conciliation officer's opinion is material or relevant or should be brought to the attention of the Minister.

(2) When a conciliation officer has made a report pursuant to subsection (1), the conciliation officer shall forthwith advise the parties to the dispute that a report has made a report. R.S., c. 460, s. 24.

Appointment of conciliation board

24 Where

(a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; and

(b) within 14 days after the conciliation officer makes a report to the Minister, both parties to the dispute, either jointly or severally, make application to the Minister for the appointment of a conciliation board to endeavour to bring about agreements between them and each nominates a person who is ready and willing to act to be a member of the board,

the Minister shall appoint a board for that purpose. R.S., c. 460, s. 25.

Settlement by binding arbitration

25 (1) Where the Minister of Education and Early Childhood Development and the Union wish to settle a matter for which the Minister of Education and Early Childhood Development is entitled to bargain as an employer as defined by this Act by compulsory and binding arbitration, they may do so if they both agree and if they both deliver to the Minister notice in writing of the matter and that they wish the matter to be settled by compulsory and binding arbitration and if the notice has been delivered within 14 days after a conciliation officer has been appointed and has failed to bring about an agreement between the parties or if the notice has been delivered within seven days after a conciliation board has been appointed and has failed to bring about an agreement between the parties and in any other case upon delivery of the notices to the Minister.

(2) Upon delivery of the notice or notices by the Minister of Education and Early Childhood Development and the Union in accordance with subsec-

tion (1), subsections 18(2) to (8) apply to the matter being negotiated between the Minister of Education and Early Childhood Development and the Union with necessary changes except that where the two arbitrators appointed cannot agree upon the third member and chair, the third member and the chair shall be appointed by the Chief Justice of Nova Scotia rather than the Minister.

(3) The Union shall pay the fees and expenses of the member appointed to the arbitration board by the Union, the Minister of Education and Early Childhood Development shall pay the fees and expenses of the member appointed to the arbitration board by the Minister of Education and Early Childhood Development, and the Union and the Minister of Education and Early Childhood Development shall each pay one half of the fees of, and expenses incurred by, the chair of the arbitration board. R.S., c. 460, s. 26; 2000, c. 4, s. 79; 2018, c. 1, s. 15.

Appointment of mediation officer

26 (1) Notwithstanding any other provision of this Act, the Minister may appoint a person as a mediation officer at any time when the Minister is satisfied that the appointment of a mediation officer may bring about settlement of or prevent a dispute.

(2) It is the function of a mediation officer, and a mediation officer has power to

(a) investigate the causes of an existing or potential dispute;

(b) attempt to bring about a settlement of the dispute or to prevent the dispute; or

(c) assist the Union and the employer in the development of effective labour-management relations.

(3) Subject to subsection (4), a mediation officer who makes an investigation shall make a report to the Minister.

(4) When a mediation officer is unable to effect a settlement of a dispute and the circumstances mentioned in Section 22 exist, the mediation officer may, with the consent of the Minister, make a report in accordance with Section 23 and the report is deemed to be a report of a conciliation officer for the purpose of this Act. R.S., c. 460, s. 27.

Parties bound by agreement

27 (1) A professional agreement entered into by the Minister of Education and Early Childhood Development as an employer and the Union as bargaining agent in respect of matters referred to in clause (a) in the definition of "employer" in Section 2 is binding upon

(a) the bargaining agent and every teacher in the Union;

(b) the Minister of Education and Early Childhood Development; and

(c) an education entity.

(2) A professional agreement entered into by an education entity as an employer and the Union as bargaining agent in respect of matters referred to in clause (b) in the definition of "employer" in Section 2 is binding upon

(a) the bargaining agent and every teacher in the Union; and

(b) an education entity. R.S., c. 460, s. 28; 2010, c. 37, s. 131; 2018, c. 1, s. 16.

Effect of professional agreement

28 (1) A professional agreement may not restrict, and is inoperative to the extent that it restricts,

(a) a teacher from accepting a secondment with the Department of Education and Early Childhood Development; or

(b) a teacher as defined in the *Education Act* who is employed with the Department of Education and Early Childhood Development from accepting a secondment with an education entity.

(2) While a teacher is seconded to the Department of Education and Early Childhood Development from an education entity, the teacher

(a) remains subject to any professional agreement applicable to teachers employed by the education entity; and

(b) is deemed not to be an employee as defined in the *Civil Service Collective Bargaining Act* for the purpose of that Act. 2018, c. 1, s. 17.

Final settlement provision

29 (1) Every professional agreement must contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.

(2) Where a professional agreement does not contain a provision as required by this Section, it is deemed to contain the following provision:

> Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration. If the parties fail to agree upon an arbitrator, the appointment shall be made by the Minister of Labour, Skills and Immigration for Nova Scotia upon the request of either party. The arbitrator shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any teacher or employer affected by it.

(3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement. R.S., c. 460, s. 29; 2010, c. 37, s. 132; 2018, c. 1, s. 18.

Powers and duty of arbitrator or arbitration board

30 An arbitrator or an arbitration board appointed pursuant to this Act or to a professional agreement

(a) shall determine the arbitrator's or arbitration board's own procedure, but shall give full opportunity to the parties to the proceedings to present evidence and make submissions to the arbitrator or arbitration board;

(b) has, in relation to any proceedings before the arbitrator or arbitration board, the powers conferred on the Board in relation to any proceedings before the Board by the *Labour Board Act* and the *Trade Union Act*;

(c) has power to determine any question as to whether a matter referred to the arbitrator or arbitration board is arbitrable;

(d) where

(i) the arbitrator or arbitration board determines that a teacher has been discharged or disciplined by an employer for cause, and

(ii) the professional agreement does not contain a specific penalty for the infraction that is the subject of the arbitration,

has power to substitute for the discharge or discipline any other penalty that to the arbitrator or arbitration board seems just and reasonable in the circumstances; and

(e) has power to treat as part of the professional agreement the provisions of any enactment of the Province governing relations between the parties to the professional agreement. R.S., c. 460, s. 30; 2010, c. 37, s. 133.

Final settlement provision endures after agreement

31 (1) Notwithstanding anything contained in a professional agreement, the provision required to be contained therein by subsection 29(1) remains in force after the termination of the professional agreement and until the requirements of subsection 34(1) have been met.

(2) Where a difference arises between the parties to a professional agreement relating to a provision contained in the professional agreement during the period from the date of its termination to the date the requirements of subsection 34(1) have been met,

(a) an arbitrator or arbitration board may hear and determine the difference; and

(b) Sections 29 and 30 apply to the hearing and determination. R.S., c. 460, s. 31.

Term of agreement and revision

32 (1) Notwithstanding anything therein contained, every professional agreement is, if for a term of less than a year, deemed to be for a term of one year from the date upon which it came or comes into operation, or, if for an indeterminate term, is deemed to be for a term of at least one year from that date and may not, except with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

(2) Nothing in this Section prevents the revision of any provisions of a professional agreement, other than a provision relating to the term of the professional agreement, that under the agreement is subject to revision during the term thereof. R.S., c. 460, s. 32.

Duty to file copy of agreement

33 Each of the parties to a professional agreement shall forthwith upon its execution file one copy with the Minister and, where the Minister of Education and Early Childhood Development is not a party to the agreement, with the Minister of Education and Early Childhood Development. R.S., c. 460, s. 33; 2018, c. 1, s. 19.

Strike procedures

34 (1) No teacher shall strike and the Union shall not declare or authorize a strike of teachers and the employer shall not declare or cause a lockout of teachers until

(a) the Union is entitled on behalf of the teachers by notice pursuant to this Act to require the employer to commence collective bargaining;

(b) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a professional agreement or a revision thereof; and

(c) either

(i) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and 14 days have elapsed from the date on which the report of the conciliation officer was made to the Minister, or

(ii) a conciliation board has been appointed to endeavour to bring about agreement between the parties and seven days have elapsed from the date on which the report of the conciliation board was received by the Minister.

(2) No teacher shall strike and the Union shall not declare or authorize a strike of teachers, and the employer shall not declare or cause a lockout of teachers more than six months after the date upon which the times provided by subclause (1)(c)(i) or (ii) have expired unless either party has thereafter requested conciliation services in accordance with Section 22 and the times provided by subclause (1)(c)(i) or (ii) have again expired.

(3) Notwithstanding anything contained in this Act,

(a) no person shall declare or authorize a strike and no teacher shall strike until after a secret vote by ballot of teachers in the unit affected as to whether to strike or not to strike has been taken and the majority of such teachers have voted in favour of a strike; and

(b) no person shall declare or authorize a strike or lockout and no teacher shall strike until 48 hours after receipt by the Minister of a notice of strike or lockout.

(4) Notwithstanding anything contained in this Act,

(a) a vote of teachers on matters arising under clause (b) in the definition of "employer" in Section 2 shall be a vote of teachers employed by the affected education entity;

(b) a vote of teachers arising on matters arising under clause (a) in the definition of "employer" in Section 2 shall be a vote of all teachers employed in the Province. R.S., c. 460, s. 34; 2018, c. 1, s. 20.

Lockout or strike prohibited

35 **(1)** Subject to subsection (2), where a professional agreement is in force, except in respect of a dispute that arises between the parties thereto with reference to the revision of a provision of the agreement that by the agreement is expressly subject to revision during the term of the agreement,

(a) no employer bound by or who is a party to the professional agreement shall declare or cause a lockout with respect to any teacher bound by the professional agreement or on whose behalf the professional agreement was entered into; and

(b) no teacher bound by the professional agreement or on whose behalf a professional agreement has been entered into shall go on strike and the Union shall not declare or authorize a strike of any such teacher.

(2) Where a dispute arises between the parties to a professional agreement with reference to a revision of a provision of the agreement in accordance with subsection 31(2), subsection 34(1) applies. R.S., c. 460, s. 35.

Effect of vote accepting conciliation report

36 **(1)** In any case where a vote of both employers and teachers is in favour of the acceptance of the report of a conciliation board, no employer shall cause a lockout and no teacher shall go on strike and no person shall declare or authorize a strike or lockout.

(2) No teacher shall strike or participate in a strike until a period of 30 days has elapsed from the expiry of any time during which a strike is prohibited by Section 34.

(3) Nothing in this Act may be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment, in whole or in part, not constituting a lockout or strike. R.S., c. 460, s. 36.

Interpretation of Sections 37 to 39

37 In this Section and Sections 38 and 39,

"person" includes the Union, teacher, employer and any agent, attorney or counsel of a person, the Union, teacher or employer;

"work stoppage" means any discontinuance or cessation of all or any part of the normal work or activity carried on by an employer and teachers on whose behalf the Union is the bargaining agent caused by a lockout or strike prohibited by this Act.

Prohibition respecting work stoppage

38 No person shall cause, authorize, participate in or commit a work stoppage. R.S., c. 460, s. 37.

Complaint respecting work stoppage

39 **(1)** Any person who claims to be involved in or affected by acts contrary to Section 38 may make a complaint to the Board identifying the complainant and the circumstances and nature of the work stoppage.

(2) Where the Board is satisfied after investigation of the complaint that Section 38 has not been complied with, the Board, notwithstanding any other provision of this Act, may issue an interim order requiring any person named in the order to forthwith cease and desist any activity or action or to perform any act or commence any activity or action stated in the interim order.

(3) Where there has been a complaint pursuant to subsection (1) the Board may, before or after the making of an interim order pursuant to subsection (2), authorize an officer of the Department of Labour, Skills and Immigration or a person designated by the Minister to inquire into the acts complained of to endeavour to effect a settlement and to make a report to the Board.

(4) Where the officer of the Department of Labour, Skills and Immigration or a person designated by the Minister is unable to effect a settlement or if the complainant or a person named in an interim order so requests in writing, the Board shall conduct a hearing for the purpose of considering evidence and representations together with the report made in accordance with subsection (3) and shall arrive at a decision with respect to the complaint.

(5) The decision must in the form of and issued as an order of the Board and may

(a) require any person to forthwith cease and desist any activity or action or to perform any act or commence any activity or action;

(b) confirm, vary or rescind an interim order.

(6) An interim order in accordance with subsection (2) or a decision of the Board in accordance with subsection (5) has the force and effect of law and is binding upon and governs the persons involved in or affected by acts contrary to Section 38 and binds and governs any person named in the interim order or decision.

(7) For the purpose of this Section, a person is named in an interim order or decision if the person is one of the persons included in classes or groups of persons or in a general description of persons.

(8) The Board may publish an interim order or decision in any manner the Board considers appropriate and may cause a copy of an interim order or decision to be served on, delivered to or otherwise brought to the attention of any person named in the interim order or decision.

(9) An interim order in accordance with subsection (2) is deemed to be in force until a decision in accordance with subsection (5) is made or the

Board makes an order rescinding or varying the interim order and a decision in accordance with subsection (5) is deemed to be in force unless the Board makes a further order rescinding or varying the decision. R.S., c. 460, s. 38; 2010, c. 10, s. 135.

Prohibited activity of employer

40 No employer and no person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding pursuant to this Act,

(ii) has made or is about to make a disclosure that the person may be required to make in a proceeding pursuant to this Act,

(iii) has made an application or filed a complaint pursuant to this Act,

(iv) has participated in a strike that is not prohibited by this Act or exercised any right pursuant to this Act;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, a teacher from exercising any right conferred upon the teacher by this Act;

(c) suspend, discharge or impose any financial or other penalty on a teacher or take any other disciplinary action against a teacher, by reason of the teacher's refusal to perform all or some of the duties and responsibilities of another teacher who is participating in a strike that is not prohibited by this Act;

(d) deny to any teacher any pension rights or accrued benefits to which the teacher would be entitled but for

(i) the cessation of work by the teacher as the result of a lockout or strike that is not prohibited by this Act, or

(ii) the dismissal of the teacher contrary to this Act;

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel a person to refrain from

(i) testifying or otherwise participating in a proceeding pursuant to this Act,

(ii) making a disclosure that the person may be required to make in a proceeding pursuant to this Act,

(iii) making an application or filing a complaint pursuant to this Act;

(f) suspend, discharge or impose any financial or other penalty on a person employed by the employer or person acting on behalf of the employer, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act prohibited by this Act. R.S., c. 460, s. 39.

Prohibited activity of Union

41 The Union shall not and no person acting on behalf of the Union shall

(a) expel or suspend a teacher from membership in the Union or deny membership in the Union to any person by applying to the person in a discriminatory manner the membership rules of the Union;

(b) take disciplinary action against or impose any form of penalty on a teacher by applying to the teacher in a discriminatory manner the standards of discipline of the Union;

(c) expel or suspend a teacher from membership in the Union or take disciplinary action against or impose any form of penalty on a teacher by reason of the teacher having refused to perform an act that is contrary to this Act; or

(d) discriminate against a person in regard to employment, a term or condition of employment or membership in the Union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because the person

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding pursuant to this Act,

(ii) has made or is about to make a disclosure that the person may be required to make in a proceeding pursuant to this Act, or

(iii) has made an application or filed a complaint pursuant to this Act. R.S., c. 460, s. 40.

Complaint of non-compliance with Section 40 or 41

42 (1) Subject to subsections (2) to (4), any person or organization may make a complaint in writing to the Board that an employer, a person acting on behalf of an employer, the Union, a person acting on behalf of the Union or a teacher has failed to comply with Section 40 or 41.

(2) Subject to this Section, a complaint must be made to the Board pursuant to subsection (1) not later than 90 days from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

(3) Subject to subsection (4), no complaint may be made to the Board pursuant to subsection (1) on the ground that the Union or any person acting on behalf of the Union has failed to comply with clause 41(a) or (b) unless

(a) the complainant has presented a grievance or appeal in accordance with any procedure

(i) that has been established by the Union, and

(ii) to which the complainant has been given ready access;

(b) the Union

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or

(ii) has not, within six months from the date on which the complainant first presented the complainant's grievance or appeal pursuant to clause (a), dealt with the grievance or appeal; and

(c) the complaint is made to the Board not later than 90 days from the first day on which the complainant could, in accordance with clauses (a) and (b), make the complaint.

(4) The Board may, on application to it by a complainant, hear a complaint in respect of an alleged failure by the Union to comply with clause 41(a) or (b) that has not been presented as a grievance or appeal to the Union, if the Board is satisfied that

(a) the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or

(b) the Union has not given the complainant ready access to a grievance or appeal procedure. R.S., c. 460, s. 41.

Complaint pursuant to Section 42

43 **(1)** Subject to subsection (2), upon receipt of a complaint made pursuant to Section 42 the Board

(a) may assist the parties to the complaint to settle the complaint; and

(b) where the Board does not act pursuant to clause (a) or the complaint is not settled within such period as the Board considers to be reasonable in the circumstances, shall hear and determine the complaint.

(2) The Board may refuse to hear and determine any complaint made pursuant to Section 42 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a professional agreement to an arbitrator or arbitration board.

(3) Where the complainant establishes that it is reasonable to believe that there may have been failure by an employer or any person acting on behalf of an employer to comply with clause 40(a), the burden of proving there is no failure is upon the employer or the person acting on behalf of the employer. R.S., c. 460, s. 42.

Order to comply with Sections 40 and 41

44 Where, pursuant to Section 43, the Board determines that a party to a complaint has failed to comply with Section 40 or 41, the Board may, by order, require the party to comply with the said appropriate Section and may,

(a) in respect of a failure to comply with clause 40(a), (c) or (f), by order, require the employer to

(i) reinstate any former teacher affected by that failure as a teacher of the employer, and

(ii) pay to any teacher or former teacher affected by that failure compensation not exceeding such sum as, in the opinion of the

Board, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to the teacher;

(b) in respect of a failure to comply with clause 40(e), by order, require an employer to rescind any disciplinary action in respect of and pay compensation to any teacher affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the teacher by the employer;

(c) in respect of a failure to comply with clause 41(a) or (c), by order, require the Union to reinstate or admit a teacher as a member of the Union; and

(d) in respect of a failure to comply with clause 41(b), (c) or (d), by order, require the Union to rescind any disciplinary action taken in respect of and pay compensation to any teacher affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the teacher by the Union. R.S., c. 460, s. 43.

Intimidation prohibited respecting membership

45 (1) No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of the Union.

(2) Nothing in this Act shall be deemed to deprive an employer of the freedom to express the employer's views so long as the employer does not use coercion, intimidation, threats or undue influence. R.S., c. 460, s. 44.

Composition of board of conciliation

46 (1) A board of conciliation and investigation pursuant to this Act consists of three members appointed in the manner provided in this Section.

(2) Where, pursuant to Section 24 both parties to a dispute have requested the Minister to appoint a conciliation board and have submitted to the Minister nominations of persons to be members of the board, the Minister shall forthwith appoint the persons so nominated to be members of the conciliation board.

(3) The two members appointed pursuant to subsection (2) shall, within five days after the day on which they are appointed, nominate a third person who is willing and ready to act to be a member and chair of the conciliation board and the Minister shall forthwith appoint that person to be a member and to be chair of the conciliation board.

(4) Where the two members appointed pursuant to subsection (2) fail or neglect to make a nomination within five days after their appointment, the Minister shall forthwith appoint as the third member and chair of the conciliation board a person whom the Minister considers fit for that purpose.

(5) When the conciliation board has been appointed, the Minister shall forthwith notify the parties of the names of the members of the board.

(6) Where the Minister has given notice to parties that a conciliation board has been appointed pursuant to this Act, it shall be conclusively presumed that the board described in the notice has been established in accordance with this Act, and no order may be made or process entered or proceedings taken in any court to question the granting or refusal of a conciliation board, or to review, prohibit or restrain the establishment of that conciliation board or any of its proceedings. R.S., c. 460, s. 45.

Replacement of chair and other members

47 (1) Where the chair of a conciliation board ceases to be a member of the board before it has completed its work, the Minister shall appoint a new chair who shall be selected in the manner prescribed by subsections 46(3) and (4) except that the other two members must nominate the third person within five days after the day upon which the Minister is advised that the chair has ceased to be a member of the board.

(2) Upon a person other than the chair ceasing to be a member of a conciliation board before it has completed its work, the party to the dispute by whom the person was nominated shall nominate another person and the Minister shall forthwith appoint that other person to be a member of the conciliation board.

(3) Where a party to a dispute who is obliged by subsection (2) to nominate a person fails to do so within five days after the day upon which the Minister is advised that the nomination must be made, the Minister shall forthwith appoint as a member of the conciliation board a person whom the Minister considers fit for that purpose. R.S., c. 460, s. 46.

Oath of office

48 Each member of a conciliation board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister, an oath or affirmation in the following form:

> I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the Conciliation Board appointed to . . . . . and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God.

R.S., c. 460, s. 47.

Statement to conciliation board of matters referred

49 (1) Where the Minister has appointed a conciliation board, the Minister shall forthwith deliver to it a statement of the matters referred to it, and may, either before or after the making of its report, amend or add to that statement.

(2) After a conciliation board has made its report, the Minister may direct the conciliation board to reconsider and clarify or amplify the report or any part thereof or to consider and report on any new matter added to the amended statement of matters referred to it and the report of the conciliation board shall not be deemed to be received by the Minister until the reconsidered report is received. R.S., c. 460, s. 48.

Duty of conciliation board upon appointment

50 (1) A conciliation board shall, immediately after appointment of the chair thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

(2) Except as otherwise provided in this Act, a conciliation board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

(3) The chair may, after consultation with the other members of the board, fix the time and place of sittings of a conciliation board and shall notify the parties as to the time and place so fixed.

(4) The chair and one other member of a conciliation board is a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

(5) The decision of a majority of the members present at a sitting of a conciliation board is the decision of the conciliation board, and in the event that the votes are equal the chair has a casting vote.

(6) The chair shall forward to the Minister a detailed certified statement of the sittings of the board, and of the members and witnesses present at each sitting.

(7) The report of the majority of its members is the report of the conciliation board. R.S., c. 460, s. 49.

Power to summon witness and admissible evidence

51 (1) A conciliation board has the powers of summoning before it any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce all documents and things that the conciliation board considers requisite to the full investigation and consideration of the matters referred to it, but the information so obtained from such documents may not, except as the conciliation board considers expedient, be made public.

(2) A conciliation board has the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

(3) Any member of a conciliation board may administer an oath, and the conciliation board may receive and accept any evidence on oath, affidavit or otherwise as it, in its discretion, considers fit and proper whether admissible in evidence in a court of law or not. R.S., c. 460, s. 50.

Right of entry and inspection

52 A conciliation board or a member of a conciliation board or any person who has been authorized for such purpose in writing by a conciliation board may, without any other warrant than this Section, at any time, enter a building, place or premises of any kind wherein work is being or has been done or commenced by teachers or in which any matter or thing is taking place or has taken place, concern-

ing the matters referred to the conciliation board, and may inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon any such place, matter or thing hereinbefore mentioned, and no person shall hinder or obstruct the board or any person authorized as aforesaid in the exercise of a power conferred by this Section or refuse to answer an interrogation made as aforesaid. R.S., c. 460, s. 51.

Report of findings and recommendations

53 A conciliation board shall, within 14 days after the appointment of the chair of the board, or within a longer period that is agreed upon by the parties, or as may from time to time be allowed by the Minister, report its findings and recommendations to the Minister. R.S., c. 460, s. 52.

Publication and delivery of report

54 On receipt of the report of a conciliation board the Minister shall forthwith cause a copy thereof to be sent to the parties and the Minister may cause the report to be published in any manner that the Minister sees fit. R.S., c. 460, s. 53.

Report and proceedings inadmissible in court

55 No report of a conciliation board and no testimony or proceedings before a conciliation board is receivable in evidence in any court in Canada except in the case of a prosecution for perjury. R.S., c. 460, s. 54.

Failure to report within time limit

56 Failure of a conciliation officer or conciliation board to report to the Minister within the time provided in this Act for report does not invalidate the proceedings of the conciliation officer or conciliation board or terminate the authority of the conciliation board pursuant to this Act. R.S., c. 460, s. 55.

Agreement to be bound by conciliation report

57 When a conciliation board has been appointed and at any time before or after the conciliation board has made its report, the parties so agree in writing, the recommendation of the conciliation board is binding on the parties and they shall give effect thereto. R.S., c. 460, s. 56.

Fees and expenses of conciliation board

58 Each of the parties before a conciliation board shall pay the fees and expenses of the member appointed to the conciliation board by or on behalf of that party and each of the parties shall pay one half of the fees of, and expenses incurred by, the chair of the conciliation board. 2000, c. 4, s. 80.

Duty of Union to file documents

59 (1) The Union shall file with the Minister a copy duly certified by its proper officers to be true and correct, of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes.

(2) A general statement of the receipts and expenditures of the Union for the preceding calendar year verified by the affidavit of a responsible officer must be transmitted to the Minister before April 1st in every year.

(3) Every member of the Union shall, on application to the secretary or treasurer of the Union, be entitled to a copy of such statements free of charge. R.S., c. 460, s. 59.

Enforcement of order to pay money

60 (1) Where an order of the Board made pursuant to this Act or a decision of an arbitrator pursuant to this Act requires any person, employer or other person to pay a sum of money or an amount of money computed by reference to any factor mentioned in the order or decision, the person entitled to the payment may bring an action in any court of competent jurisdiction to recover the sum of money or the amount computed in accordance with the order.

(2) In an action pursuant to subsection (1), evidence that the order of the Board or decision of the arbitrator was made is proof that the order or decision is valid. R.S., c. 460, s. 60.

Prosecution against Union

61 (1) A prosecution for an offence pursuant to this Act may be brought against the Union in the name of the Union and for the purpose of such a prosecution the Union is deemed to be a person, and any act or thing done or omitted by an officer or agent of the Union within the scope of its authority to act on behalf of the Union is deemed to be an act or thing done or omitted by the Union.

(2) In any prosecution pursuant to this Act against an employer, the act or omission of any person employed in a confidential capacity in matters relating to labour relations or of any person who exercises management functions is deemed to be the act or omission of the employer by whom such person was employed, unless and until it is proved that such act or omission was without the knowledge or consent of the employer.

(3) An information or complaint in respect of a contravention of this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceeding in a prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S., c. 460, s. 61.

Consent to prosecution

62 (1) No prosecution for an offence pursuant to this Act may be instituted except with the consent in writing of the Minister.

(2) A consent by the Minister indicating that the Minister has consented to the prosecution of a person named therein for an offence pursuant to this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, is a sufficient consent for the purpose of this Section to the prosecution of the person for any offence pursuant to this Act committed by or commencing on that date.

(3) This Section does not apply to a prosecution instituted by the Minister or the Attorney General. R.S., c. 460, s. 62.

Commission of inquiry

63 **(1)** The Minister may, either upon application or of the Minister's own initiative, where the Minister considers it expedient, make or cause to be made any inquiries the Minister thinks fit regarding teacher-employer matters, and may do such things as seem calculated to maintain, secure and to promote conditions favourable to settlement of disputes.

(2) For the purpose of subsection (1) or where a dispute or difference between employers and teachers exists or is apprehended, the Minister may refer the matters involved to a commission, to be designated as a "commission of inquiry" for investigation thereof, as the Minister considers expedient, and for report thereon, and shall furnish the commission with a statement of the matters concerning which the inquiry is to be made and, in the case of an inquiry involving any particular persons or parties, shall advise such persons or parties of the appointment.

(3) Immediately following its appointment a commission of inquiry shall inquire into matters referred to it by the Minister and endeavour to carry out its terms of reference and, in the case of a dispute or difference in which a settlement has not been effected in the meantime, the report of the result of its inquiries, including its recommendations, shall be made to the Minister within 14 days of its appointment or such extension thereof as the Minister may from time to time grant.

(4) Upon receipt of a report of a commission of inquiry relating to any dispute or difference between employers and teachers, the Minister shall furnish a copy to each of the parties affected and shall publish the same in such manner as the Minister sees fit.

(5) A commission of inquiry shall consist of one or more members appointed by the Minister and Sections 51 and 52 apply as though enacted in respect of that commission and the commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations.

(6) The Minister may provide a commission of inquiry with a secretary, stenographer and such clerical or other assistance as to the Minister seems necessary for the performance of its duties, and fix their remuneration.

(7) The chair and the other members of a commission of inquiry shall be paid such remuneration as the Minister determines and the chair's or other member's actual and reasonable travelling and living expenses for each day the chair or other member is absent from the chair's or that person's place of residence in connection with the work of the commission.

(8) All expenses of a commission of inquiry must be allowed and paid upon the presentation of an account therefor, approved by the chair of the commission. R.S., c. 460, s. 63.

Complaint upon violation of Act

64 **(1)** A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Minister and the Minister, upon receipt of the complaint, may require a commission

of inquiry to investigate and make a report to the Minister in respect of the alleged violation.

(2) Upon receipt of a report pursuant to subsection (1), the Minister shall furnish a copy to each of the parties affected and, if the Minister considers it desirable to do so, may publish the same in any manner that the Minister sees fit.

(3) The Minister shall take into account any report made pursuant to this Section or any action taken by the Board upon a complaint referred to it pursuant to this Act in granting or refusing to grant consent to prosecute pursuant to Section 61. R.S., c. 460, s. 64.

Penalty for contravention of Act

65 Every person or the Union who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by the person or the Union is guilty of an offence and, except where some other penalty is by this Act provided for the act, refusal or neglect, is liable on summary conviction

(a) if an individual, to a fine not exceeding $1,000; or

(b) if an education entity or the Union, to a fine not exceeding $100,000. R.S., c. 460, s. 65; 2018, c. 1, s. 21.

Offence and penalty

66 (1) Every employer and every person acting on behalf of an employer who increases or decreases a wage rate or alters any term or condition of employment contrary to clause 20(b) is guilty of an offence and liable on summary conviction to a fine not exceeding

(a) five dollars in respect of each teacher whose wage rate was so increased or decreased or whose term or condition of employment was so altered; or

(b) $250,

whichever is the lesser, for each day during which such increase, decrease or alteration continues contrary to this Act.

(2) Every employer, the Union or other person in respect of whom an order is made pursuant to subsection 21(2) who fails to comply with the order is guilty of an offence and liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $100,000 in any other case. R.S., c. 460, s. 66; 2018, c. 1, s. 22.

Penalties

67 (1) Every employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding $10,000 for each day that the lockout exists.

(2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding $10,000 for each day that the lockout exists.

(3) Where the Union declares or authorizes a strike contrary to this Act, it is liable upon summary conviction to a penalty not exceeding $10,000 for each day that the strike exists.

(4) Every officer or representative of the Union who declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding $10,000 for each day that the strike exists.

(5) Any number of such offences arising out of the same declaring or causing or authorizing may be charged against one person in one information or in separate informations and, if charged in one information, the judge of the Provincial Court may in one conviction impose as a single penalty the cumulative fines, or terms of imprisonment in default of payment, and no conviction or dismissal in respect of any such offence shall afford a plea of *autrefois convict* or *autrefois acquit* in respect of an information charging an offence on a day subsequent to the day or days in respect of which any such conviction or acquittal was made. R.S., c. 460, s. 67; 2018, c. 1, s. 23.

Failure to comply with decision or interim order

68 **(1)** Every person who, knowing that the person is required to perform any act or to cease or desist from any act by virtue of an interim order or decision of the Board made pursuant to Section 39,

(a) fails to perform any act required by the interim order or decision; or

(b) fails to cease or desist from any act required by the interim order or decision,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $100,000 in any other case.

(2) Subject to subsection (3), evidence that an interim order or decision was made pursuant to Section 39 is proof that the person accused had knowledge of the order or decision and the requirements thereof unless the contrary is proved by the person accused.

(3) In a prosecution for an offence under subsection (1), evidence that an interim order or decision made pursuant to Section 39 was served on or delivered to or otherwise brought to the attention of the person accused is conclusive proof that the person accused had knowledge of the interim order or decision.

(4) Each day that a person commits an offence under subsection (1) constitutes a separate offence.

(5) An information charging an offence under subsection (1) may contain two or more counts charging the offence on each day that it was alleged to be committed. R.S., c. 460, s. 68; 2018, c. 1, s. 24.

Failure to comply with Section 44 order

69 Every person, employer or the Union who fails to comply with an order made under Section 44 is guilty of an offence and liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $100,000 in any other case. R.S., c. 460, s. 69; 2018, c. 1, s. 25.

Failure by Union officer to comply with Section 60

70 Every officer of the Union who fails to comply with Section 60 is liable to a penalty not exceeding $100. R.S., c. 460, s. 70.

Failure to comply with decision of arbitrator

71 (1) Every person, employer or the Union who fails to comply with a decision of an arbitrator made as required by Section 29 is guilty of an offence and liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $100,000 in any other case.

(2) In any prosecution under this Section, in addition to any other method by which the decision of an arbitrator may be proved, the evidence of the arbitrator that the arbitrator made the decision and communicated the decision to the person, employer or the Union charged is conclusive proof that the decision was made and the person, employer or the Union accused had knowledge of the decision. R.S., c. 460, s. 71; 2018, c. 1, s. 26.

Payment and disposition of fines and penalties

72 All fines and penalties imposed under this Act are payable to the Minister of Finance and Treasury Board to and for the public uses of the Province. R.S., c. 460, s. 72; 2018, c. 1, s. 27.

Contract of teacher is subject to Act

73 For the purpose of this Act, a teacher's individual contract of employment is subject to this Act and is deemed to include all the applicable provisions hereof. R.S., c. 460, s. 73.

Effect of change in school board jurisdiction

74 In the event of amalgamation, annexation or other change in education entity jurisdiction, professional agreements affecting teachers covered by such amalgamation, annexation or other change in education entity jurisdiction continues in full force and effect and the education entity employing such teachers affected is deemed to be the employer under the existing professional agreement affecting such teachers for the duration of the agreement or until a new professional agreement is reached between the Union and the employer. R.S., c. 460, s. 74; 2018, c. 1, s. 28.

Regulations Act

75 The exercise by the Governor in Council of the authority contained in Section 9 is a regulation within the meaning of the *Regulations Act*. R.S., c. 460, s. 75.

Conflict with Education Act

76 Where there is a conflict between this Act and the *Education Act*, the provisions of the *Education Act* prevail. R.S., c. 460, s. 76.

CHAPTER T-4

An Act to Provide a Pension System for the Teachers of Nova Scotia

Table of Contents

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

Short title

1 This Act may be cited as the *Teachers Pension Act*. 1998, c. 26, s. 1.

Interpretation

2 In this Act,

"Appeals Committee" means the Teachers' Pension Plan Appeals Committee established pursuant to this Act;

"former Act" means Chapter 461 of the Revised Statutes, 1989, the *Teachers' Pension Act*;

"Fund" means the Nova Scotia Teachers' Pension Fund established pursuant to the former Act;

"Minister" means the Minister of Finance and Treasury Board;

"Pension Plan" means the pension plan set out in the regulations made pursuant to this Act;

"Trustee" means the Trustee of the Fund;

"Union" means the Nova Scotia Teachers Union. 1998, c. 26, s. 2; 2014, c. 34, s. 66.

Supervision and management of Act

3 The Minister has the general supervision and management of this Act. 1998, c. 26, s. 3.

Pension Plan

4 The pension plan established pursuant to the former Act is continued as the Pension Plan. 1998, c. 26, s. 4.

Terms and governance of Plan

5 The terms of the Pension Plan and the governance arrangements for the Pension Plan shall be set out in the regulations and in such other documents as may be created or adopted pursuant to this Act or the regulations. 1998, c. 26, s. 5.

Fund

6 **(1)** The Fund established pursuant to the former Act is continued.

(2) The Minister is the Trustee of the Fund.

(3) Notwithstanding subsection (2) but subject to subsection 10(2), the Minister and the Union may enter into an agreement whereby the Minister may appoint another person as the Trustee and the Minister shall transfer the responsibilities of Trustee to such person and the Minister is no longer the Trustee. 1998, c. 26, s. 6.

Credits to and charges upon Fund

7 **(1)** All contributions and amounts payable under this Act and the regulations and all interest and other earnings from Fund investments must be credited to and payable into the Fund.

(2) All pension payments, refunds, transfers, investment management expenses and other expenses of administration of the Pension Plan of any kind, including the cost of actuarial valuations and audits required to be done under this Act, and other amounts payable pursuant to this Act and the regulations, are a charge upon and payable out of the Fund. 1998, c. 26, s. 7.

Agreement

8 Subject to subsections 6(2) and (3) and subsections 11(1) and (2), the Minister and the Union may enter into an agreement establishing the roles and responsibilities of the Minister and the Union with respect to the governance and administration of the Pension Plan and such agreement is binding on the Minister and the Union for the duration specified in the agreement. 1998, c. 26, s. 8.

Contributions

9 **(1)** Pension Plan members, the Minister and other participating employers shall make contributions to the Fund as provided for in the Pension Plan.

(2) The Minister shall make special payments into the Fund in the amounts and at the times set out in the schedule contained in the regulations. 1998, c. 26, s. 9.

Insufficiency of Fund

10 (1) Where at any time before the appointment of a Trustee pursuant to subsection 6(3) the Fund is insufficient to make all payments required to be made by this Act, the Minister shall pay into the Fund an amount out of the General Revenue Fund sufficient to enable such payments to be made.

(2) Upon the appointment of a Trustee pursuant to subsection 6(3),

(a) subsection (1) ceases to have effect;

(b) the Minister is responsible for making only those payments to the Fund that the Minister is required to make pursuant to this Act and the regulations; and

(c) the Minister is not liable to make any supplementary payments for the purpose of meeting any underfunding in the Pension Plan. 1998, c. 26, s. 10.

Administration of Pension Plan

11 (1) The Minister is responsible for the day-to-day administration of the Pension Plan.

(2) Notwithstanding subsection (1), the Minister and the Union may enter into an agreement whereby the Minister and the Union appoint another person as Pension Plan administrator and the Minister thereby ceases to be the Pension Plan administrator and has no legal responsibility for the administration of the Pension Plan.

(3) The Pension Plan must be administered in accordance with the *Income Tax Act* (Canada) and, where there is conflict between this Act and the *Income Tax Act* (Canada), that Act prevails. 1998, c. 26, s. 11.

Audit

12 (1) The accounts and the investments of the Fund shall be audited annually by the Auditor General or such other auditor as the Governor in Council may from time to time appoint.

(2) Where a change is made in the trusteeship of the Fund pursuant to subsection 6(3) and in the administration of the Pension Plan pursuant to subsection 11(2) such that the *Auditor General Act* no longer applies, the Trustee shall annually appoint an auditor who shall audit the accounts of the Fund and report to the Trustee. 1998, c. 26, s. 12.

Annual actuarial examination

13 (1) The Pension Plan and the Fund shall be examined annually by an actuary who shall prepare and deliver an actuarial valuation report to the Minister and the Union and make such recommendations to the Minister and the Union as the actuary considers advisable for the proper administration of the Pension Plan.

(2) The assumptions used by the actuary in the valuations referred to in subsection (1) shall be set from time to time by the Minister and the Union. 1998, c. 26, s. 13.

Amendments to Pension Plan

14 (1) The Minister and the Union may enter into an agreement to amend the Pension Plan, except that no amendment may be made that would

(a) result in the revocation of registration of the Pension Plan under the *Income Tax Act* (Canada);

(b) increase the current cost of the benefits under the Pension Plan to a level greater than the total current contributions being made, unless specific provision is otherwise made to fund those benefits; or

(c) increase the liabilities of the Pension Plan unless specific provision is otherwise made to fund the increase.

(2) Amendments to the Pension Plan made pursuant to subsection (1) apply on and after the effective date of the amendment unless otherwise specified.

(3) The Minister and the Union may enter into an agreement to amend the schedule of special payments payable to the Fund by the Province contained in the regulations, but no such agreement is effective until approved by the Governor in Council.

(4) The exercise by the Minister and the Union of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. 1998, c. 26, s. 14.

Teachers' Pension Plan Appeal Committee

15 (1) An appeals body to be known as the Teachers' Pension Plan Appeals Committee is established.

(2) The Appeals Committee consists of

(a) one person appointed by the Minister;

(b) one person appointed by the Union; and

(c) the Chair, who is appointed jointly by the Minister and the Union, except that the Chair may not be a member, a pensioner or a person with any financial interest in benefits under the Pension Plan, or an employee of the Province or the Union, and shall not have served in a consultative role to the Province or the Union within the 12 months preceding the appointment.

(3) The Chair is a voting member of the Appeals Committee.

(4) Appeals Committee members, including the Chair, must be appointed for a term of two years and may be reappointed.

(5) Appeals Committee members may be removed by their appointing authority at the absolute discretion of the appointing authority. 1998, c. 26, s. 15.

Function and procedures of Appeals Committee

16 (1) The Appeals Committee shall hear and decide upon appeals made by Pension Plan members, pensioners or any other persons claiming a benefit under the Pension Plan of decisions of the Pension Plan administrator involving the application or interpretation of the Pension Plan provisions.

(2) The Appeals Committee shall hear such evidence as it considers necessary and shall make a decision based on the evidence and this Act and the regulations.

(3) The Minister and the Union may enter into an agreement regarding procedures related to the conduct of the business of the Appeals Committee.

(4) Decisions of the Appeals Committee are binding on the Pension Plan administrator and the appellant, subject to the requirement to maintain continuous registration of the Pension Plan under the terms of the *Income Tax Act* (Canada). 1998, c. 26, s. 16.

Retired teachers

17 The Minister shall pay from the General Revenue Fund the pensions of teachers who retired and were granted pensions under the *Nova Scotia Teachers' Pension Act, 1928*, and the pensions of widows and children of such teachers payable under the *Nova Scotia Teachers' Pension Act, 1928*. 1998, c. 26, s. 17.

Regulations respecting early retirement program

18 (1) Notwithstanding anything contained in this Act or the regulations, the Governor in Council may make regulations respecting an early retirement program for members of the Pension Plan if the funding for such a program is in addition to any contributions otherwise required to be made under this Act or the regulations.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1998, c. 26, s. 18.

Continuation of certain regulations

19 For greater certainty, the regulations of the Governor in Council, referred to as the *Nova Scotia Teachers' Early Retirement Program (1994-1998) Regulations*, continue in effect and all of the rights, obligations and duties created by those regulations continue unchanged. 1998, c. 26, s. 19.

General regulations

20 (1) The Minister and the Union may make regulations

(a) setting out the terms of the Pension Plan;

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

(c) considered necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Minister and the Union of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1998, c. 26, s. 20.

Interpretation of Sections 22 to 25

21 In Sections 22 to 25, "employee" means a person to whom this Act applies. 2004, c. 3, s. 47.

Entitlement to supplementary pension

22 Subject to Section 24, where an employee retires or has retired pursuant to the terms of the Pension Plan and the pension calculated under the terms of the Pension Plan without reference to the maximum pension rules of the *Income Tax Act* (Canada) is greater than the maximum retirement benefit prescribed by the *Income Tax Act* (Canada), the employee is entitled to a supplementary pension equal to the difference between the two, on the same terms and conditions as the pension payable pursuant to the rules of the Pension Plan and the *Income Tax Act* (Canada). 2004, c. 3, s. 47.

Payment of supplementary pension from General Revenue Fund

23 The supplementary pension payable pursuant to Section 22 must be paid from the General Revenue Fund. 2004, c. 3, s. 47.

Contributions to Pension Plan by employer

24 Notwithstanding anything contained in this Act or the Pension Plan, the contributions to the Pension Plan made by the employer in respect of an employee to whom Section 22 applies may be made only on those salaries up to a level equal to the salaries upon which the maximum pension payable pursuant to the *Income Tax Act* (Canada) is calculated. 2004, c. 3, s. 47.

Regulations respecting supplementary pensions

25 (1) The Governor in Council may make regulations

(a) respecting the payment of supplementary pensions pursuant to Sections 22 to 24;

(b) defining any word or expression used but not defined in Sections 21 to 24;

(c) considered necessary or advisable to carry out effectively the intent and purpose of Sections 21 to 24.

(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) A regulation made pursuant to this Section may, if it so provides, be made retroactive in its operation to a date not earlier than January 1, 2000. 2004, c. 3, s. 47.

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CHAPTER T-5

An Act Respecting the Nova Scotia Teachers' Union

Table of Contents

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

Short title

1 This Act may be cited as the *Teaching Profession Act*. R.S., c. 462, s. 1.

Interpretation

2 In this Act, unless the context otherwise requires,

"Council" means the Council of the Union as established pursuant to the bylaws of the Union;

"education entity" means an education entity as defined in the *Education Act*;

"Executive" means the Executive of the Council;

"local" means a local organization of members of the Union formed pursuant to the bylaws of the Union;

"manager" means a manager as defined in the *Teachers Collective Bargaining Act*;

"member" means a member of the Union;

"Minister" means the Minister of Education and Early Childhood Development;

"public school" means any school established or maintained pursuant to the *Education Act*;

"teacher" means a teacher as defined in the *Teachers Collective Bargaining Act*;

"Union" means the Nova Scotia Teachers' Union. R.S., c. 462, s. 2; 2018, c. 1, s. 42.

Union continued

3 **(1)** The Nova Scotia Teachers' Union, as incorporated by Chapter 100 of the Acts of 1951, is continued as a body corporate subject to this Act.

(2) The bylaws, members, Council, Executive, officers, committees, locals and local executives of the Union existing immediately prior to this Act continue in effect or in office until changed or replaced pursuant to this Act. R.S., c. 462, s. 3.

Constitution

4 The Constitution of the Union consists of

(a) this Act;

(b) the bylaws; and

(c) the standing orders of the Council. R.S., c. 462, s. 4.

Liability of members

5 No member of the Union is liable for the debts or liabilities of the Union unless the member expressly agrees to be liable. R.S., c. 462, s. 5.

Membership

6 The members of the Union consist of persons who are members pursuant to subsection 12(1) and, subject to subsection 12(2), such other persons as the Council by bylaw determines. R.S., c. 462, s. 6; 2018, c. 1, s. 43.

Objects

7 The objects of the Union are to advance and promote the teaching profession and the cause of education in the Province. R.S., c. 462, s. 7.

Powers of Union

8 The Union has power to do all things necessary or desirable for the attainment of the objects of the Union or incidental thereto, including, but not so as to restrict the generality of the foregoing, power for such purpose to

(a) purchase, acquire, lease and hold real and personal property and sell, convey, lease, mortgage or transfer the same;

(b) borrow money from any person or corporation and give security for any money so borrowed on any of the real and personal property of the Union by way of mortgage or otherwise;

(c) accept all gifts, legacies or bequests which may be given to the Union;

(d) expend any money of the Union;

(e) fix membership fees and special assessments of members and collect such fees and assessments;

(f) subject to this Act, suspend, expel or otherwise discipline any member and to reinstate any member so suspended or expelled. R.S., c. 462, s. 8.

Exercise of powers

9 Unless otherwise provided in this Act or by bylaws of the Union, the powers of the Union may be exercised by the Council. R.S., c. 462, s. 9.

Council bylaws

10 (1) The Council may make bylaws not inconsistent with this Act dealing with or providing for

(a) the management of the Union and its property;

(b) the constitution of the Union and of locals, including the basis of representation of locals on the Council;

(c) the officers, executive and committees of the Union and their respective powers and duties;

(d) the government, discipline and control of members;

(e) all other matters necessary or useful to carry out the objects and to exercise the powers of the Union.

(2) Every bylaw must be passed by a vote of at least two thirds of the members of the Council present at a meeting thereof, notice of the intention to propose such bylaw at such meeting having been given in writing by notice mailed postage prepaid at least 30 days before such meeting to each member of the Union at the members' last recorded address.

(3) In lieu of the notice provided for by subsection (2), notice of the intention to propose a bylaw may be given by such notice being printed in an issue of a publication of the Union mailed to all schools in the Province at least 30 days before the meeting of the Council at which it is to be considered and a number of copies of the proposed resolution equal to at least 10% of the number of members of each local having been mailed to the respective secretary of each local at least 30 days before such meeting. R.S., c. 462, s. 10.

Professional Committee

11 (1) There is a Professional Committee of the Union, elected according to the bylaws.

(2) The Professional Committee may, on the request of a local, the executive of a local or the Executive, inquire into any charge and determine if a teacher is guilty of conduct unbecoming a member of the teaching profession.

(3) When any such request is made by a local, a copy thereof must be forwarded to the Executive at the time such request is made.

(4) Any member so charged must be given at least 30 days notice in writing of the charge and must be given full opportunity to be heard by the Professional Committee and to be represented by counsel.

(5) The Professional Committee shall dismiss the charge or reprimand, suspend or expel the member.

(6) The Executive shall transmit the decision of the Professional Committee to the teacher by prepaid registered post to the last recorded address of the teacher.

(7) The Executive shall transmit to the Minister such recommendations concerning the certification of the teacher as the Professional Committee may make. R.S., c. 462, s. 11.

Union membership

12 (1) Every teacher who has a permanent contract, a probationary contract or a term contract, within the meaning of the *Education Act*, with an education entity in a teaching, supervisory or other professional capacity relating to education shall be an active member of the Union unless the teacher is expelled therefrom or unless the teacher resigns by written notice addressed to the Union at its head office and mailed by prepaid registered post.

(2) A manager is not a member of the Union and may not be determined to be a member of the Union by the Council pursuant to Section 6.

(3) Any manager who, immediately before August 1, 2018, was a member of the Union ceases to be a member on that date.

(4) Subject to subsection (5), the resignation of a teacher from the Union takes effect at the end of the school year in which the resignation is tendered and is effective for one year following such school year.

(5) When a teacher is first employed in a public school, a resignation by the teacher from the Union takes effect immediately if

(a) it is given before October 1st when the teacher's employment began on the first day of the school year; or

(b) it is given within one month after the teacher's employment began.

(6) A teacher whose resignation from the Union is in effect may continue not to be a member of the Union from year to year provided that during each school year following the teacher's resignation the teacher gives written notice as provided in subsection (1) of the intention not to be a member for the succeeding school year.

(7) A teacher who has resigned or has been expelled from the Union and who continues to be employed as a teacher shall pay to the Union through regular deductions, in the manner provided in Section 14, an amount equivalent to the regular fees for membership as are prescribed by the Union. R.S., c. 462, s. 12; 2018, c. 1, s. 44.

Report on membership and union fees

13 (1) Not later than August 15th in every year, the Union shall send to the Minister

(a) a list of the names and addresses of the persons who have resigned as active members of the Union and whose resignations are effective for the current school year; and

(b) a scale of the fees payable to the Union by its active members for the then current school year.

(2) Within 10 days after the effective date of the resignation, other than a resignation that is effective at the end of a school year, of a member from active membership in the Union or the expulsion of a member or the readmission of a member, the Union shall send the name and address of the member to the Minister.

(3) The Minister shall cause to be kept a list of the names and addresses of all persons who have resigned as active members of the Union or who have been expelled from the Union and who have not been readmitted to the Union as active members.

(4) The Minister shall cause to be sent to each education entity

(a) on or about September 15th in each year, a list of the names of the teachers employed by it whose resignations as active members of the Union became effective at the end of the preceding school year or who were expelled from the Union during the preceding school year; and

(b) the name of each member employed by it who has resigned, been expelled or been readmitted to the Union, within 10 days after receiving notice of the resignation, expulsion or readmission pursuant to subsection (2). R.S., c. 462, s. 13; 2018, c. 1, s. 45.

Payment of fees

14 (1) Every member of the Union shall pay to the Union annually such fees as are prescribed by the Union and every teacher who has resigned or has been expelled from the Union and who continues to teach shall pay an amount equivalent to such fees.

(2) On or about September 15th in each year, the Minister shall cause to be sent to each education entity a copy of the scale of fees payable to the Union by its members as furnished to the Minister pursuant to Section 13.

(3) Every education entity shall deduct from the salary of each member of the Union and each teacher employed by it who has resigned or has been expelled from the Union an amount equal to the fees payable by the person to the Union according to the scale furnished by the Minister, and shall make such deductions in 12 equal monthly instalments, or in such other number of equal monthly instalments as may be agreed upon by the board and the Union, beginning in the month of September or in the month following receipt of notice that the person has become or been readmitted as a member of the Union.

(4) Every education entity shall remit each month to the Secretary-treasurer of the Union the amount of deductions made by it pursuant to subsection (3) within 10 days after the end of the month in which the fees are deducted.

(5) The Minister shall cause to be withheld, from the amount payable by the Minister under the *Education Act* to an education entity in any year, an amount equal to the difference between the sum of the deductions made by the board pursuant to subsection (3) and the amount remitted by it to the Secretary-treasurer of the Union pursuant to subsection (4).

(6) The Minister shall cause all amounts withheld by the Minister pursuant to subsection (5) to be remitted to the Secretary-treasurer of the Union at such times and in such amounts as the Minister determines. R.S., c. 462, s. 14; 2018, c. 1, s. 46.

Benefit plan or service

15 **(1)** In this Section, "benefit plan or service" has the meaning prescribed by the regulations.

(2) Notwithstanding that managers are not members of the Union, the Union shall permit a manager to participate, on the same terms as a teacher, in any benefit plan or service established, sponsored, administered or otherwise provided by the Union for the benefit of teachers.

(3) The Minister may, in accordance with the regulations, compensate the Union for the reasonable costs it incurs by allowing managers to participate in any benefit plan or service.

(4) The Governor in Council may make regulations

(a) prescribing the meaning of "benefit plan or service";

(b) respecting the compensation of the Union for the reasonable costs it incurs by allowing managers to participate in the Union's benefit plans and services.

(5) The exercise by the Governor in Council of the authority contained in subsection (4) is a regulation within the meaning of the *Regulations Act*. 2018, c. 1, s. 47.

CHAPTER T-6

An Act to Improve and Promote Technical Safety in Nova Scotia

Table of Contents

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

Short title

1 This Act may be cited as the *Technical Safety Act*. 2008, c. 10, s. 1.

Purpose

2 The purpose of this Act is to educate and encourage persons and the community to apply the principles of technical safety to prevent incidents that could cause injury, death or unwarranted property damage. 2008, c. 10, s. 2.

Interpretation

3 **(1)** In this Act,

"Administrator" means the person appointed as the Administrator for the purpose of this Act or the regulations, and includes an Acting Administrator;

"Advisory Board" means the Technical Safety Advisory Board, or a subcommittee of the Advisory Board, established pursuant to this Act or the regulations;

"aggrieved person" means a person who is both directly and immediately aggrieved with respect to a matter for the purpose of a review or an appeal;

"alternative compliance method" means the written authorization from a chief inspector to substitute a method of compliance for a requirement in this Act, the regulations or a standard;

"amusement device" means a device or combination of devices designed or intended to entertain or amuse people by physically moving them as prescribed by the regulations;

"Appeal Board" means the Appeal Board referred to in Section 33;

"appointment" means a written appointment to a position;

"authorization" means any form of authorization such as an appointment, licence, permit, registration, certification, certificate of competency, alternative compliance method or minor variance, and includes an authorization granted by a recognized certification organization;

"boiler" means a vessel in which steam or other vapour can be generated under pressure or in which a liquid can be put under pressure by the application of a heat source;

"boiler plant" means any installation consisting of one or more boilers and any plant prescribed as a boiler plant by the regulations, and includes any pipe or fitting, prime mover, machinery or other equipment attached;

"certificate of competency" means a certificate granted by a chief inspector or a recognized certification organization to an individual pursuant to this Act or the regulations, and includes a certificate of qualification;

"certification", for the purpose of Section 25, means a certification that a regulated product met the requirements of this Act, the regulations or a standard;

"certification mark" means a mark or other identification of a recognized certification organization certifying that a regulated product on which it is placed meets the standard that the product must meet for that certification;

"chief inspector" means a chief inspector appointed pursuant to this Act;

"compliance audit" means an examination by an inspector of any information, record or other material that the inspector requires an owner, operator or other person to submit for the purpose of obtaining or continuing to hold a licence, permit, registration, certification or certificate of competency pursuant to this Act or the regulations;

"contractor" means any individual, corporation, company, firm, organization or partnership performing or engaging to perform for the contractor's own use or benefit, or for that of another and with or without remuneration or gain, any activity with respect to any regulated work to which this Act or the regulations applies;

"crane" means a lifting device as prescribed by the regulations;

"Department" means the Department of Labour, Skills and Immigration;

"device" means a mechanism, tool or other piece of equipment designed for a specific purpose, and includes a crane, electrical device, elevating device, amusement device or other device as prescribed by the regulations;

"directive" means a written guide by a chief inspector on the interpretation, application or operation of this Act, the regulations or a standard;

"electrical work" means the installation, alteration, maintenance, operation or repair of any wiring and any electrical equipment in or upon any property used or intended to be used for the utilization, distribution or transmission of electric power, energy, light, signals, data, communications or alarm from any type of transmission source that is an electrical activity or installation as prescribed by the regulations;

"elevating device" means a non-portable device for hoisting and lowering or moving persons or freight as prescribed by the regulations;

"equipment" means one or more assemblies capable of performing a function as prescribed by the regulations;

"fee" means the applicable fee pursuant to this Act or the regulations;

"fuel" means a material that is burnt to release heat energy as prescribed by the regulations;

"incident" means an event occurring as a result of regulated work, or the testing, use or operation of a regulated product, that

(a) causes death, personal injury or damage to property; or

(b) creates a risk of personal injury or damage to property;

"inspection" means the critical examination of a thing, property or activity to determine its conformance with this Act, the regulations, a standard or a specification, and includes investigating, monitoring or auditing;

"inspection agency" means an inspection agency required or authorized by this Act or the regulations to carry out an inspection for compliance with this Act or the regulations or any part of this Act or the regulations, and includes the persons employed by the agency to inspect;

"inspector" means an inspector appointed pursuant to this Act or the regulations, and includes the Administrator and a chief inspector but not an inspection agency;

"licence" means authorization to engage in an action or activity granted pursuant to this Act or the regulations;

"Minister" means the Minister of Labour, Skills and Immigration;

"minor variance" means an authorization granted by a chief inspector to vary from a minor requirement in this Act, the regulations or a standard or permission for the use of a regulated product in a manner other than the standard use that is not specifically prohibited under this Act;

"municipality" has the same meaning as in the *Municipal Government Act*;

"operator" means a person who operates a device, equipment, system, property or plant regulated by this Act or the regulations as the whole or a part of the normal duties of that person;

"owner" means any person, firm, corporation or unincorporated body, lessee, agent, syndicate, association, corporation or club that

(a) owns, controls, leases, manages or is in possession of property or any part of a property;

(b) owns, controls, leases or manages an activity on a property;

(c) owns, controls, leases, manages or is in possession of a device, equipment, system or plant;

(d) is in charge of a property, thing or activity;

(e) in the absence of proof to the contrary, is the person assessed for a property; or

(f) is prescribed as an owner by this Act or the regulations;

"permit" means authorization to engage in an activity within the scope of this Act or the regulations granted pursuant to this Act or the regulations;

"plant" means property used for regulated work, including a boiler plant or a refrigeration plant as prescribed by the regulations;

"pressure system" means a system of pipes, vessels, tanks, reactors or other equipment or interconnections operating with an internal pressure greater than the barometric pressure, and includes a boiler, pressure vessel, pressure piping system, pressure plant or other similar device as prescribed by the regulations;

"property" means land, premises or any portion thereof in, on or under which a regulated product is located or where regulated work is done and includes any installation, building, structure, equipment, system or device situated on the property;

"recognized certification organization" means a certification organization accredited for a specific purpose prescribed by the regulations as a recognized certification organization;

"refrigeration plant" means an installation consisting of pressure vessels, pipes, fittings, machinery or other equipment by which refrigerants are vaporized, compressed and liquefied in the refrigerating cycle, and includes any installation as prescribed by the regulations;

"refrigeration system" means a system consisting of pressure vessels, pipes, fittings, machinery or other equipment by which refrigerants are vaporized, compressed and liquefied in the refrigerating cycle, and includes any system as prescribed by the regulations;

"registration" means the entering of information or data into an official record as required by this Act or the regulations;

"regulated product" means a product or a part of that product prescribed as a regulated product in the regulations;

"regulated work" means

(a) the assembly, manufacture, construction, installation, operation, testing, maintenance or repair of a regulated product;

(b) the alteration of a regulated product; and

(c) an activity that is prescribed as regulated work by the regulations;

"review" means an internal review of a decision carried out by the Administrator pursuant to Section 32;

"sealing" means a measure taken by an inspector or inspection agency as authorized by this Act or the regulations to isolate any device, equipment, regulated product, system, thing, plant or property so that it will not be occupied, used or operated;

"standards" means the applicable codes, standards or guidelines adopted pursuant to this Act or the regulations;

"system" means a combination of two or more pieces of equipment integrated to perform a specific function.

(2) The definitions of "amusement device", "electrical work" and "elevating device" in subsection (1) come into force on such day as the Governor in Council orders and declares by proclamation. 2008, c. 10, s. 3.

Act binds Crown

4 **(1)** This Act binds the Crown in right of the Province.

(2) This Act applies to

(a) every agency of the Government of the Province; and

(b) all matters within the legislative jurisdiction of the Province.

(3) To the extent that the Crown in right of Canada submits, this Act binds the Crown in right of Canada and every agency of the Government of Canada. 2008, c. 10, s. 4.

Act does not affect enforcement of other laws

5 Nothing in this Act affects the powers, obligations and duties of persons or bodies to comply with, carry out or enforce any other law of the Province. 2008, c. 10, s. 5.

Application of Act

6 **(1)** This Act and the regulations apply to

(a) all persons doing regulated work;

(b) all regulated products;

(c) all categories and subcategories of activity relating to regulated work and products;

(d) all other matters or activities relating to regulated work and products with respect to the following:

(i) amusement devices,

(ii) boiler systems and boiler plants,

(iii) cranes,

(iv) electrical work,

(v) elevating devices,

(vi) fuel systems and fuel equipment,

(vii) pressure systems,

(viii) refrigeration systems and refrigeration plants,

(ix) any other regulated products specified in the regulations; and

(e) any other matter or activities prescribed by the regulations.

(2) Exemptions to subsection (1) may be established by the regulations.

(3) Subclauses (1)(d)(i), (iv) and (v) come into force on such day as the Governor in Council orders and declares by proclamation. 2008, c. 10, s. 6.

Supervision and management of Act

7 The Minister is responsible for the supervision and management of this Act and the regulations. 2008, c. 10, s. 7.

Appointments in accordance with Civil Service Act

8 The persons necessary for the administration and enforcement of this Act and the regulations must be appointed in accordance with the *Civil Service Act*, except where this Act provides otherwise. 2008, c. 10, s. 8.

Administrator

9 (1) The Minister shall designate from among those persons appointed pursuant to Section 8 an Administrator and one or more chief inspectors to perform the duties and functions and exercise the powers and authorities imposed or conferred upon them by this Act, the regulations and the standards.

(2) The Administrator may delegate any or all of the duties and functions of the Administrator to a chief inspector, including any quasi-judicial function of the Administrator.

(3) The Administrator may designate from among those persons appointed pursuant to Section 8 qualified persons as inspectors who shall perform the duties and functions and exercise the powers and authorities imposed or conferred upon inspectors by this Act, the regulations and the standards, subject to any limitations determined by the Administrator.

(4) The Administrator may require or designate an inspection agency to administer and enforce all or part of this Act, the regulations or the standards as prescribed by the regulations.

(5) The Deputy Minister of Labour, Skills and Immigration may designate one, or more than one, chief inspector to act in the place of the Administrator in the Administrator's absence or incapacity or where the position of the Administrator is vacant.

(6) A chief inspector designated pursuant to subsection (2) shall perform the functions and duties and has the powers and authorities of the Adminis-

trator, subject to any limitation determined by the Deputy Minister of Labour, Skills and Immigration. 2008, c. 10, s. 9.

Powers and duties of Administrator

10 **(1)** The Administrator may

(a) promote and encourage technical safety and co-operate with any body or person interested in improving or promoting technical safety, including promoting, encouraging and delivering public technical safety education programs and training and supporting and assisting others to provide public technical safety education programs and training;

(b) advise persons or organizations interested in improving or promoting technical safety, incident prevention, technical safety education and training and the delivery of those services;

(c) study conditions under which incidents occur;

(d) require such reports as the Administrator considers necessary from persons authorized or required to inspect, investigate or examine;

(e) maintain in the Administrator's office a statistical record of all incidents reported to the Administrator;

(f) collect and disseminate information with respect to incidents in the Province;

(g) study methods of technical safety;

(h) make recommendations, including reference guides, respecting technical safety, incident prevention and the training of persons involved in regulated work in the provision of those services and the delivery of those services and matters related to any of them;

(i) promote the development and implementation of consistent, objective, impartial, fair and transparent practices for authorizations.

(2) The Administrator shall exercise such other powers and perform such duties as are assigned to the Administrator

(a) pursuant to this Act or the regulations; or

(b) by the Minister.

(3) The Administrator has the power and authority to enforce compliance with this Act, the regulations and the standards.

(4) With the approval of the Minister, the Administrator, or a person on the staff of the Administrator, may

(a) sit as a member of a board or committee of a non-profit organization with a mandate that relates to the purpose of this Act; and

(b) represent the Minister on such a board or committee.

(5) With the approval of the Minister, the Administrator may assist, including provide administrative support for, the work of a non-profit organization with a primary mandate that relates to

(a) technical safety or incident prevention;

(b) training or certification of inspectors, employees of an inspection agency or persons involved in regulated work or accreditation of such training or certification programs; or

(c) any other mandate prescribed by the regulations.

(6) The Administrator may, with the approval of the Minister, enter into an agreement to provide services to or contract to have services provided by a municipality or other body or person.

(7) The Administrator may charge a fee for the services contracted out pursuant to subsection (6) and the fee is a debt due to the Crown in right of the Province and may be recovered in the same manner as any debt due to the Crown. 2008, c. 10, s. 10.

Advisory Board

11 (1) The Minister may establish an Advisory Board to be known as the Technical Safety Advisory Board.

(2) Members of the Advisory Board who are knowledgeable on technical safety matters shall be appointed by the Minister, in accordance with the regulations, for such terms as the Minister determines.

(3) The Advisory Board may advise the Minister regarding

(a) the administration or reform of this Act, the regulations and the standards;

(b) the promotion and support of technical safety, certification and training of persons involved in regulated work and incident prevention;

(c) matters arising from the functioning of non-profit organizations with mandates that relate to the purpose of this Act;

(d) the issuance, expiry, suspension and revocation of licences, registrations, permits or certifications or other matters as specified by the Minister;

(e) any other matter as determined by the Minister.

(4) The Advisory Board, with the approval of the Minister, may

(a) create one or more subcommittees of the Advisory Board;

(b) appoint members to a subcommittee;

(c) seek advice from non-members or groups who are experts or specialists in technical safety; and

(d) determine the mandate of a subcommittee.

(5) For greater certainty, a person who is not a member of the Advisory Board may be a member of a subcommittee of the Advisory Board.

(6) The members of the Advisory Board and any subcommittees shall be reimbursed for such expenses as the Minister determines. 2008, c. 10, s. 11.

Achievement of technical safety

12 (1) Technical safety is achieved when, taking into account the nature of the regulated work or product, all reasonable steps have been taken to ensure

(a) compliance with enactments having an impact on the protection of persons and property from the occurrence or consequences of an incident;

(b) all persons involved in regulated work or with regulated products exercise appropriate behaviour in relation to the regulated work and regulated products and take all reasonable steps to prevent incidents;

(c) all persons involved in regulated work or with regulated products have all the appropriate training and education in relation to the activities involved in the regulated work and the use of a regulated product;

(d) all persons involved in regulated work or with regulated products have all the appropriate training and education in relation to the regulated work and regulated products to fully prepare to appropriately respond to an incident or emergency; and

(e) that where an incident does occur, it does not cause unwarranted damage to property or injury.

(2) Unless this Act or the regulations otherwise provide, every owner, operator and all other persons shall take every precaution that is reasonable in the circumstances to achieve technical safety and to carry out the provisions of this Act, the regulations or a standard. 2008, c. 10, s. 12.

Notification of incident

13 Where an incident occurs, the owner or operator shall notify the Administrator or the Administrator's designate of the incident as prescribed in the regulations. 2008, c. 10, s. 13.

Inspections

14 (1) For the purpose of ensuring compliance with this Act, the regulations, the standards or any order made thereunder or to determine the cause of an incident, an inspector or, as authorized by the regulations, an inspection agency may

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

(b) require the production of records, drawings, specifications, books, plans or other documents in the possession of a person and remove them temporarily for the purpose of making copies;

(c) require the production of documents or records that may be relevant and remove them temporarily for the purpose of making copies;

(d) take photographs or recordings of the property, any thing or any activity taking place on the property;

(e) make any examination, investigation or inquiry as the inspector or inspection agency considers necessary to ascertain whether there is compliance with this Act, the regulations, the standards or any order made under them or to determine the cause of an incident;

(f) inspect, take samples and conduct tests of samples, including tests in which a sample is destroyed, of any material, product, tool, equipment, machine, system or device being produced, used or found on the property;

(g) examine a person with respect to matters pursuant to this Act, the regulations or the standards;

(h) for the purpose of an inspection, inquiry or examination made by the inspector or inspection agency pursuant to this Act, the regulations or the standards, issue a summons to give evidence and administer an oath or affirmation to a person;

(i) in an inspection, examination, inquiry or test be accompanied and assisted by or take with the inspector or inspection agency, a person having special, expert or professional knowledge of any matter or any person required for safety or enforcement;

(j) conduct or require co-operation in order to conduct a compliance audit or an inspection;

(k) exercise such other powers as may be necessary or incidental to the carrying out of the inspector's or inspection agency's functions pursuant to this Act, the regulations or the standards.

(2) Where an inspector or inspection agency takes a sample pursuant to clause (1)(f), the inspector or inspection agency is responsible for the material, product, tool, equipment, machine, system or device, except for a sample that has been destroyed, until it is returned to the person being inspected. 2008, c. 10, s. 14.

Entry of private dwelling place

15 Notwithstanding anything contained in this Act, an inspector or inspection agency may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except

(a) with the consent of the occupant of the place; or

(b) pursuant to an order under Section 16 to enter and inspect or under the authority of a search warrant. 2008, c. 10, s. 15.

Orders respecting inspections

16 (1) Notwithstanding anything contained in this Act, where a justice of the peace is satisfied on evidence under oath by an inspector or an inspection agency that

(a) there are reasonable grounds to believe that it is appropriate for the administration of this Act for the inspector or an inspection agency to do anything set out in Section 14; and

(b) the inspector or an inspection agency may not be able to carry out duties under this Act effectively without an order under this Section because

(i) no person is present to grant access to a place that is locked or is otherwise inaccessible,

(ii) a person has denied the inspector or an inspection agency access to a place or there is reasonable ground for believing that a person may deny the inspector or an inspection agency access to a place,

(iii) a person has prevented the inspector or an inspection agency from doing anything set out in Section 14 or denied the inspector or an inspection agency access to any thing as a result of which the inspector or an inspection agency in unable to do anything set out in Section 14,

(iv) there are reasonable grounds to believe that a person may prevent an inspector or an inspection agency from doing anything set out in Section 14 or may deny the inspector access to anything as a result of which the inspector or an inspection agency may be unable to do anything set out in Section 14,

(v) it is unpractical, because of the remoteness of the place, to be inspected or because of any other reason for the inspector or an inspection agency to obtain an order under this Section without delay if access is denied, or

(vi) there are reasonable grounds to believe that an attempt by the inspector or an inspection agency to do anything set out in Section 14 without the order might defeat the purpose of that Section or cause an adverse effect,

the justice of the peace may issue an order authorizing the inspector or an inspection agency to do anything set out in Section 14 that is specified in the order for the period of time set out in the order.

(2) The period of time referred to in subsection (1) may not extend beyond 30 days after the date on which the order is made, but the order may be renewed for any reason set out in subsection (1) for one or more periods each of which is not more than 30 days.

(3) An application pursuant to subsection (2) may be made before or after the expiry of the period.

(4) An order under this Section may be issued or renewed on application without notice. 2008, c. 10, s. 16.

Powers of inspector respecting unsafe things

17 (1) Where an inspector determines that any device, equipment, regulated product, system, thing, plant or property to be used

(a) is unsafe; and

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

the inspector may order the owner or any other person to rectify the violation, to stop using, displaying, selling, servicing, disconnecting, renting, leasing or otherwise supplying the device, equipment, regulated product, system, thing, plant or property to anyone.

(2) Where an inspector determines that the requirements of subsection (1) have not been met, the inspector may seal the device, equipment, regulated product, system, thing, plant or property out of service.

(3) Where an inspector seals any device, equipment, regulated product, system, thing, plant or property pursuant to subsection (2), no one shall remove or interfere with the seal and no one shall use, or permit the use of, the thing or occupy, or permit the occupancy of, the property while under seal. 2008, c. 10, s. 17.

Inspector may order assessment

18 (1) Where an inspector determines that there may be a safety risk or to assist in the determination of the cause of an incident, the inspector may order, at the expense of the owner, operator or another person, that person to

(a) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as are specified by the inspector for the purpose of determining whether there is compliance with this Act, the regulations or the standards;

(b) cause any tests necessary to the production of the report or assessment to be conducted or taken.

(2) An order under subsection (1) may be revoked if the party who received the order establishes, on a review under Section 32 or an appeal under Section 34, that the order is unreasonable. 2008, c. 10, s. 18.

Confidentiality

19 Except in accordance with this Act, the regulations or the standards, a person who, at the request of an inspector, makes an examination, inquiry or a test pursuant to clause 14(i) shall not publish, disclose or communicate to a person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred pursuant to this Act, the regulations or the standards. 2008, c. 10, s. 19.

Oral and written orders

20 (1) An inspector or inspection agency may give an order orally or in writing to a person for the carrying out of any matter, thing or activity regulated, controlled or required by this Act, the regulations or the standards, including any

reasonable terms and conditions and may require that the order be carried out within such time as the inspector or inspection agency specifies.

(2) Where an inspector or inspection agency makes an oral order pursuant to subsection (1), the inspector or inspection agency shall confirm the oral order in writing.

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

(4) Where an inspector or inspection agency makes an order pursuant to subsection (1) and finds that a property, matter, thing or activity referred to in the order is a source of danger or a hazard, the inspector or inspection agency may order that

(a) any property or thing not be used until the order is complied with;

(b) any activity on the property stop until the order to stop work is withdrawn or cancelled by an inspector;

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

(d) the person take any other action that the inspector or inspection agency determines is necessary to eliminate the source of the danger or hazard.

(5) Where an order is made pursuant to clause (4)(c), no one shall enter or permit anyone to enter the property or part of the property that is the subject of the order, except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only if the person doing the work is protected from the danger or the hazard.

(6) Where an inspector or inspection agency issues an order pursuant to this Section, the inspector or inspection agency may affix to the property or to any device, equipment, regulated product, system, plant or thing a copy or notice of the order and no person, except an inspector or inspection agency, shall remove the copy or notice unless authorized to do so by an inspector or inspection agency. 2008, c. 10, s. 20.

Duty to comply with inspections

21 (1) No person shall hinder, obstruct, molest or interfere with an inspector or inspection agency in the exercise of a power or the performance of a duty pursuant to this Act, the regulations or the standards.

(2) No person shall knowingly furnish an inspector or inspection agency with false information or neglect or refuse to furnish information required by an inspector or inspection agency in the exercise of the inspector or inspection agency's powers or the performance of the inspector or inspection agency's duties pursuant to this Act, the regulations or the standards.

(3) A person who

(a) wilfully delays an inspector or inspection agency in the exercise of the inspector or inspection agency's powers or the performance of the inspector or inspection agency's duties pursuant to this Act, the regulations or the standards;

(b) fails to comply with a direction or summons of an inspector or inspection agency given pursuant to this Act, the regulations or the standards; or

(c) fails to produce any certificate or document that the person is required by this Act, the regulations or the standards to produce,

is guilty on summary conviction of obstructing the inspector or inspection agency in the exercise of the inspector's or inspection agency's powers or the performance of the inspector or inspection agency's duties pursuant to this Act.

(4) A person shall furnish all necessary means in that person's power to facilitate any entry, inspection, examination, testing or inquiry by an inspector or inspection agency in the exercise of the inspector or inspection agency's powers or the performance of the inspector or inspection agency's duties pursuant to this Act, the regulations or the standards. 2008, c. 10, s. 21.

Authorization or registration required respecting regulated work or products

22 (1) No person shall sell, service, construct, install, control, operate or supervise a device, equipment, regulated product, system, thing, plant, property or activity without an authorization or registration required pursuant to this Act or the regulations.

(2) A chief inspector, or others as authorized by the regulations, may grant or accept an authorization or registration for regulated work or a regulated product pursuant to the regulations.

(3) A chief inspector, or others as authorized by the regulations, may refuse, suspend or revoke an authorization or registration for regulated work or a regulated product where it is contrary to this Act, the regulations, the standards or a term or condition of the authorization or registration.

(4) A chief inspector, or others as authorized by the regulations, shall provide written notice of and reasons for a refusal, suspension or revocation of an authorization or registration for regulated work or a regulated product. 2008, c. 10, s. 22.

Licences

23 (1) A licence for undertaking regulated work may be required pursuant to the regulations.

(2) No person shall direct or permit persons doing regulated work or to do regulated work for another licensed person unless those persons are licensed pursuant to this Act or the regulations.

(3) A chief inspector, may grant a licence for regulated work if the applicant meets all the requirements for the licence established in the regulations

and the licence granted may be subject to terms and conditions provided for under the regulations.

(4) A licence may specify a category of regulated work and be subject to terms or conditions as set by a chief inspector.

(5) A licence holder shall comply with the terms and conditions of the licence.

(6) A chief inspector may examine a person's qualifications and those of the person's employees and determine the scope of a licence.

(7) A chief inspector may refuse, suspend or revoke a licence where it is contrary to this Act, the regulations, the standards or a term or condition of the licence.

(8) A licence may be reinstated by a chief inspector on the conditions established by the regulations.

(9) A licence holder shall not do regulated work outside the scope of the licence and shall maintain a current knowledge of this Act, the regulations, the standards and other relevant materials that are applicable to the regulated work or regulated product in use.

(10) Licences granted pursuant to this Section may be renewed, except where there are outstanding fees. 2008, c. 10, s. 23.

Permits

24 (1) A permit for undertaking regulated work or the use of a regulated product may be required pursuant to the regulations.

(2) A person shall obtain a permit prior to undertaking regulated work or the use of a regulated product as required by this Act or the regulations.

(3) A chief inspector or, where authorized by the regulations, an inspection agency may grant a permit if the applicant meets all the requirements for the permit established in the regulations and the permit granted may be subject to terms and conditions provided for under the regulations.

(4) A permit holder shall comply with the terms and conditions of the permit.

(5) A chief inspector, or an inspection agency as authorized by the regulations, may refuse, suspend or revoke a permit where it is contrary to this Act, the regulations, the standards or a term or condition of the permit.

(6) A permit may be reinstated by the chief inspector or, where authorized by the regulations, an inspection agency on the conditions established by the regulations.

(7) A permit granted pursuant to this Section may be renewed, except if there are outstanding fees. 2008, c. 10, s. 24.

Certifications of regulated products

25 (1) Certification of a regulated product may be required pursuant to the regulations.

(2) A person shall obtain a certification before using a regulated product as required by this Act or the regulations.

(3) A chief inspector or, where authorized by the regulations, a recognized certification organization may grant a certification if the applicant meets all the requirements for the certification established in the regulations.

(4) A certification granted pursuant to this Section may be renewed, except if there are outstanding fees. 2008, c. 10, s. 25.

Certificates of competency

26 (1) A certificate of competency for undertaking regulated work may be required pursuant to the regulations.

(2) An individual may apply to a chief inspector for a certificate of competency to perform regulated work.

(3) An individual must meet all the requirements for a certificate of competency established in the regulations and the certificate of competency granted may be subject to terms and conditions provided for under the regulations.

(4) A chief inspector shall examine the individual's qualifications and determine the category of the certificate of competency. 2008, c. 10, s. 26.

Authorization of alternative compliance methods

27 (1) A person may apply to a chief inspector for authorization of an alternative compliance method as a substitute for a requirement in this Act, the regulations or a standard.

(2) A chief inspector may grant authorization if the chief inspector decides that the proposed alternative compliance method will result in the same or a greater level of technical safety and shall advise the applicant of the decision.

(3) A chief inspector may

(a) impose any term or condition that the chief inspector considers appropriate with respect to any alternative compliance method;

(b) specify requirements as to the manner in which the activity or thing to which an alternative compliance method relates is to be carried out or operated;

(c) amend a term or condition of, add a term or condition to or delete a term of condition from an alternative compliance method;

(d) require the applicant to provide reports or documentation from an authorized certification organization or qualified expert

in technical safety in support of an application sufficient to meet the requirements in subsection (2).

(4) Authorization of an alternative compliance method is in effect only during the period prescribed and, notwithstanding anything contained in this Act, during that period the requirements that are not varied by the authorization apply to the activity or thing to which the alternative compliance method relates.

(5) Authorization of an alternative compliance method may not be granted if

(a) the alternative compliance method violates the intent of this Act, the regulations or a standard;

(b) the alternative compliance method does not result in the same level or a greater level of technical safety; or

(c) the difficulty experienced results from an intentional disregard for the requirements of this Act, the regulations or a standard.

(6) Where a chief inspector grants authorization of an alternative compliance method, compliance with the terms and conditions of the authorization constitutes compliance with this Act, the regulations and the standards. 2008, c. 10, s. 27.

Minor variances

28 (1) A person may apply to a chief inspector for a minor variance of a requirement of this Act, the regulations or a standard.

(2) A chief inspector may grant a minor variance if the chief inspector considers that the proposed minor variance results in the same or a greater level of technical safety and shall advise the applicant of the decision.

(3) A chief inspector may

(a) impose any term or condition that the chief inspector considers appropriate with respect to any minor variance;

(b) specify requirements as to the manner in which the activity or thing to which the minor variance relates is to be carried out or operated;

(c) amend a term or condition of, add a term or condition to or delete a term or condition from a minor variance.

(4) A minor variance may not be granted if

(a) the minor variance violates the intent of this Act, the regulations or a standard;

(b) the minor variance does not result in the same level or greater level of technical safety; or

(c) the difficulty experienced results from an intentional disregard for the requirements of this Act, the regulations or a standard.

(5) A minor variance is in effect only during the period prescribed and, notwithstanding anything contained in this Act, during that period the requirements that are not varied by the certificate apply to the activity or thing to which the minor variance relates. 2008, c. 10, s. 28.

Compliance with minor variance

29 (1) Where a chief inspector grants a minor variance, compliance with the terms and conditions in the minor variance constitutes compliance with this Act, the regulations and the standards.

(2) A chief inspector may decide that an application for a minor variance will be handled as an application for authorization of an alternative compliance method and may refuse to grant a minor variance and require that the person make an application under Section 27. 2008, c. 10, s. 29.

Directives

30 (1) A chief inspector may, in response to a request or otherwise, issue a directive on the interpretation, application or operation of this Act, the regulations or the standards.

(2) A directive may be issued

(a) for general application;

(b) for a specific regulated product or category of regulated products;

(c) for specific regulated work or category of regulated work;

(d) for a category of persons; or

(e) in relation to a specific period of time.

(3) A chief inspector shall make all reasonable efforts to provide notice to all affected persons of a directive issued under this Section. 2008, c. 10, s. 30.

Review or appeal

31 (1) An aggrieved person may seek a review or an appeal of any order or decision by an inspector or an inspection agency, including the following matters:

(a) an authorization, certificate of competency, licence or registration for a person;

(b) an authorization, certification, licence, permit or registration for an activity or property;

(c) an amendment, addition or deletion of terms or conditions of an authorization;

(d) a notice of an administrative penalty or requirement for compliance with this Act, the regulations or a standard;

(e) the sealing out of service.

(2) An aggrieved person referred to in subsection (1) may

(a) seek a review of the order or decision by the Administrator under Section 32; or

(b) appeal the order or decision to the Appeal Board under Section 34,

by submission in writing to the Administrator or the Appeal Board, as the case may be, within 15 days of service of the order or receipt of the notice of the decision by the aggrieved person.

(3) Notwithstanding anything contained in this Act, where the regulations so provide, matters in addition to those set out in subsection (1) may be the subject of a review or an appeal. 2008, c. 10, s. 31.

Procedures respecting reviews

32 (1) An aggrieved person who seeks a review shall immediately serve a copy of the request on the inspector or inspection agency who made the order or decision, unless otherwise authorized in writing by the Administrator.

(2) The Administrator is not required to hold a hearing when conducting a review.

(3) Subject to subsection (4), where the Administrator has been previously involved in the matter that is the subject of a review, or has conferred with an inspector, an inspection agency or other person in respect of the matter, the Administrator is not disqualified from dealing with a review pursuant to clause 31(2)(a) if the involvement or conference is disclosed to the applicant as soon as the Administrator becomes aware and before the Administrator proceeds with the review.

(4) Where the Administrator discloses to an applicant a previous involvement or conference as described in subsection (3) and the applicant requests, in writing, that the Administrator not decide the review, the Administrator shall refuse to decide the review and shall refer the matter to the Appeal Board for a hearing pursuant to Section 34.

(5) When conducting a review pursuant to clause 31(2)(a), the Administrator shall summarily review the information provided by the applicant and, where the Administrator is not then able to determine that the order should be confirmed, may inquire into the matter and may use any information, including information that is gathered or has previously been provided by another person, that the Administrator considers advisable to assist in determining the review.

(6) On a review, the Administrator may, in writing,

(a) confirm, vary or revoke an order or decision;

(b) allow additional time for the person to comply with an order and attach conditions to such compliance;

(c) make any order or decision that the inspector or inspection agency could have made; or

(d) refuse to decide a matter and refer the matter to the Appeal Board.

(7) The Administrator, in writing,

(a) shall notify the aggrieved person who applied for the review;

(b) shall notify the inspector who made the order or decision; and

(c) may notify any other persons,

of the decision of the Administrator.

(8) The submission of a written request to the Administrator for a review of an order or decision pursuant to clause 31(2)(a) acts as a stay of the order or decision until the review has been determined. 2008, c. 10, s. 32.

Appeal Board

33 (1) Except as otherwise provided by the regulations, the Nova Scotia Utility and Review Board established pursuant to the *Utility and Review Board Act* is the Appeal Board for the purpose of this Act.

(2) Where an Appeal Board, other than the Nova Scotia Utility and Review Board, is provided for in the regulations, the members of the Appeal Board shall be appointed by the Minister in accordance with the regulations for such terms as the Minister determines.

(3) Where an Appeal Board referred to in subsection (2) is appointed by the Minister, the Minister may designate from the members a Chair and a Vice-chair.

(4) Different panels of the Appeal Board may sit at the same time to determine matters before the Appeal Board.

(5) The Appeal Board and each member has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(6) A member of the Appeal Board may administer oaths or affirmations, certify as to official acts of the Appeal Board and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(7) Where a person fails to comply with an order of the Appeal Board or a subpoena or where a witness refuses to testify to a matter regarding which the witness may be interrogated before the Appeal Board or a member, a judge of the Supreme Court of Nova Scotia shall, on application of the Appeal Board or a member, compel obedience by attachment proceedings for contempt as in the case of the disobedience of the requirements of a subpoena issued by the Court or a refusal to testify in court.

(8) Subsections (4) to (7) do not apply to the Nova Scotia Utility and Review Board and, for greater certainty, the *Utility and Review Board Act* applies. 2008, c. 10, s. 33.

Procedures respecting appeals

34 **(1)** An aggrieved person may

(a) appeal an order or decision made by an inspector or an inspection agency;

(b) appeal a decision made on review by the Administrator pursuant to subsection 32(6); or

(c) proceed with an appeal referred to the Appeal Board pursuant to clause 32(6)(d),

by submission, in writing, to the Appeal Board within the time established in Section 31.

(2) An aggrieved person who initiates an appeal to the Appeal Board shall immediately serve a copy of the appeal on the inspector, inspection agency or Administrator who made the order or decision unless otherwise authorized in writing by the Chair of the Appeal Board.

(3) Subject to subsection (4), an appeal made pursuant to subsection (1) acts as a stay of the order until the appeal has been determined.

(4) With or without notice, upon application by an inspector, an inspection agency or the Administrator who made the order or decision appealed from, the Appeal Board may order, after considering

(a) primarily, the degree of safety risk; and

(b) secondarily, the degree of prejudicial harm to an owner if the appeal of the order or decision does not operate as a stay and whether there is a strong prima facie case for a successful appeal of the order or decision,

that the appeal of the order or decision does not operate as a stay pending the outcome of the appeal.

(5) On an appeal made pursuant to subsection (1), the Appeal Board may, in writing,

(a) confirm, vary or revoke the order or decision appealed;

(b) allow additional time for the person to whom the order is directed, or who is the subject of the decision, to comply with the order or decision, and may attach conditions to such compliance; or

(c) make any order or decision that the inspector, inspection agency or Administrator making the original order or decision could have made.

(6) An order of the Appeal Board may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and may be enforced in the same manner as a judgment of that Court.

(7) To register an order of the Appeal Board with the Supreme Court of Nova Scotia, the Chair of the Appeal Board may make a certified copy of the order or decision, upon which shall be made the following endorsement, signed by the Chair of the Appeal Board:

Register the within with the Supreme Court of Nova Scotia.

Dated this . . . . . day of . . . . . , 20. . . . .

. . . . . .
Chair of the Appeal Board

(8) The Chair of the Appeal Board may forward the certified copy referred to in subsection (7) so endorsed, to a prothonotary of the Supreme Court of Nova Scotia who shall, on receipt of the certified copy, enter it as a record and it is thereupon registered with and enforceable in the same manner as a judgment of that Court. 2008, c. 10, s. 34.

Standing of parties and power to rescind or vary own orders

35 (1) The Administrator has standing as a party in an appeal made pursuant to subsection 34(1).

(2) An inspector or an inspection agency who made the order that is appealed has standing as a party in a review or an appeal made pursuant to this Act.

(3) Notwithstanding anything contained in this Act, a decision or order may be rescinded or varied by the inspector, inspection agency, Administrator or Appeal Board that made the order or decision. 2008, c. 10, s. 35.

Order, ruling or decision of Appeal Board is final

36 (1) An order, ruling or decision of the Appeal Board is final and binding and not open to review, except for an error of law or jurisdiction.

(2) The Appeal Board has exclusive jurisdiction to determine all questions of

(a) law respecting this Act, the regulations or the standards;

(b) fact; and

(c) mixed law and fact.

(3) A participant in a final order, ruling or decision of the Appeal Board may seek leave to appeal to the Nova Scotia Court of Appeal only on a question of jurisdiction or of law and if all other avenues of appeal provided for in this Act have been exhausted. 2008, c. 10, s. 36.

Offences

37 (1) Every person who

(a) tampers with a safety device;

(b) enters, attempts to enter or tampers with property that is closed or a thing that is sealed out of service pursuant to an order made by an inspector or inspection agency pursuant to this Act, the regulations or the applicable standards without the approval of the inspector or an inspection agency authorized to make the order;

(c) removes a copy of an order or notice posted in accordance with this Act, the regulations or the standards without the approval of the inspector or inspection agency that made or required the posting or the Administrator;

(d) provides an inspector or an inspection agency with information on matters relevant to an inspection or investigation that the person knows, or ought reasonably to know, is false or misleading;

(e) hinders or obstructs an inspector or an inspection agency acting pursuant to this Act, the regulations or the standards;

(f) refuses or neglects to attend, be sworn or give evidence before an inspector, an inspection agency or inquiry when summoned to do so;

(g) fails to comply with an order made pursuant to this Act, the regulations or the standards; or

(h) otherwise contravenes this Act, the regulations or the standards,

is guilty of an offence.

(2) Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act if the person establishes on the balance of probabilities 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. 2008, c. 10, s. 37.

Penalties

38 (1) An individual convicted of an offence pursuant to Section 37 is liable, on summary conviction, to a fine not exceeding $25,000 or to a term of imprisonment not exceeding six months, or to both.

(2) An individual convicted of an offence pursuant to Section 37 who knowingly committed the offence and the offence resulted in

(a) loss of human life, injury or damage to the health of a person; or

(b) a catastrophic impact on the community,

is, notwithstanding subsection (1), liable to a fine not exceeding $150,000 or to a term of imprisonment not exceeding two years, or to both.

(3) In addition to the fine imposed upon an individual pursuant to subsection (1) or (2), the court, on summary conviction, may impose a fine not exceeding $5,000 for each additional day during which the offence continues. 2008, c. 10, s. 38.

Offence by corporation

39 (1) A corporation convicted of an offence pursuant to Section 37 is liable, on summary conviction, to a fine not exceeding $50,000.

(2) A corporation convicted of an offence pursuant to Section 37 where the corporation, with the knowledge of an officer, director, manager or agent of the corporation, committed the offence and the offence resulted in

(a) loss of human life, injury or damage to the health of a person; or

(b) a catastrophic impact on the community,

is, notwithstanding subsection (1), liable to a fine not exceeding $250,000.

(3) In addition to the fine imposed upon a corporation pursuant to subsection (1) or (2), the court, on summary conviction, may impose a fine not exceeding $10,000 for each additional day during which the offence continues. 2008, c. 10, s. 39.

Liability of officers, directors, managers or agents

40 (1) An officer, director, manager or agent of a corporation who directs, authorizes, assents to, acquiesces or participates in the commission of an offence pursuant to this Act is guilty of the offence and liable, on summary conviction, to a fine not exceeding $25,000 or to a term of imprisonment not exceeding one year, or to both.

(2) Notwithstanding subsection (1), where a person referred to in that subsection knowingly committed an offence and the offence results in

(a) loss of human life, injury or damage to the health of a person; or

(b) a catastrophic impact on the community,

the person is liable, on summary conviction, to a fine not exceeding $150,000 or to a term of imprisonment not exceeding two years, or to both. 2008, c. 10, s. 40.

Conviction does not relieve person from compliance

41 (1) A conviction for the offence of failing to comply with an order does not relieve the person convicted from complying with the order and the convicting judge may, in addition to a fine imposed, order the person to do any act or work to comply with the order with respect to which the person was convicted, within the time specified in the order.

(2) A person who fails to comply with an order made pursuant to subsection (1) within the time specified by the judge is guilty of an offence and is liable, on summary conviction, in the case of

(a) an individual, to a fine not exceeding $5,000 for each day during which the non-compliance continues; or

(b) a corporation, to a fine not exceeding $10,000 for each day during which the non-compliance continues. 2008, c. 10, s. 41.

Injunctions

42 (1) The Administrator, an inspector or an inspection agency may apply to a judge of the Supreme Court of Nova Scotia for an order enjoining a person from carrying out any activity that is contrary to this Act, the regulations, the standards or an order made pursuant to this Act, the regulations or the standards.

(2) On receipt of an application made pursuant to subsection (1), a judge of the Supreme Court of Nova Scotia may make any order, including an order for interim relief, that the judge considers appropriate. 2008, c. 10, s. 42.

Penalties to be paid to Minister of Finance and Treasury Board

43 Except as otherwise provided in this Act or the regulations, the penalties collected pursuant to this Act must be paid to the Minister of Finance and Treasury Board for the use of the Crown in right of the Province. 2008, c. 10, s. 43.

Order for payment by offender towards education

44 (1) Where a person is convicted of an offence pursuant to this Act, the regulations or the standards in addition to any other punishment that may be imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order directing the offender to pay an amount to the Minister of Finance and Treasury Board to be held in trust, in accordance with the regulations, for the purpose of public technical-safety education to be carried out by non-profit organizations, schools or similar educational institutions.

(2) Where the court makes an order directing an offender to pay an amount to the Minister of Finance and Treasury Board pursuant to subsection (1), the total of any money payable or direct costs incurred by the offender pursuant to subsection (1), must not exceed the maximum amount payable pursuant to Section 38, 39 or 40.

(3) Where the court makes an order pursuant to subsection (1), the amount constitutes a debt due to the Crown in right of the Province and may be recovered as such in a court of competent jurisdiction.

(4) The Minister, in consultation with the Advisory Board, may designate a non-profit organization with a mandate that relates to the purpose of this Act that shall, in accordance with the regulations, direct the disbursement of amounts held in trust pursuant to subsection (1) for the purpose of public technical-safety education carried out as provided in subsection (1). 2008, c. 10, s. 44.

Limitation period

45 No prosecution for an offence pursuant to this Act, the regulations or the applicable standards may be commenced after two years from the date of the commission of the alleged offence. 2008, c. 10, s. 45.

No action lies

46 No action lies against the Crown in right of the Province or an inspector or employee of the Crown, the Administrator or any person acting under the Administrator's authority, an inspector or a delegate or a designate or an inspector, an inspection agency, member or employee, or any person acting under the authority of, or as an agent of, any person or body referred to in this Section, if the person or body is acting pursuant to the authority of this Act, the regulations or an order made pursuant to this Act, the regulations or the standards for any loss or damage suffered by a person because of an act or omission done in good faith by the person or body

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

(b) in the carrying out, or supposed carrying out, of a function or duty imposed by this Act, the regulations or the standards. 2008, c. 10, s. 46.

Service of documents

47 (1) Subject to subsection (3), a document that is served pursuant to this Act or the regulations must be served

(a) in the case of an individual,

(i) personally,

(ii) by a form of delivery that allows proof of receipt to the individual's last address known to the person sending the document, or

(iii) by electronic transmission, telephone transmission of a facsimile or by some other method that allows proof of receipt; or

(b) in the case of a corporation,

(i) personally on the recognized agent, a director, manager or officer of the corporation,

(ii) by a form of delivery that allows proof of receipt to the registered office of the corporation or, where the corporation is an extra-provincial corporation, upon application for substituted service to the office of its legal counsel in the Province, or

(iii) by electronic transmission, telephone transmission of a facsimile or by some other method that allows proof of receipt.

(2) Notwithstanding subsection (1), where an order is made with respect to premises that contain two or more units intended for separate occupancy, the order is deemed to have been served upon the occupants of the premises if a copy of the order is posted in a conspicuous place on the premises.

(3) Where the owner of land or premises cannot be found in the Province, service of any document pursuant to this Act or the regulations may be accomplished by posting a copy of the document in a conspicuous place on the land or premises.

(4) Any document that is served on a person pursuant to this Act or the regulations by mail, in the absence of evidence to the contrary, is deemed to have been received by the addressee 10 days after the day on which it was mailed, unless the person establishes that the person did not, acting in good faith, through absence, incident, illness or other cause beyond the person's control, receive a copy of the document until a later date than the deemed date of receipt.

(5) Service by electronic transmission or by telephone transmission of a facsimile is deemed to have been received the day after it was sent or, where that day was a Saturday or a holiday, on the next day that is not a Saturday or a holiday, unless the person being served establishes that the person did not, acting in good faith, through absence, incident, illness or other cause beyond the person's control, receive a copy until a later date than the deemed date of receipt. 2008, c. 10, s. 47.

Copy of document admissible in evidence

48 A copy of a document that purports to be certified by the Administrator, an inspector or an inspection agency as being a true copy of the original is admissible in evidence. 2008, c. 10, s. 48.

Regulations

49 **(1)** The Governor in Council may make regulations

(a) defining a product to be a regulated product for the purpose of this Act and the regulations;

(b) exempting, completely or partially and with or without conditions, from the application of any or all provisions of this Act and the regulations any of the following:

(i) any person or class of persons,

(ii) any regulated product,

(iii) any regulated work or classification of regulated work,

(iv) any thing, process, requirement or activity,

(v) any property, class of property or a part thereof,

(vi) any municipality or inspection agency;

(c) requiring or designating to an inspection agency the administration of any of the provisions of this Act or a regulation, except a power to make regulations, and respecting any matter necessary or advisable to carry out that intent, including the establishment of terms and conditions or limitations on the authority of the inspection agency;

(d) respecting the qualifications, registrations, certificates of competency, licensing, training, approval, examination and duties of persons or classes of persons, and any reporting requirements under this Act, including inspectors or an inspection agency;

(e) respecting the suspension, revocation or cancellation of a licence, permit, registration, certificate, certificate of competency or authorization granted inadvertently or by mistake and requir-

ing the return of any documents issued with the licence, permit, registration certificate, certificate of competency or authorization;

(f) respecting requirements for a permit, registration, licence, certification, certificate of competency or authorization in respect of regulated work or regulated products, providing for the grant of licences, permits, registration, certificates or authorizations and other documents required under this Act and respecting terms and conditions of a licence, permit, registration, certification, certificate of competency or authorization;

(g) respecting classes of licences, permits, registrations, certifications, certificates of competency or authorizations;

(h) respecting requirements or procedures to perform regulated work or for activities involving regulated products, and for the issuance and scope of the authorizations for these activities;

(i) respecting the requirement for conducting or complying with inspections or compliance audits;

(j) respecting the grant, renewal, revocation and suspension of, or expiry date for, any permit, registration, certification, certificate of competency, licence or authorizations under this Act or the regulations;

(k) respecting a minor variance, including authority to grant and to set terms and conditions, establishment of information requirements and approaches for achieving technical safety objectives;

(l) respecting authorization of an alternative compliance method, including authority to grant and to set terms and conditions, establishment of information requirements and approaches for achieving safety objectives;

(m) recognizing a person or class of persons as an inspection agency for the purpose of this Act and the regulations;

(n) recognizing a person or class of persons, an institution or an accredited organization as a recognized certification organization for the purpose of this Act and the regulations;

(o) respecting the posting or display of any identification label, approval, licence, permit, registration, authorization, certification, certificate of competency, document, notice or other communication for the purpose of this Act;

(p) respecting the registration of

(i) regulated products,

(ii) designs of regulated products,

(iii) procedures used in respect of regulated products;

(q) prohibiting, regulating and controlling regulated work and regulated products, the sale, acquisition, leasing, disposal, alteration, repair, installation, maintenance, testing, servicing, advertising, displaying and use of regulated products and respecting licences, per-

mits, registrations, certifications, certificates of competency or authorizations for, or notification of, the use of regulated products or the performance of regulated work;

(r) respecting the requirement for insurance or a bond for any purpose under this Act or the regulations and providing for the approval of the adequacy of insurance coverage;

(s) respecting the issuance of orders or directives pursuant to this Act or the regulations;

(t) providing, for a regulation made under this Act, that its contravention constitutes an offence and is subject to the penalties specified;

(u) respecting the submission or production of documents, the records to be made and maintained for the purpose of this Act and the issue of duplicate copies of any document issued under this Act;

(v) respecting any matter the Governor in Council considers necessary or advisable for the administration of a system of administrative penalties;

(w) providing for increased monetary penalties under a system of administrative penalties for repeated contraventions and specifying the time within which a contravention is to be considered a repeat contravention of an earlier contravention;

(x) governing the conduct and obligations of persons in the vicinity of regulated work or regulated products, and requiring a person to notify or obtain permission from a person in authority in respect of an intended activity in the vicinity of regulated work or regulated products and requiring the person in authority to perform duties necessary for the safe conduct of the intended activity;

(y) respecting the manufacture, carriage, storage, handling or disposal of any explosive, flammable or combustible solid, liquid or gas or the carriage, storage, handling or disposal of any gas, whether or not of such a type;

(z) subject to the *Environment Act*, respecting the carriage, storage, handling or disposal of any hazardous material, including gases that are likely to increase the risk of harm to persons in the event of ignition;

(aa) respecting the approval, sale, installation, permitting, servicing, maintenance, testing or repair of equipment using flammable or combustible liquid or a gas as fuel or equipment used in the carriage, storage, handling or disposal of any of these;

(ab) respecting the approval, sale, installation, permitting, servicing, maintenance, testing or repair of solid-fuel burning appliances or related equipment, including fireplaces, stoves, furnaces, ducts, flue pipes and chimneys;

(ac) respecting the training or qualifications of persons selling, installing, servicing, maintaining, testing or repairing products, equipment, apparatus or systems, requiring those persons to be licensed, registered or hold a certificate of competency in a prescribed manner and providing a system for the issuance, expiry, sus-

pension and revocation of such licences, registrations or certificates of competency;

(ad) requiring persons installing, servicing or testing equipment, apparatus or systems to obtain insurance or performance bonds from a financial institution approved by the Minister in any amount the Minister considers necessary to cover damage that might result from such activities;

(ae) respecting the establishment of an Appeal Board, other than the Nova Scotia Utility and Review Board, and the structure, administration and procedures of the Appeal Board;

(af) prescribing the terms and conditions, including remuneration, for an Appeal Board other than the Nova Scotia Utility and Review Board, and engaging the services of professional persons, technical safety persons and experts to advise the Appeal Board;

(ag) respecting the remuneration and expenses of the Chair, Vice-chair and members of an Appeal Board, other than the Nova Scotia Utility and Review Board;

(ah) respecting the jurisdiction of the Appeal Board, and prescribing additional matters to be heard by the Appeal Board;

(ai) respecting the composition, structure, role and functioning of the Advisory Board and its subcommittees, if any;

(aj) respecting procedures and aggrieved persons on a review to the Administrator and prescribing additional matters that may be the subject of a review;

(ak) regulating the odorization of gas;

(al) respecting classes of incidents and the requirements for reporting classes of incidents;

(am) defining any word or expression used in this Act but not defined in this Act, or further defining any word or expression;

(an) generally, 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) Any new regulation or any substantive amendment to a regulation made under this Section comes into effect only after the new regulation or amendment has been subject to such public review as the Minister considers appropriate.

(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*. 2008, c. 10, s. 49.

Regulations by Minister

50 **(1)** The Minister may make regulations

(a) establishing standards respecting regulated work and regulated products, or adopting by reference all or part of a standard, as the edition adopted is amended from time to time, or any change thereto, in whole or in part with such modifications and additions as

may be specified in the regulations, and requiring compliance with it as adopted;

(b) prescribing fees, or establishing the criteria for setting fees, for any application, appeal, interest, authorization, review, service or any other matter administered under this Act.

(2) Where a standard is established or adopted by a regulation made under this Section, the Minister shall provide direction on where it is available.

(3) Any new regulation or any new substantive amendment to a regulation made under this Section comes into effect only after the new regulation or amendment has been subject to such public review as the Minister considers appropriate.

(4) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2008, c. 10, s. 50.

Administrative penalties

51 (1) Where a chief inspector is of the opinion that a person has contravened this Act, the regulations or the standards, the chief inspector may, subject to the regulations, by notice in writing given to that person require that person to pay an administrative penalty in the amount set out in the notice sent for each day that the contravention continues.

(2) A notice of an administrative penalty may be reviewed or appealed under Section 32 or 34 subject to the conditions set out in Section 31.

(3) Where the time limit for review and appeal has expired, or where the Appeal Board has dismissed the appeal, the administrative penalty set out in the notice becomes a debt payable by the person named on the notice to the Crown in right of the Province and can be collected as such.

(4) A person who pays an administrative penalty as set out in the notice in respect of a contravention shall not be charged under this Act with an offence in respect of that contravention. 2008, c. 10, s. 51.

Transitional matters

52 (1) Every licence, permit, registration, certificate, appointment, authorization or order given, made or issued pursuant to

(a) the *Amusement Devices Safety Act* or regulations made pursuant to that Act;

(b) the former *Crane Operators and Power Engineers Act* or regulations made pursuant to that Act;

(c) the *Electrical Installation and Inspection Act* or regulations made pursuant to that Act;

(d) the *Elevators and Lifts Act* or regulations made pursuant to that Act;

(e) the *Fire Safety Act* or regulations made pursuant to that Act; or

(f) the former *Steam Boiler and Pressure Vessels Act* or regulations made pursuant to that Act,

that is subsisting and in force on the date the applicable enactment is repealed or replaced is deemed to have been given, made or issued pursuant to this Act, is enforceable as such and continues in force until it has expired or been varied, rescinded, suspended or revoked in accordance with this Act and the regulations.

(2) Where a right of appeal existed pursuant to a former enactment referred to in subsection (1), the appeal period has not expired before April 1, 2011, and an appeal has not been initiated pursuant to the former enactment as of April 1, 2011, the appeal provisions of this Act apply and the time for the filing of an appeal must be measured from the date on which the order or decision was served pursuant to the former enactment.

(3) Where an appeal has been initiated pursuant to a former enactment referred to in subsection (1) and has not been completed before April 1, 2011, the appeal must be heard and determined pursuant to the former enactment.

(4) Clauses (1)(a), (c) and (d) come into force on such day as the Governor in Council orders and declares by proclamation. 2008, c. 10, s. 52.

Repeal of Amusement Devices Safety Act

53 Chapter A-19 of the Revised Statutes, 2023, the *Amusement Devices Safety Act*, is repealed. 2008, c. 10, s. 55.

Repeal of Electrical Installation and Inspection Act

54 Chapter E-6 of the Revised Statutes, 2023, the *Electrical Installation and Inspection Act*, is repealed. 2008, c. 10, s. 58.

Repeal of Elevators and Lifts Act

55 Chapter E-9 of the Revised Statutes, 2023, the *Elevators and Lifts Act*, is repealed. 2008, c. 10, s. 59.

Proclamation

56 Sections 53 to 55 come into force on such day as the Governor in Council orders and declares by proclamation.

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CHAPTER T-7

An Act Respecting Tenancies and Distress for Rent

Table of Contents

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

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Short title

1 This Act may be cited as the *Tenancies and Distress for Rent Act*. R.S., c. 464, s. 1.

DISTRESS FOR RENT

Condition for distress for rent

2 No distress for rent may be made unless there is an actual demise at a specific rent. R.S., c. 464, s. 2.

PROCEDURE ON DISTRESS

Bonding and treatment of goods

3 **(1)** Where goods are distrained for rent reserved and due upon any demise, lease or contract, if the tenant or owner of the goods does not, within five days next after the distress taken, and after notice thereof stating the cause of such taking has been served upon the tenant or owner of the goods, or posted up in a conspicuous place on the premises charged with such rent, replevy the same, the landlord may cause the goods so distrained to be appraised by two sworn appraisers.

(2) Before the sheriff replevies, the sheriff shall take a bond in double the value of the goods sought to be replevied.

(3) The appraisers may be sworn before a justice of the peace, the sheriff or the sheriff's deputy, a constable or a commissioner of the Supreme Court of Nova Scotia.

(4) The goods so distrained may be impounded or otherwise secured in such place, or on such part of the premises charged with the rent as it is most fit and convenient, or may be removed to another place.

(5) The landlord has the option to remove the goods to another place of impounding or security, and to sell and dispose of the same after appraisal and notice, otherwise than on the premises. R.S., c. 464, s. 3.

Sale and proceeds of sale

4 (1) Subject to Section 5, after the appraisement of the goods the landlord shall, after giving five days notice of sale by handbills posted in at least five conspicuous places in the locality in which the sale is to take place, sell such goods on the premises, or at such other place, for the best price to be gotten therefor, and shall apply the proceeds of the sale towards satisfaction of the rent due and expenses incurred, and shall pay the surplus, if any, to the owner of the goods.

(2) Notwithstanding subsection (1), the tenant or any person claiming an interest in any goods to be sold at the sale may, at any time before the sale, commence a proceeding for a declaration that a person other than the tenant has an interest in the goods and defining the nature of that interest.

(3) Notwithstanding that the landlord is not conducting the sale, the landlord may be the defendant in the proceeding.

(4) The proceeding is deemed to be a proceeding within the meaning of the *Civil Procedure Rules* and must be commenced and tried in the Supreme Court of Nova Scotia, except as otherwise provided by this Act.

(5) Upon application of a party to the proceeding, a judge of the court may, by order, and without first determining whether the interest claimed in the proceeding actually exists, stay the sale of any goods pursuant to subsection (1).

(6) An application pursuant to subsection (5) may be made *ex parte*.

(7) The judge may grant an order pursuant to subsection (5), subject to such terms and conditions as the judge thinks just.

(8) Where any goods to which the order relates are sold at the sale, and the defendant is served with a true copy of the order before the sale, the defendant is deemed to have committed a wrongful distraint on the goods.

(9) The judge may, on the application of any party to the proceeding, vary or rescind the order, subject to such terms and conditions which the judge thinks just.

(10) Where the final order in the proceeding declares that the plaintiff has an interest in the goods, and declares the nature of that interest, that interest is, so long as the order is in force, exempt from the distress pursuant to which the sale was intended to be held. R.S., c. 464, s. 4.

Third party may stop sale of goods

5 (1) Where a person other than the tenant claims an interest in goods that are not exempt from distress and that are to be sold pursuant to subsection 4(1), and prior to the sale presents a claim specifying the nature of that interest to the person who is or will be conducting the sale as bailiff, showing reasonable

proof that such an interest may exist, the goods may not be sold at sale except in accordance with this Section.

(2) Where goods are not sold by reason of a person making a claim pursuant to subsection (1), the person who is or will be conducting the sale as bailiff shall forthwith notify the landlord and the landlord may, within 30 days after the date on which the sale was to be held, commence a proceeding against that person, as defendant, for a declaration that the interest claimed does not exist.

(3) The proceeding is deemed to be a proceeding within the meaning of the *Civil Procedure Rules* and must be commenced and tried in the Supreme Court of Nova Scotia in accordance with the ordinary procedure of the court.

(4) Where the court declares that the interest claimed by the defendant does not exist, the goods may be sold in accordance with Section 4 after any appeal taken in the proceeding has been finally determined and no further appeal may be taken, or where no appeal has been taken, after the time for taking an appeal in the proceeding has expired.

(5) Where the final order in the proceedings declares that the interest claimed by the defendant does exist, the goods may be sold subject to that interest or dealt with as the court orders.

(6) Where the landlord, within the time set forth in subsection (2), does not commence a proceeding against the person claiming the interest referred to in subsection (1), the person who is or will be conducting the sale shall give effect to the claim of that person.

(7) Notwithstanding anything contained in this Section, a sale that does not comply with this Section does not affect the title of

(a) a person who purchases goods at the sale in good faith without notice that a person other than the tenant claims an interest in the goods; or

(b) any person who subsequently acquires the goods or any interest in the goods in good faith without notice of the claim, whether or not the purchaser at the sale had notice of the claim when the goods were purchased at the sale. R.S., c. 464, s. 5.

UNTHRESHED GRAIN AND HAY

Unthreshed grain or hay

6 Sheaves or cocks of grain, grain loose or in the straw, hay in a barn or upon a hovel, stack or rick, or upon the land charged with such rent, may be locked up or detained upon the premises by a landlord having rent in arrear and due, for or in the nature of a distress, until the same are replevied or sold, as in the case of other goods, but they may not be removed from the premises by the landlord, to the damage of the owner, before such sale. R.S., c. 464, s. 6.

GROWING CROPS

Treatment of growing crops

7 **(1)** All sorts of corn, grain, grass, hops, roots, fruits, pulse or other product growing on any part of the premises demised, may be seized as a distress for rent in arrear and due, and the landlord may cut, gather, cure, carry and lay up the same, when ripe, in barns and other places, on such premises.

(2) Where there is no barn or proper place on the premises for receiving the same, then the landlord may cause the same to be placed in any barn or proper place to be procured as near as may be to the premises, and in convenient time shall appraise and dispose of the same towards satisfaction of the rents and the charges of such distress, as in other cases.

(3) The appraisement must be made after the crop is cut, cured and gathered, and not before.

(4) Notice of the place where the goods so distrained are placed must, within one week after their being so placed, be given to the tenant or left at the tenant's last place of abode. R.S., c. 464, s. 7.

CATTLE ON COMMON

Seizure of cattle

8 Any cattle or stock of the tenant feeding upon any common belonging to any part of the premises demised may be seized as a distress for rent in arrear and due. R.S., c. 464, s. 8.

PRIORITIES

Priority over security interest

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

"collateral" means personal property in which a security interest is taken;

"perfected" has the same meaning as in the *Personal Property Security Act*;

"proceeds" means proceeds as defined in the *Personal Property Security Act*;

"purchase money security interest" means

(a) a security interest taken in collateral to the extent that it secures payment of all or part of its purchase price and the credit charges for the purchase; and

(b) a security interest taken in collateral by a person who gives value for the purpose of enabling the tenant to acquire rights in the collateral, to the extent that the value is applied to acquire the rights, and value includes interest, credit costs and other charges payable,

but does not include an interest of a lessor under a transaction of sale by and lease back to the seller;

"security interest" means an interest in personal property that secures payment or performance of an obligation.

(2) A distress for rent has priority over

(a) a security interest in the goods of the tenant other than a purchase money security interest in goods or proceeds of those goods that is perfected at the date of the distress;

(b) the interest of a judgment creditor of the tenant under Section 4 of the *Creditors Relief Act*.

(3) Nothing in subsection (2) is to be construed as affecting or limiting the priorities that a distress for rent had immediately prior to November 3, 1997. 1995-96, c. 13, s. 86.

EXEMPTION FROM DISTRESS

Exemptions from distress for rent

10 (1) Goods brought upon or into any building used as a market bona fide for the purpose of sale, by any person or persons, not being the property of the tenant, or property in which the tenant is interested, are exempt from distress for rent and also any articles that are at any time by any Act of the Legislature declared exempt from levy under execution.

(2) The following articles are also exempt from distress for rent:

(a) the necessary wearing apparel, beds, bedding and bedsteads of the debtor and the debtor's family;

(b) one stove and pipe therefor, one crane and its appendages, one pair andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six tea cups, six saucers, one shovel, one table, six chairs, one milk jug, one teapot, six spoons, one spinning wheel, one weaving loom, one sewing machine, if in ordinary domestic use, 10 volumes of religious books, one water bucket, one axe, one saw and such fishing nets as are in common use, the value of such nets not to exceed $20;

(c) all necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and the debtor's family for 30 days, and not exceeding in value the sum of $40;

(d) one cow, two sheep and one hog, and food therefor for 30 days;

(e) tools, and implements of, or chattels ordinarily used in, the debtor's occupation, to the value of $30;

(f) all articles or goods in the possession of the tenant and held by the tenant under a duly filed agreement for hire, lease, contract or conditional sale, saving and excepting the interest of the tenant in any such articles or goods. R.S., c. 464, s. 9.

POUND-BREACH AND IRREGULARITIES IN DISTRESS

Remedy where pound-breach

11 Upon any pound-breach and rescue of goods distrained for rent, the person aggrieved thereby may recover damages against the offender, or against the owner of the goods distrained, if the same are afterwards found to have come to the person's use or possession. R.S., c. 464, s. 10.

Remedy where sale made and rent not in arrear

12 Where any distress and sale are made by any person for rent where none is in arrear, the owner of the goods distrained, the owner's executors and administrators may, by suit, recover against the persons distraining, or any of them, the person's or their executors or administrators, the value of the goods distrained, and such further damages as may be awarded. R.S., c. 464, s. 11.

Remedy for irregularity after distress

13 Where a distress is made for any kind of rent justly due, and any irregularity or unlawful act is afterwards done by the person distraining, or by the person's agent, the distress itself is not therefore deemed to be unlawful, nor the person making it to be a trespasser *ab initio*, but the person aggrieved by such unlawful act or irregularity may recover full satisfaction for the special damage the person has sustained thereby, and no more, provided, that no tenant or lessee may recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends is made by the person distraining, or the person's agent, before the action is brought. R.S., c. 464, s. 12.

CLANDESTINE REMOVAL

Goods clandestinely removed

14 Where any lessee of any messuage, land or tenement, upon the demise whereof any rent is in arrear and due, fraudulently or clandestinely conveys from such demised premises the lessee's goods, with intent to prevent the landlord distraining the same, such landlord, either personally or through the landlord's servants, may, within 21 days then next ensuing such conveying away, seize such goods, wherever found, as a distress for such rent, and dispose of the same as if they had been distrained upon the premises, unless such goods are sold in good faith and for a valuable consideration before such seizure, in which case they are not liable to a distress. R.S., c. 464, s. 13.

Goods clandestinely removed and secured

15 (1) Where any goods fraudulently or clandestinely conveyed from any demised premises are placed or kept in any house, barn, stable, outhouse, yard, close or place, locked up or otherwise secured, so as to prevent such goods from being taken as a distress for rent in arrear and due, it is lawful for the landlord, or lessor, or the agents or servants of either, to take as a distress for rent such goods.

(2) In such case, they shall call to their assistance a constable for the city, town or county in which the goods are suspected to be so placed or kept, and such constable is required to aid and assist in such taking.

(3) It shall be lawful for them, in the daytime, to break open and enter into such house, barn, stable, outhouse, yard, close and place, and take such goods for the rent so due and in arrear. R.S., c. 464, s. 14.

DISTRESS AFTER DETERMINATION OF TERM

Time limit for distress after certain leases determine

16 Rent in arrear and due upon a lease for life or lives, or for years or at will, ended or determined, may be distrained for after such determination in the same way as if the lease was not ended or determined, if the distress is made within six months after such determination, during the continuance of the landlord's title or interest, and during the possession of the tenant from whom such rent is due. R.S., c. 464, s. 15.

Distress by estate after certain leases determine

17 The executor or administrator of a landlord may distrain upon land demised for a term or at will, for rent due in the landlord's lifetime, and such rent may be distrained for after the determination of such term or lease at will, in the same manner as if the term or lease had not been ended or determined, but the distress in such case must be made within six months next after the determination of the term or lease, and during the continuance of the possession of the tenant from whom the rent is due. R.S., c. 464, s. 16.

PROTECTION OF GOODS OF LODGERS FROM DISTRESS

Protection of goods of lodger

18 (1) Where a superior landlord levies a distress on any furniture, goods or chattels of any lodger for any rent due and in arrear to such superior landlord by the superior landlord's immediate tenant, the lodger may serve the superior landlord, or the bailiff, or other person employed by the superior landlord to levy the distress, with a declaration in writing made by the lodger, setting forth that the immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that the furniture, goods or chattels are the property, or in the lawful possession, of the lodger, and also setting forth whether any and what amount, by way of rent, board or otherwise, is due, and for what period, from the lodger to the lodger's immediate landlord.

(2) To such declaration must be annexed a correct inventory, subscribed by the lodger, of the furniture, goods and chattels referred to in the declaration.

(3) Such lodger may pay to the superior landlord, or to the bailiff, or other person employed by the superior landlord, the amount, if any, so due, or so much thereof as is sufficient to discharge the claim of such superior landlord.

(4) Any such payment made by the lodger is deemed a valid payment on account of any such amount due from the lodger to the lodger's immediate landlord.

(5) Where any superior landlord, or any bailiff, or other person employed by the superior landlord, after being served with such declaration and inventory, and after the lodger has paid or tendered to such superior landlord, bailiff or other person, the amount, if any, which such lodger is herein authorized to pay, levies or proceeds with a distress on the furniture, goods or chattels of the lodger, such superior landlord, bailiff or other person, is deemed guilty of an illegal distress and the lodger may apply to the Supreme Court of Nova Scotia for an order for the restoration of such furniture, goods and chattels.

(6) Such application must be heard before a judge, who shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the furniture, goods or chattels, or otherwise, as to the judge seems just, and the superior landlord is also liable to an action at law at the suit of the lodger, in which action the truth of the declaration and inventory may likewise be inquired into.

(7) Where any lodger makes or subscribes such declaration and inventory, knowing the same or either of them to be untrue in any material particular, the lodger is liable to a penalty of not more than $50, and in default of payment thereof to imprisonment for a period not exceeding six months. R.S., c. 464, s. 17.

NOTICE TO QUIT

Length and sufficiency of notice

19 **(1)** Notice to quit any house or tenement must be given to or by the tenant thereof

(a) where the house or tenement is let from year to year, at least three months before the expiration of any such year;

(b) where from month to month, at least one month before the expiration of any such month;

(c) where from week to week, at least one week before the expiration of any such week.

(2) Such notice is sufficient although the day on which the tenancy terminates is not named therein. R.S., c. 464, s. 18.

RECOVERY FOR USE AND OCCUPATION

Recovery by landlord for use and occupation

20 Any landlord may recover, in an action at law, a reasonable satisfaction and compensation for the use and occupation of any land or tenement by any person under any agreement not made by deed, and where any parol demise or other agreement, not being by deed, by which a certain rent is reserved, appears in evidence on the trial of any such action, the plaintiff shall not on that account be debarred from a recovery, but the same may be made use of as evidence of the amount of the damages to be recovered. R.S., c. 464, s. 19.

PAYMENT OF RENT BY EXECUTION CREDITOR

Rights of creditor and landlord

21 (1) No goods, being upon any messuage or tenement leased, are liable to be taken by virtue of any attachment or execution, unless, before removal of such goods from off the premises, the person at whose suit the attachment or execution is sued out pays to the landlord, or the landlord's bailiff, at least one year's rent of such land or tenement, if so much is in arrear and due, and if the rent is not actually due, then a rateable part thereof up to the levy of the attachment or execution.

(2) Where the rent so in arrear and due exceeds one year's rent of the premises, then, upon payment to the landlord or the landlord's bailiff of one year's rent, the attaching or execution creditor may proceed with such attachment or execution, and the sheriff, the sheriff's deputy or other officer shall levy and pay to the attaching or execution creditor, as well the money so paid for rent as the amount directed to be attached or levied under the attachment or execution.

(3) Where a voluntary assignment of a tenant's property for the benefit of the tenant's creditors, or an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) is made by the tenant, or where under the *Bankruptcy and Insolvency Act* (Canada) a petition is presented to the court praying a tenant be adjudged bankrupt and that a receiving order be made against the tenant, there is no right of the landlord to distrain or complete the landlord's distress for rent except for such rent as has accrued due during the three months immediately preceding such assignment, authorized assignment or petition, provided that where a petition for a receiving order or for the winding up of an incorporated company is dismissed or withdrawn or for any other reason is not granted, the rights of the landlord affected by this subsection is deemed not to have been so affected.

(4) Notwithstanding any provision, stipulation or agreement in any lease or agreement, when a voluntary assignment of a tenant's property for the benefit of the tenant's creditors, or an order for the winding up of an incorporated company or a receiving order or an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) has been made by or against the tenant, the assignee, liquidator or trustee may within three months thereafter for the purpose of the trust estate by notice in writing to the landlord

(a) elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by such lease or agreement; or

(b) surrender possession of the leased premises or disclaim any such lease.

(5) The entry by the assignee, liquidator or trustee into possession of the leased premises or their occupation by the assignee, liquidator or trustee at any time during three months after the assignment, order, receiving order or authorized assignment, and while required for the purpose of the trust estate, is not deemed to be evidence of an intention of the assignee, liquidator or trustee to elect to retain possession of the leased premises pursuant to this Section. R.S., c. 464, s. 20.

RECOVERY OF RENT ON LEASE FOR LIFE

Recovery of rent due on lease for life

22 Rent in arrear and due upon a lease for life or lives may be recovered by action in the same way as if reserved upon a lease for years. R.S., c. 464, s. 21.

RETAIL BUSINESS LEASE

Operation on uniform closing day

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

"retail business" means the selling or offering for sale of goods or services by retail;

"uniform closing day" means a uniform closing day as defined in the *Retail Business Uniform Closing Day Act.*

(2) Notwithstanding any lease or agreement, no owner or operator of a retail business is required, and no person shall require the owner or operator of a retail business, to operate on a uniform closing day as permitted by or pursuant to subsection 3(2) of the *Retail Business Uniform Day Closing Act*.

(3) No person shall discriminate or retaliate against, penalize or refuse to renew the lease of any person because that person refuses to operate a retail business as permitted by or pursuant to subsection 3(2) of the *Retail Business Uniform Day Closing Act*. 2006, c. 10, s. 7.

CHAPTER T-8

An Act to Authorize Provision for the Proper Maintenance of Certain Dependants of Testators

Table of Contents

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

Short title

1 This Act may be cited as the *Testators Family Maintenance Act*. R.S., c. 465, s. 1.

Interpretation

2 In this Act,

"child" includes a child

(a) lawfully adopted by the testator;

(b) of the testator not born at the date of the death of the testator;

(c) of which the testator is the natural parent;

"dependant" means the widow or widower or the child of a testator;

"executor" includes an administrator with the will annexed;

"judge" means a judge of the Supreme Court of Nova Scotia;

"testator" means a person who has died leaving a will. R.S., c. 465, s. 2.

Order for adequate maintenance and support

3 **(1)** Where a testator dies without having made adequate provision in the testator's will for the proper maintenance and support of a dependant, a judge, on application by or on behalf of the dependant, has power, in the judge's discretion and taking into consideration all relevant circumstances of the case, to order that whatever provision the judge considers adequate be made out of the estate of the testator for the proper maintenance and support of the dependant.

(2) Pending the making of an order under subsection (1), the judge may make a suspensory order, suspending in whole or in part the administration of the estate of the testator to enable application to be made at a later date for an order making specific provision for proper maintenance and support of a dependant. R.S., c. 465, s. 3.

Form of application

4 An application under this Act may be made by originating notice. R.S., c. 465, s. 4.

Inquiry by judge

5 **(1)** Upon the hearing of an application made by or on behalf of a dependant under subsection 3(1), the judge shall inquire into and consider all matters that should be fairly taken into account in deciding upon the application, including, without limiting the generality of the foregoing,

(a) whether the character or conduct of the dependant is such as should disentitle the dependant to the benefit of an order under this Act;

(b) whether the dependant is likely to become possessed of or entitled to any other provision for the dependant's maintenance and support;

(c) the relations of the dependant and the testator at the time of the testator's death;

(d) the financial circumstances of the dependant;

(e) the claims that any other dependant has upon the estate;

(f) any provision that the testator while living has made for the dependant and for any other dependant;

(g) any services rendered by the dependant to the testator; and

(h) any sum of money or any property provided by the dependant for the testator for the purpose of providing a home or assisting in any business or occupation or for maintenance or medical or hospital expenses.

(2) Upon the hearing of an application under subsection 3(1), the judge, in addition to any evidence adduced by the parties appearing, may direct evidence to be given in respect of any matter that the judge considers relevant.

(3) Upon the hearing of an application under subsection 3(1), the judge may receive any evidence the judge considers relevant of the testator's rea-

sons, as far as ascertainable, for making the dispositions made by the testator's will, or for not making provision or further provision, as the case may be, for a dependant, including any statement in writing signed by the testator. R.S., c. 465, s. 5.

Order

6 **(1)** The judge, in making an order for proper maintenance and support of a dependant, may impose conditions and restrictions.

(2) The judge may make an order charging the whole or any portion of the estate, in any proportion and manner that to the judge seems proper, with payment of an allowance sufficient to provide proper maintenance and support, and the judge may order that the provision for proper maintenance and support be made out of the whole or any portion of the estate and out of income or corpus or both, and may be by way of

(a) an amount payable annually or otherwise;

(b) a lump sum to be paid or held in trust;

(c) the transfer or assignment of particular property either absolutely, in trust, for life or for a term of years to or for the benefit of the dependant; or

(d) any combination of the foregoing methods.

(3) Where a transfer or assignment of property is ordered, the judge may give all necessary and proper directions for the execution of the transfer or assignment either by the executor or other person the judge directs. R.S., c. 465, s. 6.

Variation, suspension or discharge of order

7 **(1)** Where an order has been made for proper maintenance and support, a judge, upon application at any subsequent date, may

(a) inquire whether the party benefited by the order has become possessed of, or entitled to, any other provision for the dependant's maintenance or support;

(b) inquire into the adequacy of the provision ordered; and

(c) discharge, vary or suspend the order or make any other orders the judge considers proper in the circumstances.

(2) The judge may, when proceeding under subsection (1), include as relevant the fact that the dependant was

(a) the surviving spouse of the testator and has remarried;

(b) an unmarried child of the testator who has married;

(c) an infant child of the testator who has attained the age of majority; or

(d) a disabled child of the testator who has ceased to be disabled. R.S., c. 465, s. 7.

Periodic or lump sum payment by beneficiary

8 A judge at any time may

(a) fix a periodic payment or lump sum to be paid by any legatee or devisee to represent, or be in commutation of, the proportion of the sum ordered to be paid to the dependant that falls upon the portion of the estate in which the legatee or devisee is interested;

(b) relieve such portion from further liability; and

(c) direct

(i) in what manner a periodic payment must be secured, or

(ii) to whom a lump sum must be paid and in what manner it must be vested for the benefit of the dependant. R.S., c. 465, s. 8.

Restriction on time of distribution

9 (1) Except so far as is necessary to pay debts, and funeral and testamentary expenses, the executor or trustee of the estate of any testator shall not distribute any portion of the estate without the consent of all the dependants of the testator or unless authorized to do so by order of a judge made on summary application,

(a) until the expiration of six months from the grant of probate or administration with the will annexed; or

(b) after an application has been made under this Act and notice thereof served upon the executor or trustee, until a judge has disposed of the application,

but nothing herein contained prevents an executor or trustee from making reasonable advances for maintenance to dependants who are beneficiaries under the will or prevents a court of probate from making an allowance under the *Probate Act*.

(2) An executor or trustee who disposes of or distributes any portion of an estate in violation of the provisions of subsection (1) is, if any provision for maintenance and support is ordered by a judge to be made out of the estate, personally liable to pay the amount of the provision to the extent that the provision or any part thereof, pursuant to the order or this Act, ought to be made out of the portion of the estate disposed of or distributed. R.S., c. 465, s. 9.

How cost of proper maintenance and support borne

10 The cost of any provision for proper maintenance and support ordered under this Act must, unless the judge otherwise determines, be borne rateably by the whole estate of the testator or, in cases where the jurisdiction of the judge does not extend to the whole estate, then by that part to which the jurisdiction of the judge extends, and the judge may relieve any part of the testator's estate from the incidence of the order. R.S., c. 465, s. 10.

Succession duties

11 For the purpose of enactments relating to succession duties, where an order is made under this Act, the will is deemed to have had effect from the death of the testator as if it had been executed with any variations necessary to give effect to the provisions of the order, and the Crown is bound by the provisions of this Section. R.S., c. 465, s. 11.

Further direction by judge

12 A judge may give any further directions the judge considers proper for the purpose of giving effect to an order made under this Act. R.S., c. 465, s. 12.

Filing of order

13 A certified copy of every order made under this Act must be filed with the registrar of the court out of which the letters probate, or letters of administration with the will annexed, issued and a memorandum of the order must be endorsed on or annexed to the copy of the original letters probate or letters of administration with the will annexed in the custody of the registrar. R.S., c. 465, s. 13.

Limitation period

14 (1) Subject to subsection (2), an application for an order under Section 3 may not be made after expiration of six months from the grant of probate of the will or of administration with the will annexed.

(2) A judge may, if the judge considers it just, allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. R.S., c. 465, s. 14.

Notice of application to interested person

15 Where an application is made by or on behalf of a dependant,

(a) the judge shall not make any order until the judge is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served in accordance with the *Civil Procedure Rules* with notice of the application and every such person is entitled to be heard in person or by counsel at the hearing; and

(b) the application is, except as otherwise ordered by the judge, deemed to be an application on behalf of all dependants who have been so served. R.S., c. 465, s. 15.

Effect of order on contract for devise of property

16 (1) Where a testator, in the testator's lifetime, bona fide and for valuable consideration, has entered into a contract to devise and bequeath any property, real or personal, and has by will devised or bequeathed such property in accordance with the provisions of the contract, such property is not liable to the provisions of an order made under this Act, except to the extent that the value of the property, in the opinion of the judge, exceeds the consideration received by the testator.

(2) Where a dependant has entered into any agreement with a testator in the testator's lifetime the consideration for which is a promise by the dependant not to apply under this Act for relief from the provisions of the testator's will, such promise is not binding upon the dependant under this Act. R.S., c. 465, s. 16.

Right of dependant does not survive death

17 The right to apply for an order for relief under this Act does not survive the death of a dependant. R.S., c. 465, s. 17.

Enforcement of order

18 An order or direction made under this Act may be enforced in the same way and by the same means as any other judgment or order of the Supreme Court of Nova Scotia may be enforced, and a judge may make such order or direction or interim order or direction as may be necessary to secure to the dependant the benefit to which the dependant is found to be entitled. R.S., c. 465, s. 18.

Appeal

19 An appeal lies to the Nova Scotia Court of Appeal from any order made under this Act and the decision of the Court upon the appeal is final. R.S., c. 465, s. 19.

CHAPTER T-9

An Act Respecting Theatres, Cinematographs and Other Amusements

Table of Contents

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

Short title

1 This Act may be cited as the *Theatres and Amusements Act*. R.S., c. 466, s. 1.

Interpretation

2 In this Act,

"amusement owner" includes every person, firm, association, company or corporation, that for gain conducts a place of amusement or that for gain permits the public or some of them to participate or indulge in any amusement or recreation whatsoever, but does not include a theatre owner where only a performance is given in the theatre;

"cinematograph" means a cinematograph, moving picture machine or other similar apparatus;

"Department" means the Department of Service Nova Scotia;

"Entertainment Software Rating Board" means the Entertainment Software Rating Board established by the Entertainment Software Association in the United States of America;

"film" means a cinematograph film or slide, including a video film, video tape, video cassette or video disc, a DVD-video, a video game and any other medium specified in the regulations from which moving visual images may be produced;

"Film Classification Board" means a board established to classify films under this Act;

"film classifier" means a person appointed to classify films under this Act;

"inspector" means an inspector appointed under this Act;

"Minister" means Minister of Service Nova Scotia;

"peace officer" means any sheriff, sheriff's officer, police officer or constable or any other person employed for the preservation and maintenance of the public peace;

"performance" means any theatrical, vaudeville, musical or moving picture performance or exhibition for public entertainment, or any other performance or exhibition for public entertainment, whether or not of the kind hereinbefore enumerated;

"place of amusement" includes every building, tent, enclosure or place and every structure, apparatus, machine, contrivance or device whatsoever, the purpose of which is to provide any amusement or recreation whatsoever for the public or some of them and that is conducted for gain, but does not include a theatre where only a performance is given therein;

"theatre" means any building, tent, enclosure or place in which any performance is given in respect to which an admission fee is charged;

"theatre owner" means any person, firm, company or corporation operating a theatre in the Province;

"Utility and Review Board" means the Nova Scotia Utility and Review Board;

"video game" means an object or device that

(a) stores recorded data or instructions;

(b) receives data or instructions generated by a person who uses it; and

(c) by processing the data or instructions, creates an interactive game capable of being played, viewed or experienced on or through a computer, gaming system, console or other technology,

but does not include a class of games prescribed by the regulations;

"video-game outlet" means a retail establishment that sells, leases, rents, exchanges, distributes or otherwise makes available for use video games to the public for consideration, and includes a place of amusement that makes a video game available for use. R.S., c. 466, s. 2; 2000, c. 28, s. 99; 2004, c. 17, s. 1; 2012, c. 8, s. 20; 2014, c. 34, s. 67.

Exemption

3 Video films, video tapes, video cassettes and video discs that are

(a) educational films used for instruction in educational institutions;

(b) cultural films;

(c) heritage films;

(d) religious films;

(e) children's cartoons;

(f) travelogues;

(g) political films;

(h) films used for industrial or business promotions;

(i) sporting events;

(j) films exempted by the Governor in Council,

are exempt from this Act unless exhibited in a theatre. R.S., c. 466, s. 3.

Regulations

4 **(1)** The Governor in Council may make regulations for or in relation to or incidental to any one or more or to any part or parts of any one or more of the following matters:

(a) the licensing and regulating of theatres and places of amusement;

(b) regulating and licensing or prohibiting

(i) any performance or performances in a theatre or theatres,

(ii) any amusement or amusements or recreation or recreations in a place or places of amusement, and

(iii) any amusement or amusements or recreation or recreations for participating or indulging in which, by the public or some of them, fees are charged by any amusement owner;

(c) prescribing criteria in accordance with which the Minister may exercise the Minister's powers;

(d) prescribing a classification scheme for films, including

(i) establishing different classifications for different classes of films,

(ii) adopting, by reference, a classification scheme established by another person or body, subject to any changes the Governor in Council considers appropriate,

(iii) establishing criteria for film classification;

(e) prescribing rules and procedures for the Film Classification Board;

(f) exempting any amusement owner, theatre, theatre owner, film exchange, place of amusement, place, performance, film, machine or person or any class or type thereof from any provision of this Act or the regulations;

(g) the construction, use, safety, inspection and supervision of theatres;

(h) the licensing, using and operating of cinematographs;

(i) prescribing the terms and conditions under which cinematographs may be operated;

(j) the licensing, operating and defining of film exchanges;

(k) prohibiting or regulating the exhibition, sale, lease and exchange of films;

(l) the examining, regulating and licensing of cinematograph operators and apprentices;

(m) prescribing the terms and conditions under which films may be exhibited, sold, leased and exchanged;

(n) prescribing classes of video games to which Section 10 does not apply;

(o) respecting the manner in which video games are to be marked with any classifications given to them;

(p) respecting the displaying, selling, leasing, renting, exchanging or distribution of video games or other manners of making video games available for use;

(q) establishing, adopting or otherwise providing for classification or systems of classification of video games in addition to or in place of classifications given by the Entertainment Software Rating Board;

(r) respecting restrictions on the age of persons to whom a video-game outlet may sell, lease, rent, exchange, distribute or otherwise make video games of certain classifications available;

(s) respecting restrictions on video games at places of amusement, including restrictions on the age of persons permitted to play video games;

(t) prescribing the term or period during which any class of licence is in force;

(u) prescribing and regulating the fees, including methods for ascertaining, calculating or determining the fees to be paid for licences, for examinations of cinematograph operators and for examinations of films;

(v) prescribing by whom licences may be issued;

(w) the making of such returns or reports by such persons and in respect to such matters as considered expedient for the purpose of giving effect to this Act or regulations made thereunder;

(x) any other matters that appear to the Governor in Council necessary or expedient for the purpose of giving full effect to the provisions of this Act or to any of said provisions.

(2) No fee for administering any oath verifying any return or report, referred to in clause (1)(w), is payable to or may be charged by any justice of the peace, commissioner or other person authorized to administer such oath.

(3) Where the Governor in Council is of the opinion that the enactments, including any ordinances, bylaws or regulations, of any city in respect of the construction, alteration and repair of buildings are as adequate for all purposes as the regulations made under this Act, the Governor in Council may order that those regulations made under this Act in relation to the construction, alteration and repair of theatres and the inspection thereof in connection therewith do not apply to such city, and that the said enactments, ordinances, bylaws and regulations of such city have full force and effect therein.

(4) The Minister may in the Minister's absolute discretion revoke or suspend any licence issued under the authority of this Act or of the regulations. R.S., c. 466, s. 4; 2000, c. 28, s. 102; 2004, c. 17, s. 2; 2012, c. 8, s. 21.

Powers and duties of Minister

5 (1) The Minister may, in accordance with the criteria prescribed by the regulations, permit or prohibit

(a) the use or exhibition in the Province, or in any part or parts thereof, for public entertainment of any film;

(b) any performance in any theatre;

(c) any amusement in a place of amusement or any amusement or recreation for participating or indulging in which by the public or some of them fees are charged by any amusement owner;

(d) any sale, lease, rental, exchange or distribution of a film.

(2) The Minister may delegate any power or duty conferred or imposed by this Act to an employee of the Department. R.S., c. 466, s. 5; 2012, c. 8, s. 22.

Film Classification Board

6 (1) A Film Classification Board is established, consisting of one or more members appointed by the Minister.

(2) In appointing persons pursuant to subsection (1), the Minister may

(a) fix the term of the member's appointment; and

(b) fix the remuneration to be paid to the member.

(3) At the request of the Minister, members of the Film Classification Board shall, in accordance with the criteria prescribed by the regulations, classify a film by

(a) viewing the film and establishing a classification for it; or

(b) reviewing documentation or other information describing the content of the film and establishing a classification for the film.

(4) The Minister may appoint an employee of the Department and authorize the employee to

(a) classify a film in accordance with subsection (3); or

(b) adopt a classification established by another person or body for a film.

(5) Where an employee of the Department has adopted a classification pursuant to clause (4)(b), the Minister may request that the employee review that classification in accordance with subsection (3) at any time and either

(a) confirm the classification; or

(b) rescind the classification and classify the film in accordance with the regulations;

(6) Any power mentioned in subsections (1) to (5) may be exercised, notwithstanding the previously permitted use, exhibition, sale, lease, rental, exchange or distribution of the film or that a licence is in force.

(7) There is an appeal from a decision of the Film Classification Board, a film classifier appointed under subsection (4) or the Minister to the Nova Scotia Utility and Review Board, and subject to the conditions prescribed by the regulations of the Governor in Council. 2012, c. 2, s. 22.

Inspectors

7 **(1)** The Minister may appoint inspectors for the purpose of this Act and the regulations.

(2) An inspector and every peace officer has, for the purpose of enforcing this Act and the regulations, the power to enter and to inspect theatres, cinematographs and places of amusement.

(3) An inspector shall perform such other duties as the Minister requires. R.S., c. 466, s. 5; 2021, c. 8, s. 22.

No obstruction of inspector

8 No person shall in any way interfere with, impede or obstruct an inspector in the performance of the inspector's duty. R.S., c. 466, s. 8.

Marking of video films

9 **(1)** In this Section, "video outlet" means a retail establishment that sells, leases, rents, exchanges or distributes film for use in a video cassette recorder, video disc player or similar device to the public for consideration.

(2) Except as provided by the regulations, a video outlet shall ensure that each of its films is marked with the classification given in accordance with this Act and the regulations, which classification must be affixed in such manner as the Minister may determine to both the container in which the film is kept and any container used for display purposes.

(3) Except as provided by the regulations, no video outlet shall sell, lease, rent, exchange or distribute any film unless it

(a) has been classified in accordance with this Act and the regulations; and

(b) bears the appropriate classification for that film. R.S., c. 466, s. 6; 2000, c. 28, s. 102; 2012, c. 8, s. 23.

Video games

10 (1) Except as provided by the regulations, a video-game outlet shall ensure that each of its video games, and any container in which a video game is displayed, sold, leased, rented, exchanged, distributed or made available, is marked with the classification given to the video game by the Entertainment Software Rating Board or with such other classification as is established, adopted or otherwise provided for under the regulations.

(2) Except as provided by the regulations, no video-game outlet shall sell, lease, rent, exchange, distribute or otherwise make available any video game unless the video game

(a) has been classified by the Entertainment Software Rating Board or given such other classification as is established, adopted or otherwise provided for under the regulations; and

(b) the video game is marked in accordance with subsection (1).

(3) No video-game outlet or employee or agent of a video-game outlet shall sell, lease, rent, exchange, distribute or otherwise make available any video game to any person to whom the video-game outlet is restricted by the regulations from selling, leasing, renting, exchanging, distributing or otherwise making available such video. 2004, c. 17, s. 4.

Municipal powers

11 (1) Notwithstanding any enactment or law made by the Legislature, or made under the authority of any such enactment or law, the council of any city, town or municipality does not have power to make any bylaws, rules, regulations or ordinances in relation to any of the matters mentioned in Section 4, except the construction of theatres, and all bylaws, rules, regulations and ordinances of any city, town or municipality in relation to any of the said matters, except the construction of theatres, are repealed and are declared to be inoperative.

(2) Notwithstanding this Act, the council of any city, town or municipality may make, amend or repeal bylaws regulating and licensing circuses or other itinerant amusement performances. R.S., c. 466, s. 7.

Theatre and amusement taxes

12 **(1)** Every person attending a performance at a theatre shall upon each admission thereto pay to the Crown for the use of the Province a tax to be collected as in this Act provided and according to such scale as the Governor in Council prescribes.

(2) Every person attending any place of amusement and every person participating or indulging in any recreation or amusement whatsoever shall, upon each such attendance or participation or indulgence where a fee is charged for the same, whether charged before or after such attendance, participation or indulgence, pay to the Crown for the use of the Province a tax to be collected as in this Act provided and according to such scale as the Governor in Council prescribes. R.S., c. 466, s. 9.

Cable television tax

13 Notwithstanding anything contained in this Act, the Governor in Council may, by regulation, prescribe an amusement tax that must be paid by the users of such cable television services as are determined by the regulations, and the person providing the cable television service shall collect the amusement tax and pay it to the Crown in right of the Province as determined by the regulations. R.S., c. 466, s. 10.

Collection of taxes

14 **(1)** The taxes aforesaid must be collected by the theatre and amusement owner respectively and, where in respect of any particular theatre or place of amusement or any particular amusement or recreation the Minister considers it expedient, the tax must be so collected by means of tickets issued by the Minister.

(2) The ticket must be in such form as the Governor in Council prescribes.

(3) The Minister may furnish the tickets to theatre owners and place of amusement owners respectively and other persons who shall hold the same for sale and may sell the same for the amounts represented by the tickets respectively.

(4) Where the tax is to be collected by means of tickets, every theatre owner and amusement owner shall place at the entrance to the theatre or place of amusement, or in a prominent position at the place where the amusement or recreation is participated or indulged in respectively, a receptacle in which shall be deposited as in this Act provided the tickets sold under this Act.

(5) The receptacle must be of such pattern and according to such specifications as the Minister prescribes.

(6) No person shall, where the tax imposed by this Act is payable by the person,

(a) enter a theatre;

(b) enter a place of amusement; or

(c) participate or indulge in any recreation or amusement whatsoever,

unless and until such person has paid the tax and, where the tax is to be collected by means of tickets, has deposited in the receptacle a ticket representing the amount of the tax.

(7) Where the tax imposed by this Act is payable by any person, no theatre owner and no amusement owner, and no employee or agent of a theatre owner or amusement owner, shall allow, permit or authorize or be a party or privy to the admission of any such person to a theatre or to the admission of any person to a place of amusement or to the participation or indulgence by any such person in any recreation or amusement whatsoever, unless and until the person has paid the tax.

(8) Every theatre owner and every amusement owner shall at such times or periods as the Minister determines

(a) return to the Minister the tickets that have been deposited in the receptacle where the tax is collected by means of tickets; and

(b) pay over to the Minister all money received from the sale of said tickets or received for the tax or account for the money in such other manner as prescribed by the Governor in Council.

(9) The Governor in Council may exempt

(a) persons attending performances at any class or classes of theatre or attending any performance or performances at any theatre or theatres;

(b) persons attending any class or classes of place of amusement or any place or places of amusement;

(c) persons participating or indulging in any class or classes of amusement or recreation or any recreation or amusement,

from the provisions of this Act that relate to the taxation of persons attending performances at theatres, attending places of amusement or participating or indulging in any amusement or recreation, respectively. R.S., c. 466, s. 11; 2000, c. 28, s. 102; 2001, c. 3, s. 32.

Recovery of taxes

15 The taxes due and payable pursuant to this Act to the Crown in right of the Province may be recovered by the Crown in an action in debt against the person who is required by this Act or the regulations to collect the taxes, namely, the theatre owner, the amusement owner or the person providing the cable television service, as the case may be, in any court and the court may make such order as to the costs it may determine. R.S., c. 466, s. 12.

Offence and penalty

16 Every person who violates or fails to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations and every director of a corporation who knowingly concurs in a violation or failure to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations is guilty of an offence and liable on

summary conviction to the same penalty as is provided for an offence under the *Consumer Protection Act*. R.S., c. 466, s. 13.

Summary Proceedings Act

17 The penalties and imprisonments prescribed for the violation of this Act or of any of the regulations made thereunder must be recovered or enforced under the *Summary Proceedings Act*. R.S., c. 466, s. 16.

Use of penalty and fees

18 **(1)** Any penalty imposed for a violation of this Act or of any regulation made thereunder must, when received, be paid over by the convicting judge or justice of the peace to the Minister of Finance and Treasury Board for the use of the Province.

(2) All fees paid under this Act or the regulations made thereunder are for the use of the Province. R.S., c. 466, s. 17.

Duty of peace officer

19 It is the duty of every peace officer to enforce this Act and the regulations made thereunder. R.S., c. 466, s. 18.

Agent of film exchange

20 Every film exchange carrying on business in the Province shall have an agent in the Province and shall from time to time notify the Minister of the name and address of such agent. R.S., c. 466, s. 19; 2000, c. 28, s. 102.

Licence required by film exchange

21 **(1)** No film exchange may sell, lease, rent, exchange or distribute any film in the Province without first having obtained from the Minister a licence thereunder.

(2) A licence issued pursuant to subsection (1) must be displayed in a place clearly visible to the public.

(3) The fee for such licence is such amount as the Governor in Council prescribes by regulation and every such licence expires on November 30th of each year. R.S., c. 466, s. 20; 2000, c. 28, s. 102; 2012, c. 8, s. 25.

Statement by film exchange

22 The Minister may require every film exchange or any particular film exchange or film exchanges to submit to the Minister from time to time a statement showing

(a) the name or other description of any or all films proposed to be sold, leased, rented, exchanged or distributed by such film exchange in the Province during any period for which such information is available;

(b) the terms and conditions on which any film has been or is proposed to be sold, rented, leased, exchanged or distributed to any theatre owner; and

(c) such other information relating to the sale, lease, rental, exchange or distribution of films in the Province as the Minister may from time to time require. R.S., c. 466, s. 21; 2000, c. 28, s. 102.

Prohibition on discrimination by film exchange

23 Unjust discrimination by film exchanges in respect of the selling, leasing, renting, exchanging or distribution of films is prohibited and declared unlawful. R.S., c. 466, s. 22.

Deemed unjust discrimination

24 Where any film exchange knowingly or wilfully makes or gives any undue or unreasonable preference or unfair advantage to any theatre owner or subjects any theatre owner to any undue or unreasonable prejudice or unfair disadvantage in any respect whatsoever, such film exchange is guilty of unjust discrimination. R.S., c. 466, s. 23.

Alteration of film prohibited

25 No person shall alter or cause to be altered, for the purpose of exhibition, sale, lease, rental, exchange or distribution in the Province, any film from its state as classified in accordance with this Act and the regulations. R.S., c. 466, s. 25; 2000, c. 28, s. 102; 2012, c. 8, s. 27.

Contravention of Act

26 (1) Where the Minister is satisfied after due inquiry that any film exchange or theatre owner has violated this Act or any regulations made hereunder the Minister may

(a) revoke or cancel any licence of such film exchange;

(b) revoke or cancel any licence of such theatre owner; or

(c) attach to any of such licences such terms, conditions or restrictions as the Minister considers advisable.

(2) The Minister may act upon the report of an employee of the Department and any inquiry that the Minister considers necessary to make may be made by the Minister or by an employee of the Department or some other person appointed by the Minister to make the inquiry. R.S., c. 466, s. 26; 2000, c. 28, s. 101, 102.

CHAPTER T-10

An Act Respecting the Legal Meaning of Expressions Relating to Time

Table of Contents

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

Short title

1 This Act may be cited as the *Time Definition Act*. R.S., c. 469, s. 1.

Application of Act

2 Where an expression of time occurs in any statute, Act, enactment, law, order in council, rule of court, order, bylaw, rule, regulation, deed or other instrument or where any hour or other period of time is stated either orally or in writing, or any question as to a period of time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be the time reckoned as prescribed by or under this Act. R.S., c. 469, s. 2.

Standard time

3 Time shall be reckoned as four hours behind Greenwich mean solar time. R.S., c. 469, s. 2.

Daylight savings time

4 Notwithstanding Section 3, in each year between 2:00 a.m. of the first Sunday in April and 2:00 a.m. of the last Sunday in October time shall be reckoned as three hours behind Greenwich mean solar time. R.S., c. 469, s. 2.

Variation

5 Notwithstanding Sections 3 and 4, the Governor in Council may by proclamation published in the Royal Gazette prescribe how time shall be reckoned in reference to Greenwich mean solar time. R.S., c. 469, s. 2.

Interpretation of expressions of time

6 Unless it is otherwise specifically stated,

"month" where it occurs or is stated as in Sections 2 to 5 means a calendar month;

"year" where it occurs or is stated as in Sections 2 to 5 means a calendar year and shall be equivalent to the expression "Year of our Lord". R.S., c. 469, s. 3.

CHAPTER T-11

An Act to Restrict Access to Tobacco and Tobacco Products

Table of Contents

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

Short title

1 This Act may be cited as the *Tobacco Access Act*. 1993, c. 14, s. 1.

Purpose of Act

2 The purpose of this Act is to protect the health of Nova Scotians, and in particular young persons, by

(a) restricting their access to tobacco and tobacco products; and

(b) protecting them from inducements to use tobacco,

in light of the risks associated with the use of tobacco. 1993, c. 14, s. 2; 1999, c. 12, s. 2.

Interpretation

3 In this Act,

"electronic cigarette" means a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, containing a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled and includes all components used in conjunction with the device, including the e-liquid, cartridge and any other component that may be sold separately from the device itself;

"employee" of a vendor includes any servant or agent of the vendor;

"enforcement officer" means a person designated pursuant to this Act as an enforcement officer and includes a member of a municipal police force within the meaning of the *Police Act* and a member of the Royal Canadian Mounted Police;

"flavoured tobacco" means tobacco that

(a) has a characterizing scent or flavour, other than tobacco, that is noticeable before or during use, or both;

(b) by its packaging, labelling, advertising or otherwise, is represented as having a characterizing flavour; or

(c) is designated under the regulations as being flavoured,

but does not include tobacco exempted by the regulations;

"Minister" means the Minister of Health and Wellness;

"pharmacy" means a pharmacy as defined by the *Pharmacy Act*;

"self-service tobacco display" means a retail display of tobacco or tobacco products where a customer has access to the tobacco or tobacco products without the intervention of the vendor or an employee of the vendor;

"tobacco" means tobacco in any form, intended to be consumed in any manner, and, for greater certainty, includes snuff, tobacco leaves, any extract of tobacco leaves and electronic cigarettes, but does not include any food, drug or device that contains nicotine to which the *Food and Drugs Act* (Canada) applies;

"tobacco product" means a cigarette paper, cigarette tube, cigarette filter, cigarette maker, cigarette holder or pipe;

"tobacco vending machine" includes any automatic machine that dispenses tobacco, or a tobacco product whether or not the machine dispenses any other product;

"vendor" means a vendor within the meaning of Part IV or V of the *Revenue Act*. 1993, c. 14, s. 3; 1999, c. 12, s. 3; O.I.C. 2011-15; 2014, c. 58, s. 2; 2015, c. 26, s. 1; 2020, c. 2, s. 17; 2020, c. 18, s. 4.

Enforcement officers

4 The Minister of Environment may designate persons or classes of persons to act as enforcement officers for the purpose of this Act and the regulations. 1993, c. 14, s. 4; O.I.C. 2016-230.

Prohibitions

5 (1) No vendor or employee of a vendor shall sell or give tobacco or a tobacco product to a person under the age of 19 years.

(2) No person shall

(a) purchase tobacco or a tobacco product on behalf of, or for the purpose of resale; or

(b) give tobacco or a tobacco product,

to a person under the age of 19 years.

(3) No vendor or employee of a vendor that displays tobacco or tobacco products in an establishment shall permit any person under the age of 19 years to enter or be in that establishment.

(4) It is not a defence to a prosecution pursuant to subsection (1) for the vendor or other person to show that the person under the age of 19 years appeared to be above that age.

(5) A vendor or an employee of a vendor shall require a person appearing to the vendor or employee to be under the age of 19 years to provide proof of age before selling tobacco to that person and to carry out such procedures as may be prescribed by the regulations. 1993, c. 14, s. 5; 1999, c. 12, s. 4; 2006, c. 47, s. 1.

Vending machines and displays

6 No person shall locate on any premises or in any place accessible to the public, or have on any such premises or in any such place owned by or in the possession or control of that person, a tobacco vending machine or a self-service tobacco display. 1993, c. 14, s. 6.

Prohibitions

7 No person shall sell or offer for sale

(a) cigarettes in packages of fewer than 20 cigarettes;

(b) unpackaged cigarettes;

(c) flavoured tobacco;

(d) flavoured cigarette papers;

(e) tobacco with a nicotine concentration above the amount prescribed in the regulations; or

(f) an electronic cigarette with a capacity above the amount prescribed in the regulations. 1999, c. 12, s. 5; 2015, c. 26, s. 2; 2020, c. 18, s. 5.

Products appearing to be tobacco products

8 (1) No person shall sell or offer for sale any product, including a confectionery, designed to appear as a cigarette or other form of tobacco or as a tobacco product.

(2) Subsection (1) comes into force on such day as the Governor in Council orders and declares by proclamation. 1993, c. 14, s. 8.

Signs and promotional materials

9 (1) A vendor shall display signs in such form and manner and disclosing such information relating to the sale of tobacco and the effect of tobacco on health as may be prescribed by the regulations.

(2) No person shall display or permit the display of any sign or material promoting or advertising the sale of or otherwise respecting tobacco or

tobacco products except as prescribed by the regulations. 1993, c. 14, s. 9; 2006, c. 47, s. 2.

Packaging

10 All packaging containing tobacco or tobacco products must comply with such conditions as may be prescribed by the regulations, including the content and form of information to be displayed on it. 2006, c. 47, s. 3.

Displaying and storing

11 **(1)** No vendor or employee of a vendor shall display or permit the display of tobacco or tobacco products except as prescribed by the regulations.

(2) No vendor or employee of a vendor shall store tobacco or tobacco products except as prescribed by the regulations. 2006, c. 47, s. 3.

Prohibition respecting pharmacy

12 No person shall sell tobacco in

(a) a pharmacy;

(b) an establishment where goods or services are sold or offered for sale to the public if

(i) a pharmacy is located within the establishment, or

(ii) the customers of a pharmacy can pass into the establishment directly or by use of a corridor or area used exclusively to connect the pharmacy and the establishment; or

(c) an establishment designated by the regulations. 1999, c. 12, s. 7; 2006, c. 47, s. 4.

Powers of enforcement officer

13 For the purpose of enforcing this Act and the regulations, an enforcement officer may

(a) make test purchases, or take samples of tobacco, a tobacco product or a product designed to appear as a cigarette or other form of tobacco or as a tobacco product;

(b) investigate any complaint of a contravention of this Act or the regulations and examine a vendor or employee of a vendor to determine if a contravention has occurred;

(c) from time to time and at all reasonable times, enter upon the business premises of a vendor or any other person if it is reasonably necessary to do so in order to determine whether or not this Act and the regulations are being complied with;

(d) do any other thing for the purpose of enforcing this Act and the regulations. 1993, c. 14, s. 10.

Power to seize without warrant

14 **(1)** An enforcement officer may seize without a warrant any thing that is produced to the enforcement officer or that is in plain view during an inspection that the enforcement officer believes may be used as evidence of an offence.

(2) An enforcement officer may remove the thing seized or detain it in the place where it is seized.

(3) An enforcement officer shall inform the person from whom the thing was seized of the reason for the seizure and shall give the person a receipt for it.

(4) Any thing seized pursuant to this Act or the regulations that is illegal to possess by the person from whom the thing was seized is forfeited to the Crown in right of the Province.

(5) Where a person is convicted of an offence under this Act, in addition to any penalty imposed, any thing seized pursuant to this Act or the regulations by means of or in relation to which the offence was committed is forfeited to the Crown in right of the Province.

(6) Any thing forfeited to the Crown in right of the Province pursuant to subsection (4) or (5) may be disposed of as the Minister directs. 2020, c. 18, s. 6.

Vendors and employees to provide reasonable assistance

15 A vendor or employee of a vendor shall

(a) give an enforcement officer all reasonable assistance to enable the enforcement officer to exercise the enforcement officer's powers and duties under this Act or the regulations; and

(b) furnish all information relative to the exercise of those powers and duties that the enforcement officer may reasonably require. 2020, c. 18, s. 6.

Order to comply

16 **(1)** Where an enforcement officer finds that a vendor or an employee of a vendor is not complying with a provision of this Act or the regulations, the enforcement officer may order the vendor or the employee of a vendor to comply with the provision and may require the order to be carried out immediately or within such period of time as the enforcement officer specifies.

(2) An order made pursuant to subsection (1) must indicate, generally, the nature and, where appropriate, the location of the non-compliance with this Act or the regulations. 2020, c. 18, s. 6.

Limitation of liability

17 No action lies against a person by reason of that person reporting a contravention or alleged contravention of this Act or the regulations unless the reporting is done falsely and maliciously. 1993, c. 14, s. 11.

Offence and penalties

18 **(1)** Every vendor who contravenes or whose employee contravenes subsection 5(1) is guilty of an offence and liable on summary conviction to

(a) for a first offence, a fine not exceeding $2,000;

(b) for a second offence, a fine not exceeding $5,000; or

(c) for a third or subsequent offence, a fine not exceeding $10,000.

(2) Upon conviction of a vendor, or an employee of a vendor, for a contravention of subsection 5(1), the judge shall make an order prohibiting the vendor or a successor to the vendor's business, or an employee of the vendor or the successor, from selling tobacco from the premises at which the contravention took place or any premises to which the business is moved for

(a) in the case of a second offence, seven consecutive days;

(b) in case of third offence, not less than three consecutive months and not more than six consecutive months; and

(c) in the case of a fourth or subsequent offence, not less than 12 consecutive months and not more than 24 consecutive months.

(3) Subject to subsections (1) and (2) and Section 19, every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding $2,000.

(4) In a prosecution for a contravention of clause 7(c) or (d), an indication on a container or package that the contents of the container or package are flavoured tobacco or flavoured cigarette papers is proof, in the absence of evidence to the contrary, that the contents are flavoured tobacco or flavoured cigarette papers, as the case may be.

(5) In a prosecution for a contravention of clause 7(e), an indication on a container or package of tobacco of the nicotine concentration of the tobacco is proof, in the absence of evidence to the contrary, of the nicotine concentration of the tobacco.

(6) In a prosecution for a contravention of clause 7(f), an indication on an electronic cigarette or the packaging of an electronic cigarette of the maximum capacity of the electronic cigarette is proof, in the absence of evidence to the contrary, of the maximum capacity of the electronic cigarette. 1993, c. 14, s. 12; 1999, c. 12, s. 8; 2014, c. 58, s. 3; 2015, c. 26, s. 3; 2020, c. 18, s. 7.

Offence and penalties respecting certain establishments

19 Every vendor who contravenes or whose employee contravenes Section 11, every owner of a pharmacy or establishment where goods and services are sold or offered for sale to the public who contravenes or whose employee contravenes Section 12 and every establishment designated in the regulations that sells tobacco or tobacco products or whose employee sells tobacco or tobacco products in that establishment is guilty of an offence and liable on summary conviction to

(a) for a first offence, a fine not exceeding $2,000;

(b) for a second offence, a fine not exceeding $5,000; or

(c) for a third offence or subsequent offence, a fine not exceeding $10,000. 1999, c. 12, s. 9; 2006, c. 47, s. 5.

Regulations

20 **(1)** The Governor in Council may make regulations

(a) prescribing any matter that this Act authorizes to be prescribed by the regulations;

(b) designating tobacco as flavoured tobacco;

(c) exempting certain types and flavours of tobacco from the definition of "flavoured tobacco";

(d) prescribing a maximum nicotine concentration for tobacco, including different maximum concentrations for different forms of tobacco;

(e) prescribing a maximum capacity for electronic cigarettes or components thereof, including different maximum capacities for different types or components of electronic cigarettes;

(f) designating establishments for the purpose of Section 12;

(g) defining any word or expression used in this Act and not defined in this Act;

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

(i) respecting any matter that the Governor in Council considers necessary or advisable to carry out the intent and purpose of this Act.

(2) A regulation may apply to all vendors or to a class of vendors and there may be different regulations for different classes of vendors.

(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*. 1993, c. 14, s. 13; 2006, c. 47, s. 6; 2015, c. 26, s. 4; 2020, c. 18, s. 8.

CHAPTER T-12

An Act to Recover Damages and Healthcare Costs from Manufacturers of Tobacco

Table of Contents

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

Short title

1 This Act may be cited as the *Tobacco Damages and Healthcare Costs Recovery Act*. 2005, c. 46, s. 1.

Interpretation

2 **(1)** In this Act,

"cost of healthcare benefits" means the sum of

(a) the present value of the total expenditure by the Crown in right of the Province for healthcare benefits provided for insured persons resulting from tobacco-related disease or the risk of tobacco-related disease; and

(b) the present value of the estimated total expenditure by the Crown in right of the Province for healthcare benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco-related disease or the risk of tobacco-related disease;

"disease" includes general deterioration of health;

"exposure" means any contact with, or ingestion, inhalation or assimilation of, a tobacco product, including any smoke or other by-product of the use, consumption or combustion of a tobacco product;

"healthcare benefits" means

(a) insured hospital services, insured professional services and the Insured Prescription Drug Plan under the *Health Services and Insurance Act*;

(b) payments made by the Crown in right of the Province under the *Coordinated Home Care Act*, *Health Authorities Act*, *Homemakers Services Act*, *Homes for Special Care Act* or the *Social Assistance Act*; and

(c) other expenditures, made directly or through one or more agents or other intermediate bodies, by the Crown in right of the Province for programs, services, benefits or similar matters associated with disease;

"insured person" means

(a) a person, including a deceased person, for whom healthcare benefits have been provided; or

(b) a person for whom healthcare benefits could reasonably be expected will be provided;

"joint venture" means an association of two or more persons, if

(a) the relationship among the persons does not constitute a corporation, a partnership or a trust; and

(b) the persons each have an undivided interest in assets of the association;

"manufacture" includes, for a tobacco product, the production, assembly or packaging of the tobacco product;

"manufacturer" means a person who manufactures or has manufactured a tobacco product and includes a person who currently or in the past

(a) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of a tobacco product;

(b) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products by that person or by other persons;

(c) engages in, or causes, directly or indirectly, other persons to engage in the promotion of a tobacco product; or

(d) is a trade association primarily engaged in

(i) the advancement of the interests of manufacturers,

(ii) the promotion of a tobacco product, or

(iii) causing, directly or indirectly, other persons to engage in the promotion of a tobacco product;

"person" includes a trust, joint venture or trade association;

"promote" or "promotion" includes, for a tobacco product, the marketing, distribution or sale of the tobacco product and research with respect to the tobacco product;

"tobacco product" means tobacco and any product that includes tobacco;

"tobacco-related disease" means disease caused or contributed to by exposure to a tobacco product;

"tobacco-related wrong" means

(a) a tort committed in the Province by a manufacturer that causes or contributes to tobacco-related disease; or

(b) in an action under subsection 3(1), a breach of a common law, equitable or statutory duty or obligation owed by a manufacturer to persons in the Province who have been exposed or might become exposed to a tobacco product;

"type of tobacco product" means one or a combination of the following tobacco products:

(a) cigarettes;

(b) loose tobacco intended for incorporation into cigarettes;

(c) cigars;

(d) cigarillos;

(e) pipe tobacco;

(f) chewing tobacco;

(g) nasal snuff;

(h) oral snuff;

(i) a prescribed form of tobacco.

(2) The definition of "manufacturer" in subsection (1) does not include

(a) an individual;

(b) a person who

(i) is a manufacturer only because the person is a wholesaler or retailer of tobacco products, and

(ii) is not related to

(A) a person who manufactures a tobacco product, or

(B) a person described in clause (a) under the definition of "manufacturer" in subsection (1); or

(c) a person who

(i) is a manufacturer only because clause (b) or (c) under the definition of "manufacturer" in subsection (1) applies to the person, and

(ii) is not related to

(A) a person who manufactures a tobacco product, or

(B) a person described in clause (a) or (d) under the definition of "manufacturer" in subsection (1).

(3) For the purpose of subsection (2), a person is related to another person if, directly or indirectly, the person is

(a) an affiliate, within the meaning of the *Companies Act*, of the other person; or

(b) an affiliate of the other person or an affiliate of an affiliate of the other person.

(4) For the purpose of clause (3)(b), a person is deemed to be an affiliate of another person if the person

(a) is a corporation and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, owns a beneficial interest in shares of the corporation

(i) carrying at least 50% of the votes for the election of directors of the corporation and the votes carried by the shares are sufficient, where exercised, to elect a director of the corporation, or

(ii) having a fair market value, including a premium for control if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the corporation; or

(b) is a partnership, trust or joint venture and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group to receive at least 50% of the profits or at least 50% of the assets on dissolution, winding up or termination of the partnership, trust or joint venture.

(5) For the purpose of clause (3)(b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has any direct or indirect influence that, where exercised, would result in control in fact of that person except if the other person deals at arm's length with that person and derives influence solely as a lender.

(6) For the purpose of determining the market share of a defendant for a type of tobacco product sold in the Province, the court shall calculate the defendant's market share for the type of tobacco product by the following formula:

$$dms = dm / MM \times 100\%$$

where

dms = the defendant's market share for the type of tobacco product from the date of the earliest tobacco-related wrong committed by that defendant to the date of trial;

dm = the quantity of the type of tobacco product manufactured or promoted by the defendant that is sold within the Province from the date of the earliest tobacco-related wrong committed by that defendant to the date of trial;

MM = the quantity of the type of tobacco product manufactured or promoted by all manufacturers that is sold within the Province from the date of the earliest tobacco-related wrong committed by the defendant to the date of trial. 2005, c. 46, s. 2.

Right of action

3 (1) The Crown in right of the Province has a direct and distinct action against a manufacturer to recover the cost of healthcare benefits caused or contributed to by a tobacco-related wrong.

(2) An action under subsection (1) is brought by the Crown in right of the Province in the Crown's own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the Crown in right of the Province may recover the cost of healthcare benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the tobacco-related wrong committed by the defendant.

(4) In an action under subsection (1), the Crown in right of the Province may recover the cost of healthcare benefits

(a) for particular individual insured persons; or

(b) on an aggregate basis, for a population of insured persons as a result of exposure to a type of tobacco product.

(5) Where the Crown in right of the Province seeks in an action under subsection (1) to recover the cost of healthcare benefits on an aggregate basis,

(a) it is not necessary to

(i) identify particular individual insured persons,

(ii) prove the cause of tobacco-related disease in any particular individual insured person, or

(iii) prove the cost of healthcare benefits for any particular individual insured person;

(b) the healthcare records and documents of particular individual insured persons or the documents relating to the provision of healthcare benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness;

(c) a person is not compellable to answer questions with respect to the health of, or the provision of healthcare benefits for, particular individual insured persons;

(d) notwithstanding clauses (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in clause (b) and the order must include directions concerning the nature, level of detail and type of information to be disclosed; and

(e) where an order is made under clause (d), the identity of particular individual insured persons must not be disclosed and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed. 2005, c. 46, s. 3.

Standard of proof and presumptions

4 **(1)** In an action under subsection 3(1) for the recovery of the cost of healthcare benefits on an aggregate basis, subsection (2) applies if the Crown in right of the Province proves, on a balance of probabilities, that, in respect of a type of tobacco product,

(a) the defendant breached a common law, equitable or statutory duty or obligation owed to persons in the Province who have been exposed or might become exposed to the type of tobacco product;

(b) exposure to the type of tobacco product can cause or contribute to disease; and

(c) during all or part of the period of the breach referred to in clause (a), the type of tobacco product, manufactured or promoted by the defendant, was offered for sale in the Province.

(2) Subject to subsections (1) and (4), the court shall presume that

(a) the population of insured persons who were exposed to the type of tobacco product, manufactured or promoted by the defendant, would not have been exposed to the product but for the breach referred to in clause (1)(a); and

(b) the exposure described in clause (a) caused or contributed to disease or the risk of disease in a portion of the population described in clause (a).

(3) Where the presumptions under clauses (2)(a) and (b) apply,

(a) the court shall determine on an aggregate basis the cost of healthcare benefits provided after the date of the breach referred to

in clause (1)(a) resulting from exposure to the type of tobacco product; and

(b) each defendant to which the presumptions apply is liable for the proportion of the aggregate cost referred to in clause (a) equal to its market share for the type of tobacco product.

(4) The amount of a defendant's liability assessed under clause (3)(b) may be reduced, or the proportions of liability assessed under clause (3)(b) readjusted amongst the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in clause (1)(a) did not cause or contribute to the exposure referred to in clause (2)(a) or to the disease or risk of disease referred to in clause (2)(b). 2005, c. 46, s. 4.

Joint and several liability of defendants

5 (1) Two or more defendants in an action under subsection 3(1) are jointly and severally liable for the cost of healthcare benefits if

(a) those defendants jointly breached a duty or obligation described in the definition of "tobacco-related wrong" in subsection 2(1); and

(b) as a consequence of the breach described in clause (a), at least one of those defendants is held liable in the action under subsection 3(1) for the cost of those healthcare benefits.

(2) For the purpose of an action under subsection 3(1), two or more manufacturers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in the definition of "tobacco-related wrong" in subsection (1) if

(a) one or more of those manufacturers are held to have breached the duty or obligation; and

(b) at common law, in equity or under an enactment those manufacturers would be held

(i) to have conspired or acted in concert with respect to the breach,

(ii) to have acted in a principal and agent relationship with each other with respect to the breach, or

(iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered as a consequence of the breach. 2005, c. 46, s. 5.

Evidence

6 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purpose of establishing causation and quantifying damages or the cost of healthcare benefits respecting a tobacco-related wrong in an action brought

(a) by or on behalf of a person in the person's own name; or

(b) by the Crown in right of the Province under subsection 3(1). 2005, c. 46, s. 6.

Limitation periods not to apply to actions

7 (1) No action that is commenced on or within two years after September 26, 2014, by

(a) the Crown in right of the Province;

(b) a person, on the person's own behalf or on behalf of a class of persons; or

(c) a personal representative of a deceased person on behalf of the spouse, parent or child, as defined in the *Fatal Injuries Act*, of the deceased person,

for damages, or the cost of healthcare benefits, alleged to have been caused or contributed to by a tobacco-related wrong is barred under the *Limitation of Actions Act* or by a limitation period under any other enactment.

(2) Any action described in subsection (1) for damages alleged to have been caused or contributed to by a tobacco-related wrong is revived if the action was dismissed before September 26, 2014, merely because it was held by a court to be barred or extinguished by the *Limitation of Actions Act* or a limitation period in any other enactment. 2005, c. 46, s. 7.

Apportionment of liability

8 (1) This Section applies to an action for damages, or the cost of healthcare benefits, alleged to have been caused or contributed to by a tobacco-related wrong other than an action for the recovery of the cost of healthcare benefits on an aggregate basis.

(2) Where a plaintiff is unable to establish which defendant caused or contributed to the exposure described in clause (b) and, as a result of a breach of a common law, equitable or statutory duty or obligation,

(a) one or more defendants caused or contributed to a risk of disease by exposing persons to a type of tobacco product; and

(b) the plaintiff has been exposed to the type of tobacco product referred to in clause (a) and suffers disease as a result of the exposure,

the court may find each defendant that caused or contributed to the risk of disease liable for a proportion of the damages or cost of healthcare benefits incurred equal to the proportion of its contribution to that risk of disease.

(3) The court may consider the following in apportioning liability under subsection (2):

(a) the length of time a defendant engaged in the conduct that caused or contributed to the risk of disease;

(b) the market share the defendant had for the type of tobacco product that caused or contributed to the risk of disease;

(c) the degree of toxicity of any toxic substance in the type of tobacco product manufactured or promoted by a defendant;

(d) the amount spent by a defendant on promoting the type of tobacco product that caused or contributed to the risk of disease;

(e) the degree to which a defendant collaborated or acted in concert with other manufacturers in any conduct that caused, contributed to or aggravated the risk of disease;

(f) the extent to which a defendant conducted tests and studies to determine the risk of disease resulting from exposure to the type of tobacco product;

(g) the extent to which a defendant assumed a leadership role in manufacturing the type of tobacco product;

(h) the efforts a defendant made to warn the public about the risk of disease resulting from exposure to the type of tobacco product;

(i) the extent to which a defendant continued manufacture or promotion of the type of tobacco product after it knew or ought to have known of the risk of disease resulting from exposure to the type of tobacco product;

(j) affirmative steps that a defendant took to reduce the risk of disease to the public; and

(k) other factors considered relevant by the court. 2005, c. 46, s. 8.

Actions for contribution

9 **(1)** This Section does not apply to a defendant in respect of whom the court has made a finding of liability under Section 8.

(2) A defendant who is found liable for a tobacco-related wrong may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution towards payment of the damages or the cost of healthcare benefits caused or contributed to by that wrong.

(3) Subsection (2) applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the damages or the cost of healthcare benefits caused or contributed to by the tobacco-related wrong.

(4) In an action or proceeding described in subsection (2), the court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in clauses 8(3)(a) to (k). 2005, c. 46, s. 9.

Regulations

10 **(1)** The Governor in Council may make regulations

(a) prescribing a form of tobacco for the purpose of clause (i) under the definition of "type of tobacco product" in subsection 2(1);

(b) providing for administrative and procedural matters for which no express, or only partial, provision has been made;

(c) defining any word or expression used in this Act and not defined in this Act;

(d) respecting any matter or thing that the Governor in Council considers advisable or necessary to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2005, c. 46, s. 10.

Retroactivity

11 A provision of this Act has the retroactive effect necessary to give the provision full effect for all purposes, including allowing an action to be brought under subsection 3(1) arising from a tobacco-related wrong, whenever the tobacco-related wrong occurred. 2005, c. 46, s. 11.

CHAPTER T-13

An Act Respecting Proceedings against and Contributions between Tortfeasors

Table of Contents

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

Short title

1 This Act may be cited as the *Tortfeasors Act*. R.S., c. 471, s. 1.

Interpretation

2 **(1)** In this Act,

"child" and "parent" have the same meanings as they have in the *Fatal Injuries Act*;

"contribution" includes indemnity.

(2) The reference to "the judgment first given", in a case where that judgment is reversed on appeal, is to be construed as a reference to the judgment first given that is not so reversed and, in a case where a judgment is varied on appeal, is to be construed as a reference to that judgment as so varied. R.S., c. 471, s. 2.

Remedies

3 Where damage is suffered by any person as a result of a tort, whether a crime or not,

(a) judgment recovered against any tortfeasor liable in respect of that damage is not a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the spouse, parent or child, of that person, against tortfeasors liable in respect of the damage, whether as joint tortfeasors or otherwise, the sums recoverable under the judgments given in those actions by way of damages may not in the aggregate exceed the amount of the damages awarded by the judgment first given, and in any of those actions other than that in which judgment is first given, the plaintiff is not entitled to costs unless the judge presiding at the trial or the court on appeal is of the opinion that there was reasonable ground for bringing the action;

(c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person is entitled to recover contribution under this Section from any person entitled to be indemnified by the person in respect of the liability of which the contribution is sought. R.S., c. 471, s. 3.

Amount recoverable between tortfeasors

4 **(1)** In any action for contribution under this Act or on the summary application of any one of two or more tortfeasors found liable in damages in any action, the amount of the contribution recoverable from any person is such as may be found by the judge presiding at the trial or the court on appeal, to be just and equitable having regard to the extent of that person's responsibility for the damage, and the judge or the court on appeal has the power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person amount to a complete indemnity.

(2) A tortfeasor may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage to any person suffering damage as a result of a tort, by settling with the person suffering such damage, and thereafter commencing or continuing action against such other tortfeasor, in which event the tortfeasor settling the damage shall satisfy the court that the amount of the settlement was reasonable, and in the event that the court finds the amount of the settlement was excessive it may fix the amount at which the claim should have been settled. R.S., c. 471, s. 4.

Power to add defendant

5 Whenever it appears that any person not already a party to an action is or may be wholly or partly responsible for the damages claimed, such person may be added as a party defendant or may be made a third party to the action upon such terms as may be considered just. R.S., c. 471, s. 5.

Restriction on application and effect of Act

6 Nothing in this Act

(a) affects any criminal proceedings against any person in respect of any wrongful act; or

(b) renders enforceable any agreement for indemnity that would not have been enforceable if this Section had not yet been passed. R.S., c. 471, s. 6.

CHAPTER T-14

An Act Respecting the Registration of Tourist Accommodations

Table of Contents

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

Short title

1 This Act may be cited as the *Tourist Accommodations Registration Act*. 2019, c. 9, s. 1.

Interpretation

2 In this Act,

"host" means a person who carries on the business of offering short-term rental of roofed accommodations to the travelling or vacationing public in the Province;

"platform operator" means a person who facilitates or brokers reservations for the short-term rental of roofed accommodations via the Internet and who receives payment, compensation or any other financial benefit in connection with a person making or completing reservations of such short-term rentals;

"roofed accommodation" means

(a) every building, part of a building, group of buildings or place of accommodation that provides one or more residential units used mainly for the reception of the travelling or vacationing public;

(b) cottages or cabins; or

(c) any building or part of a building designated as a roofed accommodation by the regulations;

"short-term rental" means the provision of roofed accommodations to a single party or group, for payment or compensation, for a period of 28 days or less. 2019, c. 9, s. 2; 2022, c. 29, s. 1.

Host and platform operator must register

3 **(1)** No person shall carry on the business of a host without first registering under this Act in the manner set out in the regulations.

(2) No person shall carry on the business of a platform operator without first registering under this Act in the manner set out in the regulations. 2019, c. 9, s. 3; 2022, c. 29, s. 2.

Platform operator must maintain records

4 **(1)** Every platform operator listing, advertising or facilitating the listing or advertising of short-term rentals of roofed accommodations in the Province shall keep a record of each concluded transaction in relation to the short-term rentals listed or advertised on the operator's platform for seven years following the last day of the rental period.

(2) Records required to be retained under subsection (1) must include

(a) the name, address, and, if applicable, the registration number of the host;

(b) the number of nights the roofed accommodation was rented;

(c) the nightly and total price charged for the rental; and

(d) any other information required by the regulations. 2019, c. 9, s. 4.

Offence

5 A person who contravenes this Act is guilty of an offence and liable on summary conviction to a fine of not more than $1,000 and such additional penalty as may be prescribed by the regulations. 2019, c. 9, s. 5.

Regulations

6 **(1)** The Governor in Council may make regulations

(a) designating a building or part of a building as a roofed accommodation;

(b) establishing a requirement to register under this Act, including defining any classes of persons required to register, terms of eligibility and any terms and conditions to be applied to applicants or registrants;

(c) requiring compliance with applicable land-use bylaws as a condition of obtaining or maintaining registration under this Act;

(d) respecting applications for registrations of roofed accommodations, hosts and platform operators;

(e) respecting the collection, use and disclosure of any information collected or provided pursuant to this Act;

(f) prescribing the fees to be charged for registrations required under this Act;

(g) respecting the form of any registration system required pursuant to this Act;

(h) prescribing additional penalties for non-compliance with this Act;

(i) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2019, c. 9, s. 6; 2022, c. 29, s. 3.

CHAPTER T-15

An Act Respecting the Right of Employees to Organize and Providing for Mediation, Conciliation and Arbitration of Industrial Disputes

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

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WHEREAS the Government of Nova Scotia is committed to the development and maintenance of labour legislation and policy designed for the promotion of common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes;

AND WHEREAS Nova Scotia employees, labour organizations and employers recognize and support freedom of association and free collective bargaining as the bases of effective labour relations for the determination of good working conditions and sound labour-management relations in the public and private sectors of Nova Scotia;

AND WHEREAS the Government of Nova Scotia desires to continue, and extend, its support to labour and management in their co-operative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good labour relations to be in the best interests of Nova Scotia:

Short title

1 This Act may be cited as the *Trade Union Act*. R.S., c. 475, s. 1.

PART I

INDUSTRIAL RELATIONS GENERALLY

INTERPRETATION

Interpretation

2 **(1)** In this Act,

"bargaining agent" means a trade union that acts on behalf of employees

(a) in collective bargaining;

(b) as a party to a recognition agreement with their employer; or

(c) as a party to a collective agreement with their employer;

"Board" means the Labour Board established under the *Labour Board Act*;

"certified bargaining agent" means a bargaining agent that has been certified under this Act or that is party to an agreement filed pursuant to subsection 37(2) and the certification of which has not been revoked;

"Chief Executive Officer" means the Chief Executive Officer of the Board;

"collective agreement" means a signed agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand, and a certified bargaining agent of the employer's employees on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;

"collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be;

"conciliation board" means a board of conciliation and investigation appointed by the Minister in accordance with Section 93;

"conciliation officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

"to contract out" means to make a contract or agreement in accordance with which a significant part of the work regularly done by the employees of an employer is to be done by some other person or persons;

"dispute" or "industrial dispute" means any dispute or difference or apprehended dispute or difference between an employer and one or more of the employer's employees or a bargaining agent acting on behalf of the employer's employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by the employer or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees;

"employee" means a person employed to do skilled or unskilled manual, clerical or technical work and includes

(a) police constables or officers employed by a regional municipality, town, county or district municipality or village commission, or by a board, commission or agency of, or a corporation controlled by, a regional municipality, town, county or district municipality or village commission;

(b) a person employed or engaged on fishing vessels of all types or in the operation of these vessels on water, if the person is paid wages or salary or accepts or agrees to accept a percentage or other part of the proceeds of the adventure or of the catch in lieu of or in addition to wages;

"employer" means any person who employs more than one employee;

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

"jurisdictional dispute" means a dispute between two or more trade unions or between an employer or employers' organization and one or more trade unions over the assignment of work;

"lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of the employer's employees done to compel the employees, or to aid another employer to compel that employer's employees, to agree to terms or conditions of employment;

"mediation officer" means a person appointed as such by the Minister;

"Minister" means the Minister of Labour, Skills and Immigration;

"parties" with reference to the appointment of, or proceedings before, a conciliation board means the parties who are engaged in the collective bargaining or the dispute in respect of which the conciliation board is or is not to be established;

"regulation" means a regulation of the Governor in Council under this Act;

"rule" means a procedural rule of the Board;

"strike" includes a cessation of work, or refusal to work or continue to work, by employees, in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

"trade union" means any organization of employees formed for purposes that include regulating relations between employers and employees that has a constitution and rules or bylaws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continued in membership;

"unit" means a group of two or more employees and "appropriate for collective bargaining" with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit or any other unit and whether or not the employees therein are employed by one or more employers.

(2) For the purpose of this Act, a person is not an employee if the person is

(a) a manager or superintendent, or any other person who, in the opinion of the Board, is employed in a confidential capacity in matters relating to labour relations or who exercises management functions; or

(b) a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity. R.S., c. 475, s. 2; 2010, c. 37, s. 137.

APPLICATION

Application of Act

3 **(1)** Subject to subsection (2), this Act applies to all matters within the legislative jurisdiction of the Province except that it does not apply to the Crown in right of the Province or to employees of the Crown.

(2) This Act applies to any board, commission or similar body that is an agency of the Crown in right of the Province and to the employees of the board, commission or body, other than those appointed by the Public Service Commission or by the Governor in Council.

(3) Notwithstanding subsection (1), Sections 65, 85 and 88 apply to the Crown in right of the Province and employees of the Crown in right of the Province.

(4) Notwithstanding subsection (1), Section 38 applies to the Crown in right of the Province and employees of the Crown except

(a) persons to whom the *Teachers Collective Bargaining Act* applies; and

(b) for greater certainty, where, for any purpose other than avoiding obligations under this Act, the Crown contracted out or agreed to contract out work regularly done by employees of the Crown.

(5) Sections 86 to 89 and 110 apply to complaints of a failure to comply with Section 85 made against

(a) the Nova Scotia Government Employees Union or a person acting on behalf of the Union pursuant to the *Civil Service Collective Bargaining Act*; or

(b) the Nova Scotia Highway Workers Union, CUPE Local 1867 or a successor trade union determined pursuant to the *Highway Workers Collective Bargaining Act* or a person acting on behalf of the Union. R.S., c. 475, s. 4; 2005, c. 61, s. 1; 2010, c. 37, s. 138.

POWERS AND DUTIES OF MINISTER

Powers and duties of Minister

4 The Minister is charged with the administration of this Act and shall exercise the powers and perform the duties imposed on the Minister by this Act. R.S., c. 475, s. 3.

Minister may consult

5 The Minister may consult with the public, including non-unionized employers and employees, in relation to labour issues that affect non-unionized employers and employees. 2010, c. 37, s. 134.

LABOUR-MANAGEMENT REVIEW COMMITTEE

Establishment of Committee

6 **(1)** The Minister shall establish a Labour-management Review Committee whose purpose is to improve labour relations and collective bargaining in the Province.

(2) The Committee is composed of not more than 10 members representing in equal numbers unionized labour and employers, all of whom are appointed by the Minister.

(3) Members of the Committee are appointed for a three-year term and may be reappointed, but may not serve more than two consecutive terms.

(4) After serving two consecutive terms, a person is eligible to be reappointed to the Committee no sooner than three years following the expiry of the person's last term as a member. 2010, c. 37, s. 139.

Expenses and remuneration

7 Persons appointed to the Committee must be paid expenses incurred by them in the course of carrying out their duties as members of the Committee and shall, in addition, be paid remuneration as determined by the Minister. 2010, c. 37, s. 139.

Co-chairs

8 The Minister shall select two co-chairs of the Committee, one of whom represents unionized labour and one of whom represents unionized employers. 2010, c. 37, s. 139.

Quorum

9 A quorum of the Committee consists of a majority of members representing unionized labour and a majority of members representing unionized employers. 2010, c. 37, s. 139.

Function

10 The function of the Committee is to

(a) review, report on and make recommendations to the Minister on labour-relations issues arising out of the *Civil Service Collective Bargaining Act*, the *Highway Workers Collective Bargaining Act* and this Act, on an ongoing basis; and

(b) where directed by the Minister, conduct a review of this Act and the other statutes referred to in clause (a) or any part of them. 2010, c. 37, s. 139.

Consultation

11 **(1)** The Committee shall consult with unionized employers and employees in performing its function under Section 10.

(2) The Committee shall consult non-unionized employers and employees in relation to

(a) certification issues; and

(b) other labour-relations issues that the Minister considers will affect non-unionized employers and employees. 2010, c. 37, s. 139.

Annual report

12 Each year the Committee shall submit to the Minister an annual report concerning its activities during the previous fiscal year. 2010, c. 37, s. 139.

GENERAL

Signing of application, notice or agreement

13 For the purpose of this Act, an application to the Board or any notice or any collective agreement may be signed, if it is made, given or entered into

(a) by an employer who is an individual, by that employer;

(b) where several individuals who are jointly employers, by a majority of those individuals;

(c) by a corporation, by one of its authorized managers or by one or more of the principal executive officers;

(d) by a trade union or employers' organization, by the president and secretary of the trade union or employers' organization or any two officers thereof or by any person authorized for this purpose by resolution duly passed at a meeting of the trade union or employers' organization. R.S., c. 475, s. 5.

Service of documents and use of mail

14 (1) For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through Canada Post is presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) A document may be served or delivered for the purpose of this Act or any proceedings thereunder in the manner prescribed by regulation or rule. R.S., c. 475, s. 6.

Certificate as prima facie evidence

15 A certificate purporting to be signed by the Minister, by the Deputy Minister of Labour, Skills and Immigration or by an official in the Department of Labour, Skills and Immigration stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act and, where so received or given, the date upon which it was so received or given is prima facie evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same. R.S., c. 475, s. 7.

Irregularity does not invalidate proceeding

16 No proceedings under this Act, including arbitration or other proceedings in accordance with Section 51 or 65 and arbitration in accordance with Section 140 are invalid by reason of any defect in form or any technical irregularity. R.S., c. 475, s. 8; 2005, c. 61, s. 2.

Not compellable witness

17 (1) Notwithstanding any other enactment or law, a conciliation officer, mediation officer or any persons employed in the Department of Labour, Skills and Immigration may not be compelled or required to give in evidence before any court, body or person having authority to receive evidence, any information of any kind obtained by that person for the purpose of this Act or in the course of that person's duties under this Act.

(2) Notwithstanding any other enactment or law, an arbitrator, mediator-arbitrator or member of an arbitration board appointed pursuant to this Act or a collective agreement, whether selected with or without the consent of the parties involved, may not be compelled or required to give in evidence before any court, body or person having authority to receive evidence, any information of any kind obtained by that person for the purpose of this Act or in the course of that person's duties under this Act. R.S., c. 475, s. 9; 2009, c. 29, s. 1.

Regulations

18 The Governor in Council may make regulations as to the time within which anything authorized by this Act must be done, and also as to any other matter or thing that appears to the Governor in Council necessary or advisable to the effective working of this Act. R.S., c. 475, s. 10.

Personnel

19 There may be employed any officers, clerks and employees who are necessary for the administration of this Act. R.S., c. 475, s. 11.

Administration expenses

20 Any money required for the administration of this Act, or for the carrying out of any of the provisions of this Act, must, in the absence of any vote of the Legislative Assembly available therefor, be paid out of the General Revenue Fund. R.S., c. 475, s. 12.

RIGHTS OF EMPLOYERS AND EMPLOYEES

Rights of employee and employer

21 (1) Every employee has the right to be a member of a trade union and to participate in its activities.

(2) Every employer has the right to be a member of an employers' organization and to participate in its activities. R.S., c. 475, s. 13.

Status as employee unaffected

22 No person ceases to be an employee within the meaning of this Act by reason only of the person ceasing to work for the person's employer as the result

of a lockout or strike or by reason only of dismissal by the employer contrary to this Act or to a collective agreement. R.S., c. 475, s. 14.

Right of employee to present grievance preserved

23 Notwithstanding anything contained in this Act, any employee may present a personal grievance to the employee's employer at any time. R.S., c. 475, s. 15.

LABOUR BOARD

Labour Board

24 (1) The Board is constituted and shall act as a panel of the Board consisting of the Chair or a vice-chair, as the chair of a panel, and two other members of the Board equally representative of employees and employers.

(2) Notwithstanding subsection (1), the Chair of the Board or a vice-chair of the Board may sit alone to hear a matter with respect to

(a) an uncontested application or question; or

(b) a complaint under subsection 85(3),

and, when doing so, may exercise all the powers of the Board.

(3) Upon application for an interim order pursuant to Section 73 or 74 and in any case where a hearing is not requested, where the Chair considers it appropriate, the Board may deal with any matter by each member conferring separately with the Chief Executive Officer and each deciding the matter without first giving an opportunity to the interested parties to present evidence and make representation. 2010, c. 37, s. 140.

Regulations

25 The Board, with the approval of the Governor in Council, may make regulations prescribing fees and charges to recover the cost of services pursuant to this Act. 2010, c. 37, s. 142.

Determination of question arising before Board

26 (1) Where in any proceeding before the Board a question arises under this Act as to whether

(a) a person is an employer or employee;

(b) an organization or association is an employers' organization or a trade union, or a council of trade unions;

(c) in any case a collective agreement has been entered into and the terms thereof;

(d) a collective agreement is by its terms in full force and effect and upon whom it is binding;

(e) any person has ceased to work for that person's employer as the result of a lockout or strike or has been dismissed by that person's employer contrary to this Act or to a collective agreement;

(f) any party to collective bargaining has failed to comply with Section 42;

(g) a group of employees is a unit appropriate for collective bargaining;

(h) an employee belongs to a craft or group exercising technical skills;

(i) a person is a member in good standing of a trade union;

(j) an employer has sold, leased, transferred or agreed to sell, lease or transfer the employer's business or the operations thereof or any part of either of them or has contracted out or agreed to contract out any part of the work done by the employer's employees;

(k) an employer, employer' organization, trade union or other person is doing or has done any act prohibited by Section 69, 70, 71, 72 or 85,

the Board shall decide the question and the decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, where it considers it advisable to do so, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.

(2) The Board may of its own motion state a case in writing for the opinion of the Nova Scotia Court of Appeal upon any question that, in the opinion of the Board, is a question of law.

(3) The Nova Scotia Court of Appeal shall hear and determine the question or questions of law arising thereon and remit the matter to the Board, with the opinion of the Court thereon.

(4) Costs may not be awarded in a case stated under this Section. R.S., c. 475, s. 19; 2005, c. 61, s. 4; 2009, c. 29, s. 2.

Filing of documents with Board

27 The Board may direct any trade union or employers' organization that is a party to any application for certification, or is a party to an existing collective agreement, to file with the Board

(a) a statutory declaration signed by its president or secretary stating the names and addresses of its officers; and

(b) a copy of its constitution and bylaws,

and the trade union or employers' organization shall comply with the direction within the time prescribed by the Board. R.S., c. 475, s. 20.

Related businesses may be treated as one employer

28 Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, firm, syndicate or association, or any combination thereof, under common management or direction, including direction of the workforce, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purpose of this Act. R.S., c. 475, s. 21.

ACQUISITION OF BARGAINING RIGHTS

CERTIFICATION

Application for certification as bargaining agent

29 **(1)** A trade union claiming to have as members in good standing not less than 40% of the employees of one or more employers in a unit appropriate for collective bargaining may, subject to the rules of the Board and in accordance with this Section, make application to the Board to be certified as bargaining agent of the employees in the unit.

(2) Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.

(3) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of 12 months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.

(4) Where a collective agreement relating to the unit is in force and is for a term of not more than three years, the application may be made only after the commencement of the last three months of its operation.

(5) Where a collective agreement relating to the unit is in force and is for a term of more than three years, the application may be made only

(a) after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation;

(b) during the three month period immediately preceding the end of each year that the collective agreement continues to operate after the third year of its operation; or

(c) after the commencement of the last three months of its operation.

(6) Two or more trade unions claiming to have as members in good standing of the trade unions a majority of employees in a unit that is appropriate for collective bargaining may join in an application under this Section and the provisions of this Act relating to an application by one trade union, and all matters or things arising therefrom, apply in respect of this joint application and the trade unions as if it were an application by one trade union.

(7) Where an application is made under this Act for the certification of a trade union or trade unions as bargaining agent of employees in a unit, the employer may not, without consent of the Board, increase or decrease rates of wages or alter any other term or condition of employment of those employees before the Board has given its decision on the application or, in case the Board certifies a trade union, before notice to commence collective bargaining has been given under Section 40. R.S., c. 475, s. 23.

Group with technical skills

30 **(1)** Where a group of employees of an employer belong to a craft or group exercising technical skills by reason of which they are distinguishable from the employees as a whole and the majority of the group are members of one trade union pertaining to that craft or other skills, the trade union may apply to the Board and, subject to Section 29, may be certified as the bargaining agent of the employees in the group, if the group is otherwise appropriate as a unit for collective bargaining.

(2) The Board is not required to apply this Section where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

(3) Pursuant to subsection 130(5), where the employees of an employer are certified in accordance with this Section, the employer is not bound by any accreditation order made pursuant to this Act. R.S., c. 475, s. 24.

Certification of bargaining agent

31 **(1)** Where a trade union makes application for certification in accordance with Section 29, the Board shall take a vote of the employees in the unit applied for to determine their wishes with respect to the certification of the applicant trade union as their bargaining agent.

(2) The Board shall conduct the vote under subsection (1) at the place of employment of the employees in the unit applied for during regular working hours.

(3) Normally the Board shall conduct the vote under subsection (1) no more than five working days after receipt by the Board of the application and three working days after the Board's notices are received by the employer, but where, in the opinion of the Board, special circumstances make it inappropriate to hold a vote until the Board has made such investigations as it considers appropriate, including, where the Board so decides, giving interested parties an opportunity to present evidence and make representations, the Board may delay the vote.

(4) The Board shall determine whether the unit applied for is appropriate for collective bargaining and the Board may, before certification, where it considers it appropriate to do so, include additional employees in or exclude employees from the unit.

(5) Where a vote is counted the Board shall remove and destroy, without counting, the ballots cast by persons not in the bargaining unit determined to be appropriate.

(6) The Board shall take such steps as it considers appropriate to determine the trade union membership of employees in the unit determined to be appropriate for collective bargaining.

(7) When the Board has determined that a unit of employees is appropriate for collective bargaining, where the Board is satisfied that at the date of the filing of the application for certification the applicant trade union had as members in good standing

(a) less than 40% of the employees in the unit, the Board shall dismiss the application; or

(b) 40% or more of the employees in the unit, the Board shall, subject to subsection (11), take and count the vote.

(8) Where as a result of a vote taken and counted pursuant to clause (7)(b) the majority of the votes cast are in favour of the applicant trade union, the Board shall, subject to subsection (10), certify the applicant trade union as bargaining agent of the employees in the unit.

(9) Where, in the opinion of the Board, an employer or employers' organization has contravened this Act or the regulations made pursuant to this Act in so significant a way that the representation vote does not reflect the true wishes of the employees in the bargaining unit determined to be appropriate for collective bargaining, and in the opinion of the Board the applicant trade union, at the date of the filing of the application for certification, had as members in good standing not less than 40% of the employees in the unit, the Board may, in its discretion, certify the trade union as bargaining agent of the employees in the unit.

(10) Where, in the opinion of the Board, the applicant trade union or a representative of the trade union has contravened this Act or the regulations made pursuant to this Act in so significant a way that the representation vote does not reflect the true wishes of the employees in the bargaining unit determined to be appropriate for collective bargaining, the Board may, in its discretion, dismiss the application.

(11) Where, in the opinion of the Board, the applicant trade union or a representative of the trade union has contravened this Act or the regulations made pursuant to this Act so that the membership information filed with the application does not represent the true wishes of the employees in the unit determined to be appropriate for collective bargaining, the Board may, in its discretion, dismiss the application.

(12) The Board may prescribe the nature of the evidence to be furnished to it, and the Board or any person to whom it may in writing delegate the authority may, for the purpose of making any determination under this Section, or Section 29, 30, 35, 36 or 37, make or cause to be made any examination of records or other inquiries, hold any hearings or take or supervise the taking and counting of any votes that it considers expedient, and no person shall hinder or obstruct the Board or any person so authorized in the exercise of the power conferred by this Section.

(13) Where an application for certification under this Act is made by a trade union claiming to have as members in good standing not less than 40% of the employees in a unit that is appropriate for collective bargaining, the employees in which are employed by two or more employers, the Board shall not certify the trade union as the bargaining agent of the employees in the unit unless

(a) all employers of the employees consent thereto; and

(b) the Board is satisfied that the trade union might be certified by it under this Section as the bargaining agent of the employees in the unit of each employer if separate applications for the purpose were made by the trade union.

(14) The Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.

(15) Notwithstanding anything contained in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board, dominated or influenced by an employer, so that its fitness to represent employees for the purpose of collective bargaining is impaired or which discriminates against any person because of sex, race, creed, colour, nationality, ancestry or place of origin, may be certified as the bargaining agent of the employees, nor may an agreement entered into between that trade union and that employer be deemed to be a collective agreement.

(16) Where the Board is not satisfied that a trade union is entitled to be certified under this Section, it shall reject the application and may designate the length of time that must elapse before a new application will be considered by the same applicant. R.S., c. 475, s. 25.

Information and education on collective bargaining process

32 Where the Board has certified a bargaining agent, a conciliation officer shall contact both parties within 14 days of the certification to provide information and education on the collective bargaining process to assist in the settlement of a first collective agreement. 2011, c. 71, s. 1.

Employer manufacturing at two or more locations

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

"interdependent manufacturing location" means a manufacturing location of an employer in the Province, the continued operation of which is primarily dependent on the continued normal operation of another manufacturing location or manufacturing locations of the employer in the Province;

"manufacturing" means the making of goods by hand, by machinery or by a combination of processes.

(2) An employer claiming to be engaged in manufacturing and carrying on its operation at two or more interdependent manufacturing locations in the Province may make application to the Board for a determination that the unit appropriate for collective bargaining is the unit consisting of all employees of the employer at all such interdependent manufacturing locations, subject only to the exclusion of such positions as the Board may determine would otherwise normally be excluded.

(3) Where, upon receipt of an application pursuant to subsection (2), the Board is satisfied that

(a) an employer is engaged in manufacturing; and

(b) the employer carries on operations in the Province at two or more interdependent manufacturing locations,

the Board shall determine and order that the unit appropriate for collective bargaining is the unit consisting of all employees of the employer at all the locations deter-

mined by the Board to be interdependent manufacturing locations, subject only to the exclusion of such positions as the Board may determine would otherwise normally be excluded.

(4) Subject to subsection (5), an application for an order pursuant to this Section may not be made by an employer more than one year following the commencement of production

(a) at the second manufacturing location in the Province of the employer, claimed by the employer to be an interdependent manufacturing location with the original manufacturing location of the employer in the Province; or

(b) at any additional manufacturing location in the Province of an employer already affected by an order issued pursuant to this Section.

(5) No application may be made for an order pursuant to this Section if a certification order has been made or voluntary recognition granted pursuant to this Act with respect to one or more of the interdependent manufacturing locations.

(6) Subject to subsections (4) and (5), where any trade union makes an application for certification, the Board shall give to the employer adequate opportunity to make an application pursuant to this Section before proceeding to determine the appropriate unit.

(7) Section 31, except where inconsistent with this Section, continues to apply. R.S., c. 475, s. 26.

EFFECT OF CERTIFICATION

Effect of certification

34 Where a trade union is certified under this Act as the bargaining agent of the employees in a unit,

(a) the trade union immediately replaces any other bargaining agent of employees in the unit and has exclusive authority to bargain collectively on behalf of employees in the unit and to bind them by a collective agreement until the certification of the trade union in respect of employees in the unit is revoked;

(b) where another trade union had previously been certified as bargaining agent in respect of employees in the unit, the certification of the last mentioned trade union is deemed to be revoked in respect of such employees; and

(c) where, at the time of certification, a collective agreement binding on or entered into on behalf of employees in the unit is in force, the trade union is substituted as a party to the agreement in place of the bargaining agent that is a party to the agreement on behalf of the employees in the unit. R.S., c. 475, s. 27.

AMENDMENT OF CERTIFICATION
AND TERMINATION OF BARGAINING RIGHTS

Application to amend certification

35 **(1)** Where a trade union is certified under this Act, an application may be made to the Board to amend the certification to

(a) change the name of the trade union or employer where the name of the trade union or employer has been changed;

(b) include specific additional classifications of employees in the unit;

(c) exclude specific classifications of employees from the unit; or

(d) combine previous certification orders into one order.

(2) The application must be filed with the Board in the form approved by the Board duly verified by a statutory declaration made by a person or persons permitted to sign an application under Section 13. R.S., c. 475, s. 28.

Application to revoke certification

36 Where certification of a trade union as a bargaining agent has been in effect for not less than 12 months and no collective agreement is in force, or where an application can be made pursuant to subsection 29(4) or (5), and the Board is satisfied that

(a) a significant number of members of the trade union allege that the trade union is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it was certified; or

(b) the trade union no longer represents a majority of the employees in the unit,

the Board upon application for revocation of certification may order the taking of a vote to determine the wishes of the employees in the unit concerning revocation of the existing certification and may revoke or confirm the certification in accordance with the result of the vote. R.S., c. 475, s. 29.

VOLUNTARY RECOGNITION

Agreement for voluntary recognition

37 **(1)** Where a trade union purports to represent employees of an employer and intends to bargain collectively on behalf of the employees, the trade union and employer may make and enter into an agreement in writing, which may be part of a collective agreement, whereby

(a) the employer recognizes the trade union as the exclusive bargaining agent for the employees; and

(b) the unit of employees to which the agreement extends is defined.

(2) Subject to subsection (3), when an agreement made pursuant to subsection (1) is filed with the Minister, this Act applies as though the trade union

was the certified bargaining agent for the employees in the unit defined by the agreement at the time the agreement was filed.

(3) This Section does not apply if

(a) the trade union that is a party to the agreement does not meet the requirements of subsection 31(15);

(b) at the time the agreement is filed, another trade union

(i) has pursuant to this Section acquired bargaining rights on behalf of any of the employees to whom the agreement extends, or

(ii) is certified as or has applied to the Board for certification as bargaining agent for any of the employees to whom the agreement extends; or

(c) the trade union does not represent a majority of the employees in the unit defined by the agreement, but the trade union is deemed to have represented a majority of those employees at all relevant times when the employer has posted a copy of the agreement made pursuant to subsection (1) in a conspicuous place or places upon the premises of the employer at which the agreement is most likely to come to the attention of the employees and 30 days have elapsed from the date of posting.

(4) Where any question arises whether a trade union represents or represented a majority of the employees in the unit defined by an agreement made pursuant to this Section, the Board upon application by a trade union shall decide the question and any related question as though the question had arisen in a certification proceeding before the Board.

(5) The provisions of this Act relating to revocation of certification of a trade union as bargaining agent apply to a trade union that is a party to an agreement filed with the Minister and that has the status of a certified bargaining agent by virtue of subsection (2). R.S., c. 475, s. 30; 2010, c. 37, s. 144.

TRANSFER OF BUSINESS AND SUCCESSOR RIGHTS

Effect of transfer of business

38 (1) Where an employer sells, leases or transfers or agrees to sell, lease or transfer the employer's business or the operations thereof, or any part of either of them, and either

(a) the employer or the purchaser, lessee or transferee, or any of them, is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by the sale, lease or transfer or contract;

(b) one or more bargaining agents have been certified as bargaining agent for any such employees;

(c) one or more trade unions have applied to be certified as bargaining agent for any such employees; or

(d) one or more bargaining agents have given or are entitled to give notice under either Section 40 or 41 with respect to any such employees,

unless the Board otherwise directs, the collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon the purchaser, lessee or transferee.

(2) Where the Board is satisfied that an employer contracted out or agreed to contract out work regularly done by the employer's employees to avoid obligations under this Act, the Board may direct that this Section applies as if the employer had transferred or agreed to transfer part of the employer's business or the operations thereof.

(3) For the purpose of subsection (2), the onus of proving that there has been no contracting out or agreement to contract out work regularly done by employers to avoid obligations under this Act is upon the employer.

(4) Any employer, purchaser, lessee or transferee or any bargaining agent or trade union within subsection (1) or (2) may apply to the Board for the resolution of any question or problem that, as a result of such sale, lease, transfer or contract, has arisen or may arise with respect to any collective agreement, certification, application, notice or entitlement to give notice.

(5) Upon the application being made, the Board shall, by order, make whatever award, give whatever direction or take any other action that in its discretion the Board considers appropriate, to resolve any relevant question or problem and, without restricting the generality of the foregoing, may, by that order or subsequent order,

(a) modify or rescind to the extent that the Board considers necessary or appropriate any collective agreement;

(b) amend or revoke any certification or amend any application for certification;

(c) modify or restrict the operation of any notice or entitlement to give notice;

(d) determine whether employees affected constitute one or more appropriate bargaining units;

(e) where more than one collective agreement is to continue in force, designate which employees are to be covered by each agreement;

(f) modify or restrict the operation or effect of any provision of any collective agreement and define the rights with respect thereto of any employees affected by the sale, lease, transfer or contract;

(g) declare which trade union or trade unions shall be the bargaining agent or agents for the employees;

(h) interpret any provision of any collective agreement.

(6) Until the Board has disposed of any application under this Section, a purchaser, lessee, transferee or contractor, notwithstanding any other pro-

vision of this Act, may not be required to bargain with any bargaining agent with respect to employees to whom the application relates.

(7) Where an application is made under this Section, the Board may make or cause to be made any examination of records or other inquiries, and may hold any hearings and take any representation votes that it considers necessary and prescribe the nature of evidence to be furnished to the Board.

(8) This Section applies to any amalgamation, annexation or other change in a county or district municipality, a regional municipality or a town, or in a board, education entity, commission or agency thereof by or under the *Municipal Government Act*, the *Education Act* or any other enactment. R.S., c. 475, s. 31; 2018, c. 1, Sch. A, s. 152.

Determination of question of successor rights

39 (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is a successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union affected, may by order declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor.

(2) Before issuing an order under subsection (1), the Board may make or cause to be made any examination of records or other inquiries, and may hold any hearings or representation votes that it considers necessary and prescribe the nature of evidence to be furnished to the Board.

(3) Where the Board makes an affirmative declaration under subsection (1), the successor for the purpose of this Act acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise. R.S., c. 475, s. 32.

NEGOTIATION

Notice to commence bargaining where no agreement

40 Where a trade union is certified as the bargaining agent of employees in a unit and no collective agreement with their employer binding on or entered into on behalf of employees in the unit is in force,

(a) the bargaining agent may, on behalf of the employees in the unit, by notice in writing, require their employer to commence collective bargaining; or

(b) the employer or an employers' organization representing the employer, may, by notice in writing, require the bargaining agent to commence collective bargaining. R.S., c. 475, s. 33.

Notice to commence bargaining where agreement

41 Either party to a collective agreement may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of

the agreement, by notice in writing, require the other party to the agreement to commence collective bargaining. R.S., c. 475, s. 34.

Effect of notice to commence bargaining

42 Where notice to commence collective bargaining has been given under Section 40 or 41 or in accordance with a collective agreement that provides for the revision of a provision of the agreement,

(a) the certified bargaining agent and the employer, or an employers' organization representing the employer, shall, without delay, but in any case within 20 clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude and sign a collective agreement; and

(b) the employer shall not, without consent by the certified or recognized bargaining agent or by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until

(i) a new collective agreement has been concluded, or

(ii) the bargaining agent and the employer or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement,

and either

(iii) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and 14 days have elapsed from the date on which the report of the conciliation officer was made to the Minister, or

(iv) a conciliation board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the conciliation board was received by the Minister. R.S., c. 475, s. 35.

Complaint of failure to comply with Section 42

43 (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to the collective bargaining has failed to comply with Section 42, the Minister may refer the complaint to the Board.

(2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection (1), the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to the collective bargaining to do the things that, in the opinion of the Board, are necessary to secure compliance with Section 42, and may order an employer to pay to any employee compensation not exceeding a sum that, in the opinion of the Board, is equivalent to the remuneration that would, but for a failure to comply with clause 42(b), have been paid by the employer to the employee. R.S., c. 475, s. 36.

CONCILIATION

Conciliation officer instructed to confer with parties

44 Where a notice to commence collective bargaining has been given in accordance with Section 42, and

(a) collective bargaining has not commenced within the time prescribed by this Act;

(b) collective bargaining has commenced and either party thereto requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and the request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining; or

(c) in any other case in which, in the opinion of the Minister, it is advisable to do so,

the Minister may instruct a conciliation officer to confer with the parties engaged in collective bargaining. R.S., c. 475, s. 37.

Report of conciliation officer

45 (1) Where a conciliation officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, the conciliation officer shall, within 14 days after being so instructed or within any longer period that the Minister may allow, make a report to the Minister setting out

(a) the matters, if any, upon which the parties have agreed;

(b) the matters, if any, upon which the parties cannot agree; and

(c) any other matter that in the conciliation officer's opinion is material or relevant or should be brought to the attention of the Minister.

(2) When a conciliation officer has made a report under subsection (1), the conciliation officer shall forthwith advise the parties to the dispute that a report has been made.

(3) Where the appointment of a conciliation officer under Section 44 is in respect of a first collective agreement and, after conferring with the parties, the conciliation officer

(a) is satisfied that the parties have made reasonable efforts to conclude a collective agreement; and

(b) is of the opinion that the parties are not likely to conclude a collective agreement,

the conciliation officer, for the purpose of subsection 48(1), may notify the Board and the parties in writing that the parties, after making reasonable efforts, have not been able to conclude a first collective agreement.

(4) Where the Board has been notified pursuant to subsection (3), the notice constitutes a report to the Minister within the meaning of and for the pur-

pose of subclause 42(b)(iii) and clause 69(1)(c). R.S., c. 475, s. 38; 2011, c. 71, s. 2; 2013, c. 43, s. 1.

Appointment of conciliation board

46 Where

(a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; and

(b) within 14 days after the conciliation officer makes a report to the Minister both parties to the dispute, either jointly or severally, make application to the Minister for the appointment of a conciliation board to endeavour to bring about agreements between them and each nominates a person who is ready and willing to act to be a member of the board,

the Minister shall appoint a board for that purpose. R.S., c. 475, s. 39.

PREVENTIVE MEDIATION

Mediation officer

47 (1) Notwithstanding any other provision of this Act, the Minister may appoint a person as a mediation officer at any time when the Minister is satisfied that the appointment of a mediation officer may bring about settlement of an industrial dispute or prevent an industrial dispute.

(2) It is the function of a mediation officer, and a mediation officer has power, to

(a) investigate the causes of an existing or potential industrial dispute;

(b) attempt to bring about a settlement of an industrial dispute or to prevent an industrial dispute; or

(c) assist a trade union and employer in the development of effective labour-management relations.

(3) Subject to subsection (4), a mediation officer who makes an investigation shall make a report to the Minister.

(4) When a mediation officer is unable to effect a settlement of an industrial dispute and the circumstances mentioned in Section 44 exist, the mediation officer may, with the consent of the Minister, make a report in accordance with Section 45 and the report is deemed to be a report of a conciliation officer for the purpose of this Act. R.S., c. 475, s. 40.

Settlement of provisions of first collective agreement

48 (1) Where

(a) an employer or bargaining agent for a unit is required, by notice given under Section 40, to commence collective bargaining with a view to the conclusion of a first collective agreement between the employer and the bargaining agent in respect of the unit;

(b) a conciliation officer appointed under Section 44 has notified the Board and the parties under subsection 45(3); and

(c) the bargaining agent and the employer have not concluded a first collective agreement,

the bargaining agent or the employer may apply in writing to the Board to direct the settlement of the provisions of a first collective agreement between the parties by arbitration and, where a party so applies, the Board shall as soon as practicable serve notice on the parties of receipt of the application.

(2) Within 10 days after being served with notice under subsection (1), the bargaining agent and employer may serve notice on the Board of

(a) the agreement of the bargaining agent and employer to conclude the first collective agreement by arbitration; and

(b) the name of a person who has agreed to act as arbitrator.

(3) Within 60 days after a notice is served on the Board under subsection (2), the arbitrator shall settle the provisions of the first collective agreement.

(4) The provisions of this Act respecting arbitration apply with necessary changes to an arbitrator acting under this Section.

(5) Where

(a) an application is made by an employer or bargaining agent under subsection (1);

(b) the parties do not agree to proceed by arbitration under subsection (2); and

(c) regardless of whether Section 42 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of

(i) the refusal of the employer to recognize the bargaining authority of the bargaining agent,

(ii) the uncompromising nature of any bargaining position adopted by the other party without reasonable justification,

(iii) the failure of the other party to make reasonable or expeditious efforts to conclude a collective agreement, or

(iv) any other reason the Board considers relevant,

the Board, within 30 days of receiving the application, shall either

(d) direct the settlement of the provisions of a first collective agreement by arbitration; or

(e) direct that the parties resume their efforts to conclude a first collective agreement, with the assistance of a conciliation officer, for a period of 30 days.

(6) Where the Board directs the parties to resume collective bargaining with the assistance of a conciliation officer under clause (5)(e) and the parties fail to conclude a first collective agreement within the period referred to therein,

the conciliation officer shall notify the Board and the Board shall, within a further 30 days, direct the settlement of the provisions of a first collective agreement by arbitration.

(7) Where a direction is given under clause (5)(d) or subsection (6), the provisions of the first collective agreement between the employer and the bargaining agent must be settled by arbitration conducted in accordance with Section 49 unless, within seven days of the giving of the direction, one of the parties requests in writing that the Board settle the provisions of the first collective agreement.

(8) Where a request is made under subsection (7), the Board shall

(a) appoint a date for and commence a hearing within 21 days of receiving the request; and

(b) determine all matters in dispute and release its decision within 45 days of the commencement of the hearing.

(9) The employees in the bargaining unit shall not strike and the employer shall not lock out the employees if

(a) a notice has been served on the Board under subsection (2) or a direction has been given under subsection (5); and

(b) the provisions of a first collective agreement have not yet been settled.

(10) Where notice is served on the Board under subsection (2) or a direction is given under subsection (5) during a strike by, or a lockout of, employees in the unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lockout, as the case may be, and the employer shall reinstate the employees in the unit in the employment they had at the time the strike or lockout commenced

(a) in accordance with any agreement between the employer and the bargaining agent respecting reinstatement of the employees in the unit; or

(b) where no agreement respecting reinstatement of the employees in the unit is reached between the employer and the bargaining agent, on the basis of the service standing of each employee in relation to the service of the other employees in the unit employed at the time the strike or lockout commenced, except as may be directed by an order of the Board made for the sole purpose of allowing the employer at a totally shut-down workplace to resume normal operations in stages.

(11) In settling the provisions of a first collective agreement under this Section, the Board or arbitrator shall accept, without amendment, any provisions agreed upon in writing by the parties and shall give the parties an opportunity to present evidence and make representations, and the Board or arbitrator may take into account

(a) the terms and conditions of employment, if any, negotiated through collective bargaining for employees performing the

same or similar functions in the same or similar circumstances as the employees in the unit; and

(b) such other matters as the Board or arbitrator considers will assist in arriving at provisions of a first collective agreement between the parties that are fair and reasonable in the circumstances.

(12) Where the Board or an arbitrator settles the provisions of a first collective agreement under this Section, the collective agreement is effective for a period of one year from the date on which the Board or arbitrator settles the provisions thereof, and the collective agreement is binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties, except to the extent that any of its provisions may be amended by the parties by subsequent agreement in writing.

(13) The parties may by agreement in writing extend any time limit set out in this Section, and the agreement of the parties becomes effective once it is filed with the Board.

(14) The Board or arbitrator shall commit to writing every collective agreement settled under this Section and file a copy of the collective agreement with the Minister.

(15) The Board shall proceed to deal with an application for revocation of certification made under Section 36 before dealing with or continuing to deal with an application made under subsection (1) and, where the Board revokes the certification of a bargaining agent that is a party to collective bargaining that is the subject of an application made under subsection (1), the Board shall dismiss the application. 2011, c. 71, s. 3; 2013, c. 43, s. 2.

Directed settlement by arbitration

49 (1) Where the Board directs the settlement of a first collective agreement by arbitration under clause 48(5)(d) or subsection 48(6) and neither party requests that the Board settle the first collective agreement under subsection 48(7), the parties shall, within 10 days of the giving of the direction, attempt to agree on a person satisfactory to both parties to be the arbitrator and, where agreement is reached,

(a) that person is appointed as the arbitrator; and

(b) the parties shall notify the Board of the appointment.

(2) Where the parties are unable to agree on a person to be the arbitrator pursuant to subsection (1), either party may apply to the Board for the appointment of a person to be the arbitrator and the Board shall, within seven days, appoint a person.

(3) The employer and the bargaining agent shall each pay one half of the fees of, and expenses incurred by, the arbitrator.

(4) Within 60 days after an arbitrator is appointed under clause (1)(a) or subsection (2), the arbitrator shall settle the provisions of the first collective agreement.

(5) The provisions of this Act respecting arbitration apply with necessary changes to an arbitrator acting under this Section. 2013, c. 43, s. 3.

COLLECTIVE AGREEMENTS AND ARBITRATION

Parties bound by collective agreement

50 A collective agreement entered into by an employer or an employers' organization and a trade union as bargaining agent is, subject to and for the purpose of this Act, binding upon

(a) the bargaining agent and every employee in the unit of employees; and

(b) an employer

(i) who has entered into the agreement,

(ii) on whose behalf the agreement has been entered into, or

(iii) who has, by contract with an employer or an employers' organization, agreed to be bound by a collective agreement. R.S., c. 475, s. 41.

Final settlement provision

51 (1) Every collective agreement must contain a provision for final and binding settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation, including any question as to whether a matter is arbitrable.

(2) Where a collective agreement does not contain a provision as required by this Section, it is deemed to contain the following provision:

> Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration. Where the parties fail to agree upon an arbitrator, the appointment shall be made by the Minister of Labour, Skills and Immigration upon the request of either party. The arbitrator shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it.

(3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement. R.S., c. 475, s. 42; 2010, c. 37, s. 145; 2010, c. 76, s. 1.

Application of Sections 51 and 53 to 61

52 (1) For greater certainty, Sections 53 to 61 apply to an arbitration under Section 65.

(2) Sections 51 and 53 to 61 apply with necessary changes to the adjudication of a rights dispute under the *Civil Service Collective Bargaining Act* and the *Highway Workers Collective Bargaining Act*. 2010, c. 76, s. 2.

Interpretation of Sections 54 to 61

53 In Sections 54 to 61, "arbitrator" and "arbitration board" mean an arbitrator or arbitration board, as the case may be, appointed pursuant to this Act or a collective agreement. 2010, c. 76, s. 2.

Powers of arbitrator or arbitration board

54 **(1)** An arbitrator or the chair of an arbitration board may

(a) require any party to furnish particulars before or during a hearing;

(b) at any stage of a proceeding, require any party to or person bound by the collective agreement to produce documents or things that may be relevant to the matter before the arbitrator or the arbitration board, after providing the parties the opportunity to make representations;

(c) fix dates for the commencement and continuation of hearings;

(d) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation and to produce such documents and things as the arbitrator or the arbitration board considers requisite to the full investigation and consideration of a matter, whether admissible in a court of law or not; and

(e) administer oaths and affirmations.

(2) An arbitrator or an arbitration board may

(a) receive and accept such oral or written evidence and information on oath, by affidavit, or otherwise as the arbitrator or arbitration board considers fit, whether the evidence or information is admissible in a court of law or not;

(b) determine the arbitrator's or arbitration board's procedure and consider submissions provided in such form or by such method as the arbitrator or arbitration board considers appropriate;

(c) determine all questions of fact or law that arise out of a dispute;

(d) have regard to the real substance of a matter in dispute between the parties;

(e) at any reasonable time enter any premises, other than a private dwelling, where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or arbitration board and inspect or view any work, material, machinery, appliance or article at the premises;

(f) authorize any person to do anything that the arbitrator or arbitration board may do under clause (e) and to report to the arbitrator or the arbitration board about it;

(g) make such orders or give such directions as the arbitrator or arbitration board considers appropriate to expedite proceedings or to prevent abuse of the arbitration process;

(h) treat as part of the collective agreement the provisions of any statute of the Province governing relations between the parties to the collective agreement; and

(i) correct in any award any clerical mistake, error or omission.

(3) An arbitrator or arbitration board, and each member of an arbitration board, has, without limiting the powers set out in this Section, the powers, privileges and immunities of a commissioner under the *Public Inquiries Act.* 2010, c. 76, s. 2.

Mediation

55 (1) An arbitrator or an arbitration board may mediate the differences between the parties at any stage in the proceedings with the consent of the parties.

(2) Where the mediation is not successful, the arbitrator or arbitration board retains the power to determine the difference by arbitration. 2010, c. 76, s. 2.

Extension of time

56 An arbitrator or arbitration board may extend the time for the taking of any step in the grievance or arbitration procedure under a collective agreement notwithstanding the expiration of the time if the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension. 2010, c. 76, s. 2.

Award implementing settlement of grievance

57 An arbitrator or an arbitration board may issue an award implementing the settlement of a grievance. 2010, c. 76, s. 2.

Oral decision

58 (1) An arbitrator or arbitration board may give an oral decision and, in that case, the arbitrator or arbitration board shall

(a) give the decision promptly after hearings on the matter are concluded;

(b) give a written decision, without reasons, promptly upon the request of either party; and

(c) give written reasons for the decision within a reasonable period of time upon the request of either party.

(2) Where an arbitrator or an arbitration board renders a decision in respect of a dispute or difference, the arbitrator or the chair of the arbitration

board shall transmit a copy of the written decision to the Minister and to the parties at the same time. 2010, c. 76, s. 2.

Substitution of penalty

59 Where an arbitrator or arbitration board determines that an employer has imposed a penalty on an employee, the arbitrator or arbitration board may substitute any other penalty that to the arbitrator or arbitration board seems just and reasonable in the circumstances. 2010, c. 76, s. 2.

Effect upon filing of order or decision

60 (1) Any person or organization affected by any order or decision of an arbitrator or arbitration board may, after 14 days from the date on which the order or decision is made or given, or from the date provided in it for compliance, whichever is the later date, file in the Supreme Court of Nova Scotia a copy of the order or decision.

(2) On filing an order or decision of an arbitrator or arbitration board in the Supreme Court of Nova Scotia under subsection (1), the order or decision shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order or decision were a judgment obtained in the Court. 2010, c. 76, s. 2.

Payment of fees and expenses of arbitrator or arbitration board

61 (1) The employer or the employers' organization and the trade union that are parties to the arbitration shall each pay one half of the fees of, and the expenses incurred by, an arbitrator.

(2) Where the arbitration is conducted by an arbitration board, the employer or the employers' organization shall pay the fees and expenses of the member appointed to the arbitration board by the employer or the employers' organization, the trade union shall pay the fees and expenses of the member appointed to the arbitration board by the trade union and the employer or employers' organization and the trade union shall each pay one half of the fees of, and the expenses incurred by, the chair of the arbitration board. 2010, c. 76, s. 2.

Final settlement provision endures—dispute before strike position

62 (1) Notwithstanding anything contained in a collective agreement, the provision required to be contained therein by subsection 51(1) remains in force after the termination of the collective agreement and until the requirements of subsection 69(1) have been met.

(2) Where a difference arises between the parties to a collective agreement relating to a provision contained in the collective agreement during the period from the date of its termination to the date the requirements of subsection 69(1) have been met,

(a) an arbitrator or arbitration board may hear and determine the difference; and

(b) Sections 51 and 52 apply to the hearing and determination. R.S., c. 475, s. 44.

Deemed minimum term of agreement

63 **(1)** Notwithstanding anything therein contained, every collective agreement, where for a term of less than a year, is deemed to be for a term of one year from the date upon which it came or comes into operation, or, where for an indeterminate term, is deemed to be for a term of at least one year from that date and may not, except with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

(2) Nothing in this Section prevents the revision of any provision of a collective agreement, other than a provision relating to the term of the collective agreement, that under the agreement is subject to revision during the term thereof. R.S., c. 475, s. 45.

Duty to file copy of agreement

64 Each of the parties to a collective agreement shall forthwith upon its execution file one copy with the Minister. R.S., c. 475, s. 46.

Expedited arbitration

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

"arbitration" means a process for determination of a dispute and includes an adjudication under the *Civil Service Collective Bargaining Act* or the *Highway Workers Collective Bargaining Act*;

"dispute" means a dispute between the parties to a collective agreement relating to the interpretation, application or administration of the collective agreement or an allegation that the agreement has been violated and includes a rights dispute under the *Civil Service Collective Bargaining Act* or the *Highway Workers Collective Bargaining Act*.

(2) Subject to subsection (4), a party to a collective agreement may apply to the Minister or the Minister's designate for an expedited arbitration on a dispute arising out of the collective agreement.

(3) The party making an application under subsection (2) shall send a copy of the application to the other party to the collective agreement.

(4) An application under subsection (2) may be made when

(a) the grievance procedure under the collective agreement has been exhausted;

(b) five months or more have passed since the date on which the dispute was referred to arbitration; and

(c) no hearings have been commenced.

(5) When a party applies under subsection (2), the Minister

(a) shall, where there is no arbitrator appointed, appoint a single arbitrator under subsection 51(2);

(b) shall, where there is no hearing date set, order the setting down of a hearing date within 30 days of the order unless the parties mutually agree to another date; and

(c) may

(i) order that the decision of the arbitrator be rendered on or before a date specified, or

(ii) where the appointed arbitrator is not available, appoint a different single arbitrator under subsection 51(2).

(6) An arbitrator appointed under subsection (5) has exclusive jurisdiction to hear and determine the dispute.

(7) An arbitrator shall, when requested by the parties and where appropriate, issue an oral decision no later than seven days after the conclusion of the hearing.

(8) Where an arbitrator provides an oral decision under subsection (7), the arbitrator shall issue to the parties written reasons for the oral decisions within 30 days of the conclusion of the hearing.

(9) Where an arbitrator appointed under this Section withdraws, is incapacitated or otherwise is unable to carry out the arbitrator's responsibilities, the Minister may at the request of either party and after consulting with the parties and the arbitrator, if possible, appoint a new arbitrator to hear and determine the dispute.

(10) The decision of an arbitrator pursuant to this Section is final and binding upon the parties and upon any employee or employer affected by it.

(11) The Minister may establish a list of approved arbitrators for appointments under this Section based upon advice provided by an advisory committee.

(12) The Minister shall constitute an advisory committee with the following seven members for the purpose of advising the Minister respecting the selection of arbitrators and matters relating to arbitration:

(a) three members representing trade unions;

(b) three representing employers; and

(c) a designated chair as chosen by the Minister.

(13) The costs of arbitration pursuant to this Section must be shared equally between the parties. 2005, c. 61, s. 6; 2006, c. 48, s. 1.

Parties under Section 65

66 For the purpose of Section 65,

(a) the employer under the *Civil Service Collective Bargaining Act*;

(b) the Nova Scotia Government Employees Union acting under the *Civil Service Collective Bargaining Act*;

(c) the Employer under the *Highway Workers Collective Bargaining Act*; and

(d) the Nova Scotia Highway Workers Union, CUPE Local 1867, or a successor trade union determined pursuant to the *Highway Workers Collective Bargaining Act*,

are parties to disputes that relate to them under that Section. 2005, c. 61, s. 6.

Single arbitrator for several disputes

67 Where an application or a number of applications under subsection 65(2) concerns several disputes arising under the collective agreement, on the request of both parties, the Minister may appoint an arbitrator under subsection (2) of that Section to deal with all of the disputes. 2005, c. 61, s. 6.

MEDIATION-ARBITRATION

Procedure

68 (1) Notwithstanding any grievance or arbitration provision contained in a collective agreement or deemed to be contained in a collective agreement under subsection 51(2), the parties to a collective agreement may, at any time, agree to refer one or more grievances to a mediator-arbitrator, for the purpose of resolving the grievances in an expeditious and informal manner.

(2) Where the parties to a collective agreement wish to make use of a mediator-arbitrator but are unable to agree upon one, the Minister shall appoint a mediator-arbitrator upon the request of the parties.

(3) A mediator-arbitrator appointed under this Section shall attempt to assist the parties to the collective agreement to settle the grievance by mediation.

(4) Where the parties to the collective agreement are not able to settle a grievance by mediation, the mediator-arbitrator shall attempt to assist the parties to agree upon the material facts in the dispute and shall then determine the grievance by arbitration.

(5) When determining a grievance by arbitration, a mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as the mediator-arbitrator considers appropriate.

(6) A mediator-arbitrator shall deliver a decision within 30 days after completing an arbitration of a grievance.

(7) Sections 52 and 62 apply with necessary changes to a mediator-arbitrator and a settlement, determination or decision under this Section. 2009, c. 29, s. 3.

STRIKES AND LOCKOUTS

Restrictions on strike or lockout

69 **(1)** No employee shall strike and no trade union shall declare or authorize a strike of employees, and the employer shall not declare or cause a lockout of employees until

(a) the trade union is entitled on behalf of the employees by notice under this Act to require the employer to commence collective bargaining; and

(b) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement or a revision thereof,

and either

(c) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and 14 days have elapsed from the date on which the report of the conciliation officer was made to the Minister; or

(d) a conciliation board has been appointed to endeavour to bring about agreement between the parties and seven days have elapsed from the date on which the report of the conciliation board was received by the Minister.

(2) No employee shall strike and no trade union shall declare or authorize a strike of employees, and the employer shall not declare or cause a lockout of employees more than six months after the date upon which the times provided by clause (1)(c) or (d) has expired unless either party has thereafter requested conciliation services in accordance with Section 44 and the times provided by clause (1)(c) or (d) have again expired.

(3) Notwithstanding anything contained in this Act,

(a) no person shall declare or authorize a strike and no employee shall strike until after a secret vote by ballot of employees in the unit affected as to whether to strike or not to strike has been taken and the majority of such employees have voted in favour of a strike; and

(b) no person shall declare or authorize a strike or lockout and no employee shall strike until 48 hours after receipt by the Minister of a notice of strike or lockout. R.S., c. 475, s. 47.

Prohibition of strike or lockout

70 **(1)** Subject to subsection (2), where a collective agreement is in force, except in respect of a dispute that arises between the parties thereto with reference to the revision of a provision of the agreement that by the agreement is expressly subject to revision during the term of the agreement,

(a) no employer bound by or who is a party to the collective agreement shall declare or cause a lockout with respect to any employee bound by the collective agreement or on whose behalf the collective agreement was entered into; and

(b) no employee bound by the collective agreement or on whose behalf a collective agreement has been entered into shall go on strike and no trade union shall declare or authorize a strike of any such employee.

(2) Where a dispute arises between the parties to a collective agreement with reference to a revision of a provision of the agreement in accordance with subsection 62(2), subsection 69(1) shall apply. R.S., c. 475, s. 48.

Further restrictions on strike or lockout

71 **(1)** In any case where a vote of both employers and employees is in favour of the acceptance of the report of a conciliation board, no employer shall cause a lockout and no employee shall go on strike and no person shall declare or authorize a strike or lockout.

(2) No employee within the terms of subsection 5(2) shall strike or participate in a strike until a period of 30 days has elapsed from the expiry of any time during which a strike is prohibited by Section 69.

(3) Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment, in whole or in part, not constituting a lockout or strike. R.S., c. 475, s. 49; 2004, c. 47, s. 1.

Interpretation of Sections 72 to 74 - prohibition of work stoppage

72 **(1)** In this Section and Sections 73 and 74,

"person" includes a trade union, council of trade unions, employee, employer, employers' organization and any agent, attorney or counsel of a person, trade union, council of trade unions, employee, employer or employers' organization;

"work stoppage" means any discontinuance or cessation of all or any part of the normal work or activity carried on by an employer and employees on whose behalf a trade union is certified as bargaining agent caused by

(a) a lockout or strike prohibited by this Act; or

(b) a jurisdictional dispute.

(2) No person shall cause, authorize, participate in or commit a work stoppage. R.S., c. 475, s. 50.

Complaint respecting work stoppage

73 **(1)** Any person who claims to be involved in or affected by acts contrary to Section 72 may make a complaint to the Board identifying the complainant and the circumstances and nature of the work stoppage.

(2) Where the Board is satisfied after investigation of the complaint that Section 72 has not been complied with, the Board, notwithstanding any other provision of this Act, may issue an interim order requiring any person named in the order to forthwith cease and desist any activity or action or to perform any act or commence any activity or action stated in the interim order.

(3) Where there has been a complaint under subsection (1), the Board may, before or after the making of an interim order under subsection (2), authorize an officer of the Department of Labour, Skills and Immigration or a person designated by the Minister, to inquire into the acts complained of, to endeavour to effect a settlement and to make a report to the Board.

(4) Where the officer of the Department of Labour, Skills and Immigration or a person designated by the Minister is unable to effect a settlement or where the complainant or a person named in an interim order so requests in writing, the Board shall conduct a hearing for the purpose of considering evidence and representations together with the report made in accordance with subsection (3) and shall arrive at a decision with respect to the complaint.

(5) The decision must be in the form of and issued as an order of the Board and may

(a) require any person to forthwith cease and desist any activity or action or to perform any act or commence any activity or action;

(b) confirm, vary or rescind an interim order.

(6) An interim order in accordance with subsection (2) or a decision in accordance with subsection (5) may, in the case of a jurisdictional dispute, direct the assignment of work to persons skilled in or belonging to a specific trade or craft or a specific trade union and the direction binds and governs all the parties involved in or affected by the jurisdictional dispute unless

(a) an agreement in writing respecting the assignment of the work made between the employer and the trade union or trade unions involved in or affected by the jurisdictional dispute is filed with the Board; or

(b) the jurisdictional dispute is submitted to a tribunal or to arbitration and the tribunal or arbitrator renders a decision that binds the parties to a settlement of the jurisdictional dispute.

(7) For the purpose of subsection (6), where the Board has made a direction with respect to the assignment of work pursuant to Section 74, the Board may include the same direction in an interim order or decision.

(8) An interim order in accordance with subsection (2) or decision of the Board in accordance with subsection (5) has the force and effect of law and is binding upon and govern the persons involved in or affected by acts contrary to Section 72 and binds and governs any person named in the interim order or decision.

(9) For the purpose of this Section, a person is named in an interim order or decision if the person is one of the persons included in classes or groups of persons or in a general description of persons.

(10) The Board may publish an interim order or decision in any manner the Board considers appropriate and may cause a copy of an interim order or decision to be served on, delivered to or otherwise brought to the attention of any person named in the interim order or decision.

(11) An interim order in accordance with subsection (2) is deemed to be in force until a decision in accordance with subsection (5) is made or the Board makes an order rescinding or varying the interim order and a decision in accordance with subsection (5) is deemed to be in force unless the Board makes a further order rescinding or varying the decision. R.S., c. 475, s. 51.

Where work stoppage likely to occur

74 **(1)** Where a person has reasonable grounds for believing and does believe that a stoppage of all or any part of the work carried on by one or more employers and employees represented by one or more trade unions is likely to occur as the result of a jurisdictional dispute, the person may make a complaint to the Board.

(2) The complaint must identify the complainant and state the grounds for the complaint and the nature of the jurisdictional dispute.

(3) Where the Board is satisfied after investigation of the complaint that a stoppage of work is likely to occur as a result of a jurisdictional dispute, the Board may issue an interim order directing the assignment of work to persons skilled in or belonging to a specific trade or craft or belonging to a specific trade union.

(4) A trade union, employer or employers' organization involved in a jurisdictional dispute in respect of which an interim order has been made may apply to the Board to review the interim order and the Board shall conduct a hearing and may by order confirm, vary or revoke the interim order.

(5) An interim order made by the Board under this Section and any order confirming, varying or revoking the interim order binds and governs all the parties involved in or affected by the jurisdictional dispute to which the order relates unless

(a) an agreement in writing respecting the assignment of the work made between the employer and the trade union or trade unions involved in or affected by the jurisdictional dispute is filed with the Board; or

(b) the jurisdictional dispute is submitted to a tribunal or to arbitration and the tribunal or arbitrator renders a decision that binds the parties to a settlement of the jurisdictional dispute. R.S., c. 475, s. 52.

INTEREST ARBITRATION

Prohibition of strike or lockout of police

75 **(1)** In this Section, "police bargaining unit" means a unit that includes police constables or officers that has been certified under this Act or that is a party to an agreement filed pursuant to subsection 37(2) and the certification of which has not been revoked.

(2) Notwithstanding anything contained in this Act,

(a) no police constable or officer or member of a police bargaining unit has the right to strike; and

(b) no employer shall lock out a police constable or officer or member of a police bargaining unit.

(3) The right to strike and the right to lock out police constables or officers and members of a police bargaining unit is replaced with interest arbitration. 2004, c. 47, s. 2; 2006, c. 48, s. 3; 2008, c. 67, s. 1.

Prohibition of strike or lockout of firefighters

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

"firefighter" means a full-time firefighter and, for greater certainty, does not include a volunteer firefighter;

"firefighter bargaining unit" means a unit that includes firefighters that has been certified under this Act or that is a party to an agreement filed pursuant to subsection 37(2) and the certification of which has not been revoked.

(2) Notwithstanding anything contained in this Act,

(a) no firefighter or member of a firefighter bargaining unit has the right to strike; and

(b) no employer shall lock out a firefighter or member of a firefighter bargaining unit.

(3) The right to strike and the right to lock out firefighters and members of a firefighter bargaining unit is replaced with interest arbitration. 2006, c. 48, s. 4; 2010, c. 37, s. 146.

Restriction on alteration of terms of employment

77 Notwithstanding Section 42, the employer shall not, without consent by the certified or recognized bargaining agent or by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until

(a) a new collective agreement has been concluded; or

(b) the bargaining agent and the employer or representatives authorized by them in that behalf have bargained collectively and have failed to conclude a collective agreement and an interest-arbitration board has made an award. 2004, c. 47, s. 2.

Notice of desire to submit to interest arbitration

78 Where

(a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; and

(b) the conciliation officer makes a report to the Minister,

the employer or the trade union shall notify the other party in writing of its desire to submit the collective agreement to an interest-arbitration board composed of one person unless the parties agree to submit the collective agreement to an interest-arbitration board of three persons. 2004, c. 47, s. 2.

Interest-arbitration board of one person

79 (1) Where the interest-arbitration board referred to in Section 78 is to be composed of one person, the employer and the trade union shall, within 10 days after delivery of the notification referred to in that Section, attempt to agree on a person satisfactory to both parties to be the interest-arbitration board and, where agreement is reached, that person is appointed as the interest-arbitration board.

(2) Where the parties are unable to agree on a person to be the interest-arbitration board pursuant to subsection (1), either party may apply to the Minister to appoint a person to be the interest-arbitration board and the Minister shall appoint a person.

(3) The employer and the trade union shall each pay one half of the fees of, and expenses incurred by, an interest-arbitration board appointed pursuant to subsection (1) or (2).

(4) Where an interest-arbitration board is appointed pursuant to subsection (1) or (2), the person appointed is the chair for the purpose of subsection 81(4) and Section 82. 2004, c. 47, s. 2.

Interest-arbitration board of three persons

80 (1) Where the employer and the trade union agree pursuant to Section 78 to appoint an interest-arbitration board composed of three persons, the party that gave notification pursuant to that Section shall, within seven days of the date of the agreement, give notice of its readiness to proceed pursuant to this Section.

(2) The party giving the notice referred to in subsection (1) shall, in and with the notice, give the name of a person to act as its nominee on the interest-arbitration board and request that the other party name a person to act as its nominee on the board.

(3) The party to whom notice is given pursuant to subsections (1) and (2) shall, within seven days of the receipt of such notice, appoint a person to be its nominee on the interest-arbitration board and shall, within those seven days, notify in writing the other party of the name of the person so appointed.

(4) Where a party fails to appoint a member to the interest-arbitration board and give notice thereof as required by subsection (3), the Minister, on the application of the party who has appointed a member pursuant to subsection (2), shall, within seven days, appoint a person to act on the interest-arbitration board as the nominee of the party who has failed to appoint a member.

(5) The two members appointed pursuant to subsections (2), (3) and (4) shall, within seven days after the day on which the second of them is appointed, appoint a third person to be a member and chair of the interest-arbitration board.

(6) Where the two members fail or neglect to make an appointment as required by subsection (5), the Minister, on the application of either party, shall, within seven days, appoint a third person to be a member and chair of the interest-arbitration board.

(7) The decision of a majority of the interest-arbitration board is the decision of the arbitration board.

(8) The employer shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the employer, the trade union shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the trade union, and the employer and the trade union shall each pay one half of the fees of, and expenses incurred by, the chair of the interest-arbitration board. 2004, c. 47, s. 2.

Powers and duties of board and effect of award

81 **(1)** An interest-arbitration board appointed pursuant to Section 79 or 80 or a collective agreement

(a) shall determine the procedure to be followed during the arbitration, but shall give full opportunity to the parties to the proceeding to present evidence and make submissions to the arbitrator; and

(b) has, in relation to any proceedings before the arbitrator, the powers conferred on the Board, in relation to any proceedings before the Board,

and the parties to the proceedings may

(c) appear and be heard and be represented by counsel; and

(d) call witnesses and examine or cross-examine all witnesses.

(2) As soon as possible after conducting a hearing into the matters referred to it, the interest-arbitration board shall make an award and in its award deal with each item in dispute.

(3) An award of an interest-arbitration board is binding upon

(a) the trade union and every employee in the unit on whose behalf it was bargaining collectively; and

(b) the employer,

and the employer and the trade union shall give effect to it.

(4) Every award of an interest-arbitration board must be signed by the chair of the board. 2004, c. 47, s. 2; 2010, c. 37, s. 147.

Report to Minister and parties

82 Where an interest-arbitration board renders an award, the chair of the interest-arbitration board shall make a report and transmit it to the Minister and to the parties. 2004, c. 47, s. 2.

UNFAIR PRACTICES

Prohibited activities of employer

83 **(1)** No employer and no person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or

(b) contribute financial or other support to a trade union.

(2) An employer is deemed not to contravene subsection (1) by reason only that the employer

(a) in respect of a trade union that is the bargaining agent for a bargaining unit comprised of or including employees of the employer,

(i) permits an employee or representative of the trade union to confer with the employer during working hours or to attend to the business of the trade union during working hours without any deduction from wages or any deduction of time worked for the employer,

(ii) provides free transportation to representatives of the trade union for purposes of collective bargaining, the administration of a collective agreement and related matters, or

(iii) permits the trade union to use the employer's premises for the purposes of the trade union; or

(b) contributes financial support to any pension, health or other welfare trust fund the sole purpose of which is to provide pension, health or other welfare rights or benefits to employees.

(3) No employer and no person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person

(i) is or was a member of a trade union,

(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,

(iii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,

(iv) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Act,

(v) has made an application or filed a complaint under this Act,

(vi) has participated in a strike that is not prohibited by this Act or exercised any right under this Act;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred upon the employee by this Act;

(c) suspend, discharge or impose any financial or other penalty on an employee or take any other disciplinary action against an employee, by reason of the employee's refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike that is not prohibited by this Act;

(d) deny to any employee any pension rights or accrued benefits to which the employee would be entitled but for

(i) the cessation of work by the employee as the result of a lockout or strike that is not prohibited by this Act, or

(ii) the dismissal of the employee contrary to this Act;

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from

(i) testifying or otherwise participating in a proceeding under this Act,

(ii) making a disclosure that the person may be required to make in a proceeding under this Act,

(iii) making an application or filing a complaint under this Act;

(f) suspend, discharge or impose any financial or other penalty on a person employed by the employer, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act prohibited by this Act; or

(g) bargain collectively for the purpose of entering into a collective agreement, or enter into a collective agreement with a trade union in respect of a bargaining unit if another trade union is the bargaining agent for that bargaining unit. R.S., c. 475, s. 53.

Prohibited activities of trade union

84 No trade union and no person acting on behalf of a trade union shall

(a) seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;

(b) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with an employer in

respect of a bargaining unit, if that trade union or person knows or, in the opinion of the Board, ought to know that another trade union is the bargaining agent for that bargaining unit;

(c) participate in or interfere with the formation or administration of an employers' organization;

(d) except with the consent of the employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of a trade union;

(e) require an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;

(f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to any person by applying to that person in a discriminatory manner the membership rules of the trade union;

(g) take disciplinary action against or impose any form of penalty on an employee by applying to the employee in a discriminatory manner the standards of discipline of the trade union;

(h) expel or suspend an employee from membership in the trade union or take disciplinary action against or impose any form of penalty on an employee by reason of the employee having refused to perform an act that is contrary to this Act; or

(i) discriminate against a person in regard to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because the person

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,

(ii) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Act, or

(iii) has made an application or filed a complaint under this Act. R.S., c. 475, s. 54.

Prohibition respecting employee

85 (1) In this Section, "employee" includes an employee within the meaning of each of the *Civil Service Collective Bargaining Act* and the *Highway Workers Collective Bargaining Act*.

(2) In this Section and subsection 86(3), "trade union" includes

(a) the Nova Scotia Government Employees Union acting under the *Civil Service Collective Bargaining Act*; and

(b) the Nova Scotia Highway Workers Union, CUPE Local 1867, or a successor trade union determined pursuant to the *Highway Workers Collective Bargaining Act*.

(3) No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee's rights under a collective agreement. 2005, c. 61, s. 7.

Complaint of failure to comply with Section 83 or 84

86 (1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has failed to comply with Section 83 or 84 or subsection 85(3).

(2) Subject to this Section, a complaint shall be made to the Board pursuant to subsection (1) not later than 90 days from the date on which the complainant knew or, in the opinion of the Board, ought to have known of the action or circumstances giving rise to the complaint.

(3) Subject to subsection (4), no complaint shall be made to the Board under subsection (1) or 85(3) on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with clause 84(f) or (g) or subsection 85(3) unless

(a) the complainant has presented a grievance or appeal in accordance with any procedure

(i) that has been established by the trade union, and

(ii) to which the complainant has been given ready access;

(b) the trade union

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or

(ii) has not, within six months from the date on which the complainant first presented the grievance or appeal pursuant to clause (a), dealt with the grievance or appeal; and

(c) the complaint is made to the Board not later than 90 days from the first day on which the complainant could, in accordance with clauses (a) and (b), make the complaint.

(4) The Board may, on application to it by a complainant, hear a complaint in respect of an alleged failure by a trade union to comply with clause 84(f) or (g) that has not been presented as a grievance or appeal to the trade union, if the Board is satisfied that

(a) the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or

(b) the trade union has not given the complainant ready access to a grievance or appeal procedure.

(5) Except with the consent in writing of the Minister, no complaint shall be made to the Board under subsection (1) in respect of an alleged failure to comply with clause 83(3)(g) or 84(a) or (b). R.S., c. 475, s. 55; 2005, c. 61, s. 8.

Settlement or hearing of complaint required

87 (1) Subject to subsection (2), upon receipt of a complaint made under Section 86 the Board

(a) may assist the parties to the complaint to settle the complaint; and

(b) where the Board does not act under clause (a) or the complaint is not settled within such period as the Board considers to be reasonable in the circumstances, shall hear and determine the complaint.

(2) The Board may refuse to hear and determine any complaint made pursuant to Section 86 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a collective agreement to an arbitrator or arbitration board.

(3) Where the complainant establishes that it is reasonable to believe that there may have been failure by an employer or any person acting on behalf of an employer to comply with clause 83(3)(a), the burden of proving there is no failure is upon the employer or the person acting on behalf of the employer.

(4) The Board may refuse to hear and determine any complaint made pursuant to Section 86 in respect of an alleged failure by a trade union or a person acting on behalf of a trade union to comply with Section 85 if the Board considers the complaint to be frivolous, vexatious or otherwise not worthy of a hearing. R.S., c. 475, s. 56; 2005, c. 61, s. 9.

Review officer

88 (1) Where the Board receives a written complaint that a trade union or a person acting on behalf of a trade union has contravened subsection 85(3), the Board shall appoint an employee within the Department of Labour, Skills and Immigration, or a person appointed by the Minister, as a review officer to review the complaint to determine whether there is sufficient evidence of a breach of the duty of fair representation.

(2) Where a review officer appointed pursuant to subsection (1) is not satisfied on initial review that there is sufficient evidence of a failure to comply with subsection 85(3), the review officer shall dismiss the complaint.

(3) Where a review officer decides not to dismiss the complaint pursuant to subsection (2), the review officer shall serve notice of the complaint on the trade union against which the complaint is made and request a response from the trade union.

(4) Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) and is not satisfied that there is sufficient evidence of a failure to comply with subsection 85(3), the review officer shall dismiss the complaint.

(5) Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) or the trade union has failed to respond to the request within such period of time as the review officer considers necessary and, where the review officer believes that there has been a failure to comply with subsection 85(3), the review officer shall

(a) effect a settlement, if possible; or

(b) where not possible, refer the complaint to the Board for disposition.

(6) A review officer appointed pursuant to subsection (1) has the power to order the parties to produce any documents or other things that the review officer considers necessary for the full review of the complaint without holding a hearing.

(7) A decision of a review officer under this Section is final and conclusive and not open to question or review.

(8) Where a complaint has been referred to the Board for disposition pursuant to clause (5)(b), the Board may

(a) add a party to the proceeding at any stage of the proceeding;

(b) determine a complaint with or without holding a hearing; and

(c) where the Board is satisfied that the trade union or person acting on behalf of a trade union has contravened subsection 85(3), the Board may make an order provided for in clause 89(e) and make an order provided for in Section 110.

(9) A complaint under subsection (1) may be withdrawn by the complainant upon such conditions as the Board may determine. 2005, c. 61, s. 10; 2006, c. 48, s. 2.

Order to comply with Section 83 or 84

89 Where, under Section 87, the Board determines that a party to a complaint has failed to comply with Section 83 or 84, the Board may, by order, require the party to comply with the said appropriate Section and may

(a) in respect of a failure to comply with clause 83(3)(a), (c) or (f), by order, require an employer to

(i) reinstate any former employee affected by that failure as an employee of the employer, and

(ii) pay to any employee or former employee affected by that failure compensation not exceeding such sum as, in the opinion of the Board, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to the employee;

(b) in respect of a failure to comply with clause 83(3)(e), by order, require an employer to rescind any disciplinary action in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the employer;

(c) in respect of a failure to comply with clause 84(f) or (h), by order, require a trade union to reinstate or admit an employee as a member of the trade union;

(d) in respect of a failure to comply with clause 84(g), (h) or (i), by order, require a trade union to rescind any disciplinary action taken in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the trade union; and

(e) in respect of a failure to comply with Section 85, by order, require a trade union to rectify any act or omission complained of and refer the matter to arbitration and may order that time limits in a collective agreement be abridged or extended in respect of the arbitration. R.S., c. 475, s. 57; 2005, c. 61, s. 11.

Intimidation respecting trade union membership

90 (1) No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union or an employers' organization.

(2) Nothing in this Act may be deemed to deprive an employer of the freedom to express the employer's views so long as the employer does not use coercion, intimidation, threats or undue influence. R.S., c. 475, s. 58.

TRADE UNION SECURITY

Provisions in collective agreement

91 (1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring, as a condition of employment, membership in a specified trade union or granting a preference of employment to members in a specified trade union.

(2) No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of a trade union other than a specified trade union, is valid. R.S., c. 475, s. 59.

CHECK-OFF

Deduction for initiation fees and trade union dues

92 (1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring the employer to honour a written authorization for deduction of wages for initiation fees and trade union dues to the bargaining agent.

(2) Every employer shall honour a written authorization for deduction of wages for initiation fees and trade union dues to a trade union certified or recognized by the employer as the bargaining agent.

(3) An authorization pursuant to subsection (2) must be substantially in the following form:

To . . . . . (*name of Employer*)

I hereby authorize you to deduct from my wages and pay to (*name of trade union*) fees in the amount following:

(1) Initiation fee in the amount of . . . . . .

(2) Dues of $. . . . . per . . . . . .

(4) Unless the authorization is revoked in writing pursuant to subsection (5), the employer shall remit the dues deducted to the trade union named in the authorization at least once each month together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.

(5) Subject to the provisions of a collective agreement, an authorization pursuant to subsection (2) continues in effect for a minimum period of three consecutive months and thereafter the employee may revoke such authorization at any time by delivering to the employer revocation in writing.

(6) Where an authorization is revoked pursuant to subsection (5), the employer shall give notice thereof to the trade union. R.S., c. 475, s. 60.

CONCILIATION BOARDS AND INDUSTRIAL INQUIRY COMMISSIONS

Composition of conciliation board

93 **(1)** A board of conciliation and investigation under this Act must consist of three members appointed in the manner provided in this Section.

(2) Where, pursuant to Section 46, both parties to a dispute have requested the Minister to appoint a conciliation board and have submitted to the Minister nominations of persons to be members of the board, the Minister shall forthwith appoint the persons so nominated to be members of the conciliation board.

(3) The two members appointed under subsection (2) shall, within five days after the day on which they are appointed, nominate a third person who is willing and ready to act to be a member and chair of the conciliation board and the Minister shall forthwith appoint that person to be a member and to be chair of the conciliation board.

(4) Where the two members appointed under subsection (2) fail or neglect to make a nomination within five days after their appointment, the Minister shall forthwith appoint as the third member and chair of the conciliation board a person whom the Minister considers fit for that purpose.

(5) When the conciliation board has been appointed, the Minister shall forthwith notify the parties of the names of the members of the board.

(6) Where the Minister has given notice to the parties that a conciliation board has been appointed under this Act, it must be conclusively presumed that the board described in the notice has been established in accordance with this

Act, and no order may be made or process entered or proceedings taken in any court to question the granting or refusal of a conciliation board, or to review, prohibit or restrain the establishment of that conciliation board or any of its proceedings. R.S., c. 475, s. 61.

Replacement of chair or other members of board

94 **(1)** Where the chair of a conciliation board ceases to be a member of the board before it has completed its work, the Minister shall appoint a chair in the chair's place who is selected in the manner prescribed by subsections 93(3) and (4), except that the other two members must nominate the third person within five days after the day upon which the Minister is advised that the chair has ceased to be a member of the board.

(2) Upon a person other than the chair ceasing to be a member of a conciliation board before it has completed its work, the party to the dispute by whom the chair was nominated shall nominate another person and the Minister shall forthwith appoint that other person to be a member of the conciliation board.

(3) Where a party to a dispute who is obliged by subsection (2) to nominate a person fails to do so within five days after the day upon which the Minister is advised that the nomination must be made, the Minister shall forthwith appoint as a member of the conciliation board a person whom the Minister considers fit for that purpose. R.S., c. 475, s. 62.

Oath of office

95 Each member of a conciliation board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister, an oath or affirmation in the following form:

> I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the Conciliation Board appointed to . . . . . and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. (So help me God.)

R.S., c. 475, s. 63.

Statement to board of matters referred and reconsideration

96 **(1)** Where the Minister has appointed a conciliation board, the Minister shall forthwith deliver to it a statement of the matters referred to it, and may, either before or after the making of its report, amend or add to that statement.

(2) After a conciliation board has made its report the Minister may direct the conciliation board to reconsider and clarify or amplify the report or any part thereof or to consider and report on any new matter added to the amended statement of matters referred to it and the report of the conciliation board is not deemed to be received by the Minister until the reconsidered report is received. R.S., c. 475, s. 64.

Duties, quorum and decision of board

97 **(1)** A conciliation board shall, immediately after appointment of the chair thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

(2) Except as otherwise provided in this Act, a conciliation board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

(3) The chair may, after consultation with the other members of the board, fix the time and place of sittings of a conciliation board and shall notify the parties as to the time and place so fixed.

(4) The chair and one other member of a conciliation board is a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

(5) The decision of a majority of the members present at a sitting of a conciliation board is the decision of the conciliation board, and in the event that the votes are equal the chair has a casting vote.

(6) The chair shall forward to the Minister a detailed certified statement of the sittings of the board and of the members and witnesses present at each sitting.

(7) The report of the majority of its members is the report of the conciliation board. R.S., c. 475, s. 65.

Witnesses and evidence

98 **(1)** A conciliation board has the power of summoning before it any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce all documents and things that the conciliation board considers requisite to the full investigation and consideration of the matters referred to it, but the information so obtained from such documents must not, except as the conciliation board considers expedient, be made public.

(2) A conciliation board has the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

(3) Any member of a conciliation board may administer an oath, and the conciliation board may receive and accept any evidence on oath, affidavit or otherwise as it, in its discretion, considers fit and proper, whether admissible in evidence in a court of law or not. R.S., c. 475, s. 66.

Right of entry and inspection

99 A conciliation board or a member of a conciliation board or any person who has been authorized for such purpose in writing by a conciliation board may, without any other warrant than this Section, at any time, enter a building, ship, vessel, factory, workshop, place or premises of any kind wherein work is being or has been done or commenced by employees or in which an employer carries on

business or any matter or thing is taking place or has taken place, concerning the matters referred to the conciliation board, and may inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon any such place, matter or thing hereinbefore mentioned, and no person shall hinder or obstruct the board or any person authorized as aforesaid in the exercise of a power conferred by this Section or refuse to answer an interrogation made as aforesaid. R.S., c. 475, s. 67.

Report of findings and recommendations

100 A conciliation board shall, within 14 days after the appointment of the chair of the board, or within a longer period that is agreed upon by the parties, or as may be allowed by the Minister, report its findings and recommendations to the Minister. R.S., c. 475, s. 68.

Publication and delivery of report to parties

101 On receipt of the report of a conciliation board the Minister shall forthwith cause a copy thereof to be sent to the parties and the report to be published in any manner that the Minister sees fit. R.S., c. 475, s. 69.

Report and proceedings inadmissible in court

102 No report of a conciliation board and no testimony or proceedings before a conciliation board is receivable in evidence in any court in Canada except in the case of a prosecution for perjury. R.S., c. 475, s. 70.

Failure to report within time limit

103 Failure of a conciliation officer or conciliation board to report to the Minister within the time provided in this Act for report does not invalidate the proceedings of the conciliation officer or conciliation board or terminate the authority of the conciliation board under this Act. R.S., c. 475, s. 71.

Agreement to be bound by conciliation report

104 When a conciliation board has been appointed and at any time before or after the conciliation board has made its report the parties so agree in writing, the recommendation of the conciliation board is binding on the parties and they shall give effect thereto. R.S., c. 475, s. 72.

Promotion of settlement, including industrial inquiry commission

105 (1) The Minister may either upon application or of the Minister's own initiative, if the Minister considers it expedient, make or cause to be made any inquiries the Minister thinks fit regarding industrial matters, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

(2) For the purpose of subsection (1) or where in any industry a dispute or difference between employers and employees exists or is apprehended, the Minister may refer the matters involved to a commission, to be designated as an "industrial inquiry commission", for investigation thereof, as the Minister considers expedient, and for report thereon, and shall furnish the commission with a statement of the matters concerning which the inquiry is to be made, and, in the case of an

inquiry involving any particular persons or parties, shall advise such persons or parties of the appointment.

(3) Immediately following its appointment an industrial inquiry commission shall inquire into matters referred to it by the Minister and endeavour to carry out its terms of reference and, in the case of a dispute or difference in which a settlement has not been effected in the meantime, the report of the result of its inquiries, including its recommendations, must be made to the Minister within 14 days of its appointment or such extension thereof as the Minister may grant.

(4) Upon receipt of a report of an industrial inquiry commission relating to any dispute or difference between employers and employees, the Minister shall furnish a copy to each of the parties affected and shall publish the same in such manner as the Minister sees fit.

(5) An industrial inquiry commission must consist of one or more members appointed by the Minister and Sections 98 and 99 of this Act apply as though enacted in respect of that commission and the commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations. R.S., c. 475, s. 73.

Staff, fees and expenses of commission

106 (1) The Minister may provide an industrial inquiry commission with a secretary and such clerical or other assistance as the Minister considers appropriate and fix their remuneration.

(2) The chair and the other members of an industrial inquiry commission shall be paid such remuneration as the Minister determines along with actual and reasonable travelling and living expenses for each day a member of the commission is absent from the member's place of residence in connection with the work of the commission.

(3) All expenses of an industrial inquiry commission must be allowed and paid upon the presentation of an account, approved by the chair of the commission.

(4) The remuneration referred to in subsections (1) and (2) and the expenses referred to in subsection (3) must be paid by the Minister. 2000, c. 4, s. 82.

Fees and expenses of member of board

107 Each of the parties before a conciliation board shall pay the fees and expenses of the member appointed to the conciliation board by that party and each of the parties shall pay one half of the fees and expenses of the chair of the conciliation board. 2000, c. 4, s. 82.

RETURNS BY TRADE UNIONS

Constitution, bylaws and other documents and financial statements

108 (1) Every trade union shall file with the Minister a copy duly certified by its proper officers to be true and correct, of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes.

(2) A general statement of the receipts and expenditures of every trade union for the preceding calendar year verified by the affidavit of a responsible officer must be transmitted to the Minister before April 1st in every year, and must be in such form and contain such particulars and such further information as the Minister may require.

(3) Every member of such trade union shall, on application to the secretary or treasurer of such trade union, be entitled to a copy of such statements free of charge.

(4) Every treasurer or other officer having custody of the funds or property of a trade union shall

(a) at such times as required to do so by the rules or bylaws of the trade union, render to the members of the trade union at a meeting of the trade union a just and true account of all money received and paid by the treasurer or other officer since the treasurer or other officer last rendered the like account and of the balance then remaining in the treasurer's or other officer's hands and of all property of the trade union;

(b) cause the said account to be audited by a fit and proper person named by the members of the trade union at a meeting thereof; and

(c) upon the account being audited, where required by the members, hand over to such person or persons, as the members of the trade union designate, the balance that on such audit appears to be due from the treasurer or other officer and all securities and effects, books, papers and property of the trade union in the treasurer's or other officer's hands or custody.

(5) Where the treasurer or other officer fails to do the actions required under subsection (4), any such person or persons so designated may, on behalf of the trade union, sue the treasurer or other officer in any competent court for

(a) the balance appearing to have been due from the treasurer or other officer upon the account last rendered by the treasurer or other officer and for all the money since received by the treasurer or other officer on account of the said trade union; and

(b) for the securities and effects, books, papers and property in the treasurer's or other officer's hands or custody, leaving the treasurer or other officer to set off in such action the sums, if any, that the treasurer or other officer may have since paid on account of the trade union. R.S., c. 475, s. 76.

ENFORCEMENT AND PENALTIES

Enforcement of order to pay money

109 (1) Where an order of the Board made under this Act or a decision of an arbitrator under Part II requires any person, employer, employers' organization or other person to pay a sum of money or an amount of money computed by reference to any factor mentioned in the order or decision, the person entitled to the

payment may bring an action in any court of competent jurisdiction to recover the sum of money or the amount computed in accordance with the order.

(2) In an action pursuant to subsection (1), evidence that the order of the Board or decision of the arbitrator was made is proof that the order or decision is valid. R.S., c. 475, s. 77.

Order when Act contravened

110 Notwithstanding any other provision of this Act, where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act, it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee must do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing, may include, notwithstanding the provisions of any collective agreement, any one or more of

(a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;

(b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or omission complained of;

(c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate in lieu of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally. R.S., c. 475, s. 78.

Prosecution for violation of Act

111 (1) A prosecution for an offence under this Act may be brought against an employers' organization or a trade union in the name of the organization or trade union and for the purpose of such a prosecution a trade union or an employers' organization is deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union within the scope of the officer's or agent's authority to act on behalf of the organization or trade union is deemed to be an act or thing done or omitted by the employers' organization or trade union.

(2) In any prosecution under this Act against an employer or employers' organization, the act or omission of any manager, superintendent or other person employed in a confidential capacity in matters relating to labour relations or of any person who exercises management functions is deemed to be the act or omission of the employer or employers' organization, as the case may be, by whom such person was employed, unless and until it is proved that such act or omission was without the knowledge or consent of the employer or employers' organization.

(3) An information or complaint in respect of a contravention of this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceedings in a prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S., c. 475, s. 79.

Consent to prosecution

112 **(1)** No prosecution for an offence under this Act may be instituted except with the consent in writing of the Minister.

(2) A consent by the Minister indicating that the Minister has consented to the prosecution of a person named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, is a sufficient consent for the purpose of this Section to the prosecution of the person for any offence under this Act committed by or commencing on that date.

(3) This Section does not apply to a prosecution instituted by the Minister or the Attorney General. R.S., c. 475, s. 80.

Complaint of alleged violation of Act

113 **(1)** A person claiming to be aggrieved because of an alleged violation of this Act may make a complaint in writing to the Minister and the Minister, upon receipt of the complaint, may require an industrial inquiry commission appointed by the Minister pursuant to Section 105 or a conciliation officer to investigate and make a report to the Minister in respect of the alleged violation.

(2) Upon receipt of a report pursuant to subsection (1), the Minister shall furnish a copy to each of the parties affected and if the Minister considers it desirable to do so, may publish the same in any manner that the Minister sees fit.

(3) The Minister shall take into account any report made pursuant to this Section or any action taken by the Board upon a complaint referred to it under this Act in granting or refusing to grant consent to prosecute under Section 112. R.S., c. 475, s. 81.

Offence and penalty for contravention of Act

114 Every person, trade union or employers' organization who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by the person, trade union or employers' organization is guilty of an offence and, except where some other penalty is by this Act provided for the act, refusal or neglect, is liable on summary conviction

(a) where an individual, to a fine not exceeding $1,000; or

(b) where a corporation, trade union or employers' organization, to a fine not exceeding $10,000. R.S., c. 475, s. 82.

Offence and penalty for violating s. 29(7) or s. 42(b) or order under s. 43(2)

115 **(1)** Every employer and every person acting on behalf of an employer who increases or decreases a wage rate or alters any term or condition of employment contrary to subsection 29(7) or clause 42(b) is guilty of an offence and liable on summary conviction to a fine not exceeding

(a) five dollars in respect of each employee whose wage rate was so increased or decreased or whose term or condition of employment was so altered; or

(b) $250,

whichever is less, for each day during which such increase, decrease or alteration continues contrary to this Act.

(2) Every employer, employers' organization, trade union or other person in respect of whom an order is made under subsection 43(2) who fails to comply with the order is guilty of an offence and is liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $10,000 in any other case. R.S., c. 475, s. 83.

Penalty for prohibited lockout or unlawful strike

116 (1) Every employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding $300 for each day that the lockout exists.

(2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding $200 for each day that the lockout exists.

(3) Every trade union that declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding $300 for each day that the strike exists.

(4) Every officer or representative of a trade union who declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding $200 for each day that the strike exists.

(5) Any number of such offences arising out of the same declaring, causing or authorizing may be charged against one person in one information or in separate informations and, where charged in one information, the judge of the Provincial Court may in one conviction impose as a single penalty the cumulative fines, or terms of imprisonment in default of payment, and no conviction or dismissal in respect of any such offence affords a plea of *autre fois convict* or *autre fois acquit* in respect of an information charging an offence on a day subsequent to the day or days in respect of which any such conviction or acquittal was made. R.S., c. 475, s. 84.

Failure to comply with Section 73 interim order

117 (1) Every person who, knowing that the person is required to perform any act or to cease or desist from any act by virtue of an interim order or decision of the Board made pursuant to Section 73,

(a) fails to perform any act required by the interim order or decision; or

(b) fails to cease or desist from any act required by the interim order or decision,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $10,000 in any other case.

(2) Subject to subsection (3), evidence that an interim order or decision was made pursuant to Section 73 is proof that the person accused had knowledge of the order or decision and the requirements thereof unless the contrary is proved by the person accused.

(3) In any prosecution for an offence under subsection (1), evidence that an interim order or decision made pursuant to Section 73 was served on or delivered to or otherwise brought to the attention of the person accused is conclusive proof that the person accused had knowledge of the interim order or decision.

(4) Each day that a person commits an offence under subsection (1) constitutes a separate offence.

(5) An information charging an offence under subsection (1) may contain two or more counts charging the offence on each day that it was alleged to be committed. R.S., c. 475, s. 85.

Failure to comply with Section 89 order

118 Every person, employer, employers' organization or trade union who fails to comply with an order made under Section 89 is guilty of an offence and is liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $10,000 in any other case. R.S., c. 475, s. 86.

Failure to comply with Section 108

119 Every officer of a trade union who fails to comply with Section 108 is liable to a penalty not exceeding $100. R.S., c. 475, s. 87.

Failure to comply with decision of arbitrator

120 (1) Every person, employer, employers' organization or trade union who fails to comply with a decision of an arbitrator made pursuant to Section 51 or 107 is guilty of an offence and is liable on summary conviction to a penalty not exceeding $1,000 in the case of an individual or $10,000 in any other case.

(2) In any prosecution under this Section, in addition to any other method by which the decision of an arbitrator may be proved, the evidence of the arbitrator that the arbitrator made the decision and communicated the decision to the person, employer, employers' organization or trade union charged is conclusive proof that the decision was made and the person, employer, employers' organization or trade union accused had knowledge of the decision. R.S., c. 475, s. 88.

Use and payment of fine and penalty

121 All fines and penalties imposed under this Act are payable to the Minister of Finance and Treasury Board to and for the public use of the Province. R.S., c. 475, s. 89.

WARTIME REGULATIONS CONFIRMED

Wartime Act or regulations

122 (1) Every regulation, order, decision, determination or agreement, or any other act or thing made, given, done or negotiated under the provisions of the *Wartime Labour Relations (Nova Scotia) Act, 1944*, or of the *Wartime Labour Relations Regulations* (P.C. 1003) or of Order in Council P.C. 5001, in so far as the same might have been done under this Act, is deemed to have been made, given, done or negotiated under this Act.

(2) Where bargaining representatives were certified under the provisions set forth in subsection (1) and that certification had not been revoked,

(a) where they had been elected or appointed by a trade union, that trade union is the certified bargaining agent under this Act;

(b) where they had been elected by employees for their bargaining representatives, they are certified bargaining representatives under this Act. R.S., c. 475, s. 90.

AGREEMENT WITH GOVERNMENT OF CANADA

Agreement respecting administration of legislation

123 Where legislation enacted by the Parliament of Canada and this Act are substantially uniform, the Minister may, on behalf of the Government of the Province with the approval of the Governor in Council, enter into an agreement with the Government of Canada to provide for the employment by the Government of the Province in the administration of this Act of persons who are in the employ of the Government of Canada and to provide for the employment by the Government of Canada in the administration of the federal legislation of persons who are in the employ of the Government of the Province and to provide for the payments to be made by the Government of Canada to the Government of the Province and vice versa in respect of such employment. R.S., c. 475, s. 91.

PART II

CONSTRUCTION INDUSTRY LABOUR RELATIONS

INTERPRETATION

Interpretation of Part II

124 In this Part,

"accredited employers' organization" means an organization of employers that is accredited under this Act as the bargaining agent for a unit of unionized employers in the construction industry;

"appropriate unit" means a unit determined by the Board to be appropriate for collective bargaining purposes;

"construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipelines, tunnels, shafts, bridges, wharves, piers, canals or other works;

"council of trade unions" means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined;

"employee" means a person employed in the construction industry but does not include

(a) a person who performs management functions or is employed in a confidential capacity in matters relating to labour relations;

(b) a member of the architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity;

"employer" means any person who employs, or in the preceding 12 months has employed, more than one employee and who operates a business in the construction industry;

"employers' organization" means an organization of employers that is formed for purposes that include the regulation of relations between employers and employees as defined in this Section;

"sector" means one of the following divisions of the construction industry:

(a) industrial and commercial;

(b) housebuilding;

(c) sewers, tunnels and water mains;

(d) roadbuilding, or any other sectors determined by the Board;

"trade union" means a trade union that according to established trade union practices pertains to the construction industry;

"unionized employee" means an employee on behalf of whom a trade union or council of trade unions has been certified or recognized as bargaining agent by an employer or employers' organization in accordance with this Part, if the certification or recognition has not been revoked;

"unionized employer" means an employer of unionized employees in the geographical area or areas and sector concerned. R.S., c. 475, s. 92; 1994, c. 35, s. 1; 2010, c. 37, s. 148.

APPLICATION OF PART AND AUTHORITY OF BOARD

Application of Part I

125 Except where inconsistent with this Part, Part I, except clause 37(3)(c), subsection 45(3) and Sections 48, 49, 65, 85 and 88, applies to the construction industry and all references therein to "employer" and "trade union" shall be taken to be references to "employers' organization" and "council of trade unions" if appropriate. R.S., c. 475, s. 93; 1994, c. 35, s. 2; 2005, c. 61, s. 12; 2011, c. 71, s. 4; 2013, c. 43, s. 4.

Authority of Board

126 (1) When a question arises as to whether a matter is a matter relating to the construction industry, the question must be finally determined by the Board.

(2) Upon application for an interim order pursuant to Section 73 or 74 or for certification pursuant to Section 127 and in any case where a hearing is not requested, where the Chair considers it appropriate, the Board may deal with any matter by each member conferring separately with the Chief Executive Officer and each deciding the matter without first giving an opportunity to the interested parties to present evidence and make representation. 2010, c. 37, s. 149.

CERTIFICATION

Application for certification as bargaining agent

127 (1) A trade union or a council of trade unions claiming to have as members in good standing not less than 35% of the employees of one or more employers in the construction industry in a unit appropriate for collective bargaining may, subject to the rules of the Board and in accordance with Sections 29 and 30, make application to the Board to be certified as bargaining agent of the employees in the unit.

(2) Where a trade union or council of trade unions makes application for certification as bargaining agent of the employees in a unit, the Board

(a) shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area;

(b) may designate the whole or any part of the Province as a geographic area and may limit the unit to a designated geographic area; and

(c) may, before certification, if it considers it appropriate to do so, include additional employees in or exclude employees from the unit.

(3) Where, pursuant to an application for certification under this Part by a trade union or council of trade unions, the Board has determined the unit appropriate for collective bargaining and consistent with a geographic area established by the Board,

(a) where the Board is satisfied that the applicant trade union or council of trade unions has as members in good standing less than 35% of the employees in the appropriate unit, the Board shall dismiss the application;

(b) where the Board is satisfied that the applicant trade union or council of trade unions has as members in good standing more than 50% of the employees in the appropriate unit, the Board may certify the trade union or council of trade unions as the bargaining agent of the employees in the unit;

(c) where the Board is satisfied that the applicant trade union or council of trade unions has as members in good standing not less than 35% and not more than 50% of the employees in the appropriate unit, the Board shall forthwith order that a vote be conducted among the employees in the appropriate unit to determine whether the employees select the applicant trade union or council of trade unions to be bargaining agent in their behalf.

(4) Subsections 31(3), (4), (5), (7) and (8) apply to an application by a trade union or council of trade unions for certification under this Section.

(5) In an application for certification by a council of trade unions, a person who is a member of any constituent trade union is deemed to be a member of the council.

(6) Before the Board certifies a council of trade unions as bargaining agent for the employees of an employer or employers in a bargaining unit, the Board shall satisfy itself that each of the trade unions that is a constituent trade union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.

(7) Where the Board is of the opinion that appropriate authority has not been vested in the applicant council, the Board may dismiss or postpone disposition of the application to enable the constituent trade unions to vest such additional or other authority as the Board considers necessary. R.S., c. 475, s. 95; 2010, c. 37, s. 150.

Further to Section 127

128 (1) Where the Board issues an order dismissing an application pursuant to clause 127(3)(a) or (c) and the applicant trade union or council of trade unions requests a hearing, the Board shall hold a hearing and may revoke the order.

(2) Subsection 24(9) or any provision of this Act or the regulations requiring notice does not apply to an application under Section 127, but upon application by the employer of employees on whose behalf a trade union or council of trade unions has been certified, or by another trade union or council of trade unions, the Board may revoke or vary an order of certification under Section 127 and shall, in every such case, give an opportunity to all interested parties to present evidence and make representations. R.S., c. 475, s. 96; 2010, c. 37, s. 151.

ACCREDITATION

Application for accreditation

129 (1) An employers' organization claiming to represent the unionized employers in a geographic area engaged in a particular sector of the construction industry may, subject to the rules of the Board, make application in a form approved by the Board to be accredited as the sole collective bargaining agent for all unionized employers in the sector of the construction industry and the geographic area applied for.

(2) Where an employers' organization makes application for accreditation as sole collective bargaining agent for all unionized employers in a geographic area and sector of the construction industry, the Board

(a) shall determine the geographic area and sector that is appropriate for accreditation;

(b) may designate the whole or any part of the Province as an appropriate geographic area; and

(c) may, before accreditation, where it considers it appropriate to do so, include additional employers in or exclude employers from the unit.

(3) Where, in an application for accreditation, the Board is satisfied either

(a) that the employers' organization has as members a majority of the unionized employers in the geographic area and sector applied for; or

(b) that the employers' organization has as members

(i) no less than 35% of the unionized employers in the geographic area and sector applied for, and

(ii) those employers who are members of the employers' organization that employ a majority of employees employed by unionized employers in the geographic area and sector applied for,

the Board may accredit the employers' organization as the sole collective bargaining agent to bargain for all unionized employers in the area and sector.

(4) Upon application for accreditation the Board shall ascertain the number of unionized employers in the geographic area and sector applied for and the number of them who were members of the employers' organization at the time the application was made.

(5) Where the Board considers it advisable, the Board may hold a representation vote of employers in the sector and area applied for.

(6) For the purpose of this Section, an employee is deemed to be a person who was on the payroll of an employer in the sector and area applied for for the weekly payroll period immediately preceding the date of the application or where, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the unionized employers in the sector and area applied for, then such other weekly payroll period of any one or more of the employers as the Board considers advisable.

(7) Where the Board is satisfied that the employers' organization has met the requirements herein, it may accredit the employers' organization as the sole bargaining agent to bargain with all trade unions or councils of trade unions for the unionized employers in the sector and area determined by the Board as an appropriate unit.

(8) Before the Board accredits an employers' organization the Board shall satisfy itself that

(a) the employers' organization is a properly constituted organization controlled by its members; and

(b) each of its members has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

(9) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization, the Board may dismiss or postpone disposition of the application to enable employers who are members of the employers' organization to vest in the organization whatever additional or other authority the Board considers necessary.

(10) Notwithstanding anything contained in this Act, no employers' organization that discriminates against any person because of sex, race, creed, colour, nationality, ancestry or place of origin may be accredited. R.S., c. 475, s. 97; 2010, c. 37, s. 152.

Effect of accreditation

130 **(1)** Subject to subsection (6), upon accreditation, all bargaining rights and duties under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent pass to the accredited employers' organization.

(2) Upon accreditation any collective agreement in operation between a trade union or council of trade unions and any employer for whom the accredited employers' organization is or becomes the bargaining agent is binding on the parties thereto until the expiry date of the agreement, regardless of its renewal provisions.

(3) Where an employers' organization has been accredited, and where, after the date of the accreditation order, an employer in the sector and area covered by that accreditation order becomes subject to bargaining rights and duties with a trade union or council of trade unions in accordance with subsection (6), those bargaining rights and duties pass to the accredited employers' organization, whether the employer becomes a member of the accredited employers' organization or not, and the employer is bound by any collective agreement in effect or subsequently negotiated between the accredited employers' organization and that trade union or council of trade unions in that sector and area of the construction industry.

(4) Notwithstanding that a unionized employer's membership in an accredited employers' organization is terminated, the accredited employers' organization retains all bargaining rights and duties gained under this Section on behalf of that employer until the accreditation has been revoked.

(5) Notwithstanding anything contained in this Act, where the employees of an employer are certified in accordance with Section 30, the employer is not bound by any accreditation order.

(6) In this Part, the bargaining rights and duties of an employer under this Act that pass to an accredited employers' organization are the bargaining rights and duties of that employer in respect of a unit appropriate for bargaining with a trade union

(a) that has been certified in accordance with Section 127 as bargaining agent for the employees of that employer in that unit;

(b) that has been voluntarily recognized as bargaining agent for the employees of that employer in that unit, in accordance with Section 37, which voluntary recognition has not accrued as a result of a collective agreement negotiated by an employers' organization or otherwise through the agency of an employers' organization; or

(c) with which that employer has explicitly, in writing, authorized the employers' organization to bargain collectively on its behalf.

(7) For greater certainty, nothing in subsection (6) precludes an accredited employers' organization and a trade union or council of trade unions from entering into a collective agreement that prohibits engaging non-union employees or non-union subcontractors in trades other than those represented by a trade union or council of trade unions that is party to the collective agreement.

(8) Where there is a dispute between a trade union or a council of trade unions and an employer or the accredited employers' organization over whether they are, were or have been bound by a collective agreement by virtue of this Section or Section 133, any of them may apply to the Board and the Board shall decide the issue following such investigation, hearing or other procedure, and on the basis of such evidence, as the Board in its sole discretion considers appropriate, and may make such order as the Board in its sole discretion considers appropriate. R.S., c. 475, s. 98; 1994, c. 35, s. 3; 2010, c. 37, s. 153.

Dues to accredited employers' organization

131 (1) An accredited employers' organization may require an employer who is bound by a collective agreement entered into by the accredited employers' organization or on whose behalf the accredited employers' organization bargains collectively to pay dues to the accredited employers' organization if the dues

(a) are uniformly required to be paid by all members to the accredited employers' organization; and

(b) are reasonably related to the services performed by the accredited employers' organization in respect of its duties under this Act.

(2) A collective agreement may include terms and conditions requiring an employer to pay the dues referred to subsection (1).

(3) Where an employer fails to pay the dues required under subsection (1), the dues are a debt payable by the employer to the registered employers' organization and may be collected by civil action.

(4) Where an employer is required by the terms and conditions of a collective agreement to pay the dues referred to in subsection (1), any dispute or difference relating to or involving the dues must be resolved in accordance with Section 140 notwithstanding any arbitration or arbitration procedure provided for in the collective agreement.

(5) This Section does not restrict the ability of an accredited employers' organization to establish and collect periodic dues, assessments and initiation fees from its members in addition to the dues referred to in subsection (1). 2010, c. 37, s. 154.

Denial of membership of employer

132 (1) No accredited employers' organization and no person acting on behalf of an accredited employers' organization shall deny membership to any employer for whom it is bargaining agent for a reason other than refusal or failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the employers' organization as a condition of acquiring or retaining membership in the organization.

(2) An employer may make a complaint in writing to the Board that an employers' organization or person acting on behalf of an accredited employers' organization has failed to comply with subsection (1) and the Board has the same power to deal with the complaint as with a complaint under Section 86 of a breach of clause 84(e). R.S., c. 475, s. 99; 2010, c. 37, s. 155.

Parties bound by collective agreement

133 (1) Subject to subsections (3) and 130(2), a collective agreement entered into between an employers' organization and a trade union, trade unions or council of trade unions is binding upon the employers' organization, employers whose bargaining rights have passed to the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order, the trade union, trade unions, council of trade unions and upon every employee within the scope of the collective agreement.

(2) No collective agreement shall be individually negotiated between an employer in the accredited sector and area and a trade union or council of trade unions and, where such a collective agreement is entered, it is not binding on any person.

(3) Notwithstanding the accreditation of an employers' organization, no unionized employer in the sector and area covered by the accreditation order is bound by a collective agreement entered into by an accredited employers' organization and a trade union or council of trade unions in that area and sector unless that trade union or council of trade unions has acquired rights to bargain with that employer in accordance with subsection 130(6).

(4) Nothing in subsection (3) or 130(6) affects

(a) any money paid before February 3, 1994; or

(b) any order, decision, award or other legal ruling given or issued in respect of a matter fully heard before February 3, 1994, to the extent it requires the payment of money in respect of any time before February 3, 1994. R.S., c. 475, s. 100; 1994, c. 35, s. 4.

Application for declaration to revoke accreditation

134 (1) Any of the employers in the unit of employers determined in an accreditation order pursuant to Section 129 may apply to the Board for a declaration that the accreditation is revoked

(a) where the accreditation order has been in effect for not less than 12 months and the accredited employers' organization is not party to any collective agreement;

(b) after the commencement of the 46th month of the operation of the accreditation order and before the commencement of the 49th month of its operation; or

(c) during the three-month period immediately preceding the end of every third year thereafter.

(2) Upon an application under subsection (1), the Board shall ascertain

(a) the number of employers in the unit of employers on the date of the making of the application;

(b) the number of employers in the unit of employers who, within the two-month period immediately preceding the date of the making of the application, have voluntarily signified in writing that

they no longer wish to be represented by the accredited employers' organization; and

(c) the number of unionized employees affected by the application of the employers in the unit of employers on the payroll of each such employer for the weekly payroll period immediately preceding the date of the making of the application or where, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the employers, such other weekly payroll period for any one or more of the employers as the Board considers advisable.

(3) Where the Board is satisfied that

(a) a majority of the employers ascertained in accordance with clause (2)(a) has voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and

(b) such majority of employers employed a majority of the employees ascertained in accordance with clause (2)(c),

the Board may declare the accreditation of the employers' organization revoked.

(4) Upon an application under subsection (1), when the employers' organization informs the Board that it does not desire to continue to represent the employers in the unit of employers, the Board may declare the accreditation of the employers' organization revoked.

(5) Upon the Board making a declaration under subsection (3) or (4), all rights, duties and obligations of the employers' organization under this Act and under any unexpired collective agreement revert to the individual employers represented by the employers' organization. R.S., c. 475, s. 101; 2010, c. 37, s. 156.

Supply of employees during strike or lockout

135 No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lockout and, where any such agreement or understanding is entered into it is void and no such trade union or council of trade unions or person shall supply such employees to the employers. R.S., c. 475, s. 102.

NEGOTIATION

Commencement of bargaining and mandatory vote bargaining

136 (1) Where notice to commence collective bargaining has been given by a trade union, council of trade unions, employer or accredited employers' organization under this Part,

(a) the certified bargaining agent and the employer or accredited employers' organization shall, without delay but in any case within five clear days after notice was given, or such further time

as the parties may agree, meet and commence or cause authorized representatives to meet and commence to bargain collectively; and

(b) the employer shall not, without consent by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until

(i) a new collective agreement has been concluded,

(ii) 90 days have elapsed from the date of receipt of the notice to commence collective bargaining, in the case of the concluding of a first collective agreement between the parties, or

(iii) the day following the termination date of the collective agreement being renegotiated in the case of the renegotiation of an existing agreement.

(2) Sections 43 and 115 apply to any failure to comply with this Section as if it were a failure to comply with Section 42.

(3) Notwithstanding any other provision of this Act or the regulations, before the commencement of a strike, but subsequent to the date on which the report of the conciliation officer was made to the Minister, a vote of the employees must be taken as to the acceptance or rejection of the offer of the employer last received in conciliation by the trade union in respect of all matters remaining in dispute between the parties, and the trade union may include any additional proposals communicated to them by the employer prior to the taking of the vote.

(4) The taking of a vote, or the holding of a vote, pursuant to subsection (3) does not abridge or extend any time limits or periods provided for in this Act.

(5) A vote to ratify a proposed collective agreement taken by a trade union must be by secret ballot.

(6) A vote to lockout or a vote to ratify a proposed collective agreement by an accredited employers' organization must be by secret ballot.

(7) Notwithstanding any other provision of this Act or the regulations, before the commencement of a lockout, but subsequent to the date on which the report of the conciliation officer was made to the Minister, a vote of the employers in the accredited employers' organization must be taken as to the acceptance or rejection of the offer of the trade union last received in conciliation by the employers' organization in respect of all matters remaining in dispute between the parties and the employers may include any additional proposals communicated to them by the trade union prior to the taking of the vote.

(8) The taking of a vote, or the holding of a vote, pursuant to subsection (7) does not abridge or extend any time limits or periods provided for in this Act. R.S., c. 475, s. 103; 2010, c. 37, s. 157.

CONCILIATION

Conciliation officer instructed to confer with parties

137 Where a notice to commence collective bargaining has been given under this Part and either party requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to make a collective agreement or a renewal or revision thereof, or in any other case in which, in the opinion of the Minister, it is advisable to do so, the Minister may instruct a conciliation officer to confer with the parties engaged in collective bargaining. R.S., c. 475, s. 104.

STRIKES

Restrictions on strike or lockout

138 (1) No employee shall strike and no trade union or council of trade unions shall declare or authorize a strike of employees and the employer or employers' organization shall not declare or cause a lockout of employees until

(a) the trade union or council of trade unions is entitled on behalf of the employees by notice under this Act to require the employer to commence collective bargaining;

(b) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and two days have elapsed from the date on which the report of the conciliation officer was made to the Minister;

(c) either

(i) 90 days have elapsed from the date of receipt of the notice to commence collective bargaining, in the case of bargaining for a first collective agreement between the parties to the dispute, or

(ii) the termination date of the collective agreement being renegotiated has passed, in the case of the renegotiation of an existing agreement; and

(d) in the case of a collective agreement falling within a sector for which there is an accredited employers' organization, Section 139 has been complied with.

(2) No employee shall strike and no trade union or council of trade unions shall declare or authorize a strike of employees, and the employer or employers' organization shall not declare or cause a lockout of employees more than six months after the date upon which the times provided by clause (1)(c) or (d) expired, unless either party has thereafter requested conciliation services in accordance with Section 137 and 90 days have elapsed after the request.

(3) Notwithstanding anything contained in this Act,

(a) no person shall declare or authorize a strike and no employee shall strike until after a secret vote, conducted after the time provided in clause (1)(b), by ballot of employees in the unit affected as to whether to strike or not to strike has been taken and the majority of such employees have voted in favour of a strike; and

(b) no person shall declare or authorize a strike or lockout and no employee shall strike until 48 hours after receipt by the Minister of a notice of strike or lockout. R.S., c. 475, s. 105.

Further restrictions on strike or lockout

139 (1) Notwithstanding any other provision of this Act but subject to subsection (2), no strike or lockout shall take place in a sector for which there is an accredited employers' organization unless

(a) in the case of a strike,

(i) any three or more trade unions in the appropriate accredited unit vote for a strike and maintain a withdrawal of services, and

(ii) trade union members entitled to strike withdraw their services from all jobs then being worked in that sector; or

(b) in the case of a lockout,

(i) the accredited employers' organization votes to lockout any three or more trade unions in the appropriate accredited unit and maintain such lockout, and

(ii) employers entitled to lockout, lockout all trade union members affected from all jobs then being worked in that sector.

(2) Where collective agreements are reached with all except two or fewer trade unions, no strike or lockout is permitted except that any trade union that has not concluded a collective agreement may strike or remain on strike until a collective agreement is concluded or 21 days have elapsed from the date on which collective agreements have been concluded with all except two or fewer trade unions, whichever event first occurs.

(3) Where collective agreements have not been concluded and a return to work is required pursuant to subsection (2), the trade union or trade unions and the employers' organization shall within seven days of the return to work appoint a construction industry conciliation board, whose members are knowledgeable in the construction industry, consisting of one member appointed by the trade union or trade unions, one member appointed by the employers' organization and a third member, who is the chair, appointed by the two members so appointed.

(4) Where either party fails to appoint a member, the Minister shall appoint a member to fill the vacancy.

(5) Where the two members of the construction industry conciliation board fail to agree on the appointment of a chair, the Minister shall appoint a chair.

(6) The construction industry conciliation board shall conduct a hearing and is empowered, in the absence of an agreement, to impose a binding settlement of all outstanding issues in all collective agreements that have not been concluded between the accredited employers' organization and the trade union or trade unions, such settlement to be consistent with settlements already concluded in the

current round of negotiations and with due consideration to historic relationships existing in the construction industry for that trade union or trade unions.

(7) Each of the parties to a conciliation pursuant to this Section shall pay the fees and expenses of the member appointed to the construction industry conciliation board by that party and each of the parties shall pay one half of the fees and expenses of the chair of the board. R.S., c. 475, s. 106; 2000, c. 4, s. 83.

ARBITRATION IN CONSTRUCTION INDUSTRY

Arbitration required

140 (1) Notwithstanding Sections 50 and 51 and any provision in a collective agreement, where an employer or an employers' organization enters a collective agreement, any dispute or difference between the parties to the collective agreement, including the persons bound by the collective agreement, relating to or involving

(a) the interpretation, meaning, application or administration of the collective agreement or any provision of the collective agreement;

(b) a violation or an allegation of a violation of the collective agreement;

(c) working conditions; or

(d) a question whether a matter is arbitrable,

must be submitted for final settlement to arbitration in accordance with this Section in substitution for any arbitration or arbitration procedure provided for in the collective agreement.

(2) Where a dispute or difference arises between the parties to a collective agreement to which this Section applies during the period from the date of its termination to the date the requirements of Section 138 have been met, this Section applies to the settlement of the dispute or difference.

(3) When a dispute or difference arises that the parties are unable to resolve, the parties to the dispute or difference shall agree by midnight of the day on which the dispute or difference arises upon the appointment of a single arbitrator to arbitrate the dispute or difference.

(4) When one of the parties advises the Minister that a dispute or difference has arisen and that the parties to the dispute or difference have failed to comply with subsection (3), the Minister may appoint an arbitrator.

(5) Notwithstanding any other provision of this Section, the Minister may, with the written consent of the employer and the trade union or trade unions representing the employees who are represented by a trade union, appoint a person to be the arbitrator for the purpose of this Section for the term of the collective agreement or for the term mentioned in the appointment and subsections (3) and (4) do not apply.

(6) The arbitrator appointed pursuant to this Section has the powers conferred by Section 52 and, without restricting the arbitrator's power and authority, the arbitrator's decision is an order and may require

(a) compliance with the collective agreement in the manner stipulated;

(b) reinstatement of an employee in the case of a dismissal or suspension in lieu of dismissal with or without compensation.

(7) The decision of the arbitrator must be rendered within 48 hours of the time of appointment unless an extension is agreed upon by the parties.

(8) The parties to the dispute or difference are bound by the decision of the arbitrator from the time the decision is rendered and shall abide by and carry out any requirement contained in the decision.

(9) An arbitrator appointed pursuant to this Section who renders a decision in respect of a dispute or difference shall transmit a copy of the written decision to the Minister and to the parties at the same time.

(10) The employer or the employers' organization and the trade union that are parties to the collective agreement shall each pay one half of the fees of, and the expenses incurred by, an arbitrator appointed pursuant to this Section. R.S., c. 475, s. 107; 2000, c. 4, s. 84.

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CHAPTER T-16

An Act to Provide for Trails over Land and Water in Nova Scotia

Table of Contents

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

Short title

1 This Act may be cited as the *Trails Act*. R.S., c. 476, s. 1.

Purpose

2 The purpose of this Act is to

(a) establish and operate trails on Crown lands and over watercourses for recreational use and enjoyment;

(b) establish trails on privately owned lands, with the prior consent of the owners or occupiers;

(c) reduce the liability of the owner or the occupier of privately owned lands where consent is given to designate a trail;

(d) establish and operate trails, either by the Department or through agreement with persons, including municipalities, clubs, organizations and other such bodies; and

(e) provide for effective management of trails and the regulation of trail user activities to ensure quality user experiences. R.S., c. 476, s. 2.

Interpretation

3 In this Act,

"Crown land" means Crown land under the administration and control of the Department and other lands the administration and control of which is transferred to the Department;

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

"land" includes land covered with water and watercourses;

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

"municipality" means a municipality, village or service commission as defined in the *Municipal Government Act*;

"peace officer" includes a member of the Royal Canadian Mounted Police, a police officer appointed by a regional municipality, town or municipality of a county or district and a conservation officer as defined in the *Crown Lands Act*, the *Forests Act* and the *Wildlife Act*;

"recreational waterways program" means a program established by Section 10;

"special management zones" means zones established pursuant to Section 8;

"trail" means a trail designated by the Governor in Council for recreational purposes pursuant to this Act;

"vehicle" means any vehicle propelled or driven otherwise than by muscular power, whether or not the vehicle is registered pursuant to the *Motor Vehicle Act*, and includes an airplane;

"vessel" means a means of conveyance of a kind used on water and includes any accessory to the vessel;

"watercourse" means watercourse as defined in the *Environment Act*. R.S., c. 476, s. 3.

Designation of trail

4 **(1)** The Governor in Council, upon the recommendation of the Minister, may designate a trail over Crown land or, with the written consent of the landowner or occupier, over privately owned land.

(2) When the Governor in Council designates a trail pursuant to subsection (1), the Minister shall

(a) publish, in the Royal Gazette and in a newspaper circulating in the county or counties where the trail is located, a notice containing a plan and general description of the land or watercourse affected sufficient to identify the land to the public;

(b) deposit a copy of the plan and general description in the office of the registrar of deeds for the registration district where the trail is situate;

(c) give notice to the owner or occupier of any privately owned land, if the owner is known, by serving upon the owner or by mailing by registered post to the owner at the owner's last known

address, a notice containing a plan and general description of the trail; and

(d) post signs at the usual points of access to the trail indicating that the land or watercourse is a trail.

(3) Evidence that a sign has been posted is prima facie proof that a sign has been posted pursuant to clause (2)(d).

(4) A general description and plan of a trail appearing to be certified by the Minister or Registrar of Crown lands must be received as evidence without proof of signature and the designation of land or a watercourse on a plan as a trail is prima facie proof that the land or watercourse so designated is a trail. R.S., c. 476, s. 5.

Acquisition of land

5 **(1)** For the purpose of establishing, maintaining, operating or obtaining access to a trail, the Minister may acquire by gift or, with the approval of the Governor in Council, purchase, land or an interest therein.

(2) Subsection (1) may include the acquisition of land or an interest therein along a trail for picnic, camping, boat launches or other purposes. R.S., c. 476, s. 6.

Land set aside for trail

6 Subject to any other enactment, the Minister may set aside Crown land for the purpose of a trail. R.S., c. 476, s. 7.

Designation as trail

7 To provide for canoeing, boating and other recreational activities on watercourses, the Governor in Council may designate such areas as a trail. R.S., c. 476, s. 8.

Special management zone

8 To enhance the physical appearance of the forests along a trail, to promote the long-term diversity and stability of forest ecosystems and to provide suitable habitat for wildlife, the Minister may develop special management zones on Crown land adjacent to a trail and establish similar guidelines to be developed and integrated into ongoing forest management programs to be recommended for use on privately owned lands that adjoin a trail. R.S., c. 476, s. 9.

Studies, research and educational programs

9 **(1)** The Minister may undertake studies and carry out research on land and watercourses in the Province to identify and evaluate their potential as outdoor and recreational heritage resources.

(2) In an effort to provide public awareness of trail opportunities, the Minister may promote educational programs and encourage the exchange of information between the public and private sectors, produce promotional literature and materials or undertake promotional programs. R.S., c. 476, s. 10.

Recreational waterways program

10 To encourage public use and enjoyment of select rivers and waterways, a recreational waterways program is established, which will

(a) provide for recreational access to select waterways; and

(b) provide for maintenance of the natural quality and character of those waterways. R.S., c. 476, s. 11.

Effect of consent upon owners or occupiers

11 (1) Where the owner or occupier of privately owned land gives written consent to the designation of that land as a trail, such consent must be filed in the office of the registry of deeds for the registration district where the land is located and the consent is binding upon

(a) the owner and all subsequent owners of the land or any estate or interest therein; or

(b) the occupier of the land and the successors of the occupier.

(2) Notwithstanding subsection (1), where a consent is stated to be for a specified period of time, including a term in perpetuity, such consent for the time specified is binding upon

(a) the owner and all subsequent owners of the land or any estate or interest therein; or

(b) the occupier of the land and the successors of the occupier.

(3) Where a consent referred to in subsection (1) is given, no compensation is payable unless expressly stated otherwise in the consent. R.S., c. 476, s. 12.

Responsibilities of Minister

12 The Minister is responsible for the general supervision, construction, administration, operation and maintenance of trails pursuant to this Act. R.S., c. 476, s. 13.

Agreements

13 (1) For the purpose of this Act, the Minister may enter into agreements with

(a) the Government of Canada;

(b) a province;

(c) a municipality;

(d) an agency of the Government of Canada, a province or a municipality;

(e) a person;

(f) an organization, whether incorporated or not; or

(g) any combination thereof,

for any purpose coming within the provisions of this Act or the regulations.

(2) Without restricting the generality of subsection (1), the Minister may enter into an agreement with the owner or occupier of land adjacent to a trail to manage or preserve that land so that it complements the trail. R.S., c. 476, s. 14.

Identification by Minister and restrictions on use of trails

14 (1) The Minister may take such measures as the Minister considers necessary to identify the location of a trail and mark the boundaries.

(2) The Minister may, by notice, determine the recreational use or activity on a trail or a part thereof.

(3) Where notice in writing is given by means of a sign, the sign must be posted so that it is clearly visible in daylight and normal conditions from the approach to each usual point of access to the trail to which it applies.

(4) Evidence that a sign has been posted is prima facie proof that the sign has been posted pursuant to this Section.

(5) No person may travel on a trail or a portion thereof which is closed.

(6) No person may, while using a trail, engage in an activity that is prohibited by notice or engage in an activity other than one that is permitted.

(7) No person may use that part of a trail through a forest where the Minister has, pursuant to the *Forests Act*, closed the forests to travel. R.S., c. 476, s. 15.

Retention of traditional uses of trail

15 The designation by the Governor in Council of a trail or the prescribing by the Governor in Council of the recreational use to which a trail or parts thereof may be put does not restrict traditional or prior uses of the trail, unless prohibited by the Minister. R.S., c. 476, s. 16.

Effect of consent upon Minister and public

16 (1) Where a consent referred to in Section 11 so authorizes, upon the designation of the land referred to in the consent as a trail,

(a) a person authorized by the Minister may construct, administer, operate and maintain the trail for public recreational use; and

(b) a person may enter upon and make use of the trail for recreational purposes in accordance with this Act and the regulations.

(2) Notwithstanding any enactment, upon the designation of a trail, a person making lawful use of such trail for recreational purposes pursuant to this Act and the regulations, is deemed not to be trespassing upon the land to the extent of such use. R.S., c. 476, s. 17.

Assumption of risk

17 (1) In this Section, an owner or occupier includes the owner of an easement, right-of-way or irrevocable licence over the trail which may form part of the trail.

(2) A user of a trail voluntarily assumes all risks that may be encountered on the land when using a trail, whether the person is on the trail or not.

(3) Subject to subsection (4), where land has been designated as a trail, the owner or occupier of land, including the Crown, together with their agents, employees and servants, owes no duty of care towards a person who is using the land or that person's property whether that person is actually on the trail or not.

(4) The owner or occupier of land owes a duty of care to users of a trail not to create a danger with deliberate intent of doing harm or damage to the person or the person's property. R.S., c. 476, s. 18.

Arrest and detention

18 (1) A peace officer may arrest a person for an offence pursuant to this Act or the regulations and, where the offence is committed on a trail, under any other enactment, and detain that person in custody after the arrest if, on reasonable and probable grounds, the peace officer believes that the arrest and detention is necessary to

(a) prevent the continuation or repetition of the offence; or

(b) establish the identity of the person.

(2) A peace officer making an arrest without warrant shall, with reasonable diligence, take the person arrested before a judge of the Provincial Court to be dealt with according to law. R.S., c. 476, s. 19.

Search and seizure

19 (1) A peace officer may search without warrant a vehicle, vessel or other receptacle where the peace officer has reason to believe that it contains anything or is being used in connection with the commission of an offence pursuant to this Act or the regulations or any other enactment, if the offence is committed on a trail, and the peace officer may seize the vehicle, vessel or receptacle.

(2) A peace officer may exercise all powers of a peace officer and is a peace officer within the meaning of any enactment for the protection of peace officers. R.S., c. 476, s. 20.

Order of prohibition

20 (1) Where the Minister or a peace officer has reasonable and probable grounds to believe that a person has violated or is about to violate a provision of this Act or the regulations or that the entry upon or remaining within a trail by a person may be detrimental to the landowner or occupier or to the safety of other trail users or their enjoyment of the trail and its facilities, the Minister, or any person authorized to act on behalf of the Minister, may, without notice or hearing, issue an order in writing prohibiting that person from entering upon or being within any trail specified in the order for a period specified therein.

(2) Every person having knowledge of an order made pursuant to subsection (1) shall observe that order and, in the event the person is within a trail when the order is made, shall forthwith leave the trail. R.S., c. 476, s. 21.

Prohibitions

21 No person shall, while on a trail,

(a) be impaired by alcohol or drugs;

(b) act in a noisy or disorderly manner;

(c) create a disturbance;

(d) pursue a course of conduct that is detrimental to the safety of other trail users or their enjoyment of the trail and its facilities;

(e) wilfully destroy trail property and other natural resources found on or adjacent to a trail;

(f) dump or deposit garbage or other material on or from a trail other than in a receptacle so provided;

(g) engage in any other activity prohibited by the regulations. R.S., c. 476, s. 22.

Additional penalty

22 In addition to a penalty imposed pursuant to the *Summary Proceedings Act*, the court may order a person convicted pursuant to this Act or the regulations to restore the land as nearly as possible to the condition it was in before the offence was committed and pay an amount equal to twice the market value of trail property that was damaged or destroyed. R.S., c. 476, s. 23.

Regulations

23 **(1)** The Governor in Council may make regulations

(a) prescribing the recreational uses to which trails or parts thereof may be put;

(b) prohibiting uses to which trails or parts thereof may be put;

(c) providing a detailed set of rules to allow orderly recreational use of trails;

(d) providing standards for the design, construction, length, width, surface type, maintenance, operation and administration of trails;

(e) providing safety, health and environmental standards with respect to trails;

(f) prescribing fees or a schedule of fees that may be charged to users of trails;

(g) providing for the collection of fees;

(h) respecting the management or preservation of an area adjacent to a trail;

(i) providing for the enforcement of this Act and any rules and regulations made with respect to trails;

(j) providing for a recreational waterways program;

(k) prescribing a minimum penalty of not less than $50 and a maximum penalty of not more than $1,000 for offences pursuant to the regulations;

(l) defining any word or expression used in this Act and not defined in this Act;

(m) generally with respect to all matters relating to design, establishment, construction, operation and maintenance of trails so as to minimize any conflicts with respect to the use adjoining lands may be put.

(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. 476, s. 24.

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CHAPTER T-17

An Act Respecting Trust and Loan Companies

Table of Contents

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

Short title

1 This Act may be cited as the *Trust and Loan Companies Act*. 1991, c. 7, s. 1.

Interpretation

2 **(1)** In this Act,

"accountant" means a person licensed pursuant to the *Chartered Professional Accountants Act*;

"affairs" means the relationships among a body corporate, its affiliates and the shareholders, directors and officers of those bodies corporate but does not include the business carried on by those bodies corporate;

"affiliate" means an affiliated body corporate within the meaning of subsection (2);

"annual financial statement" means the statement referred to in subsection 140(3);

"associate", when used to indicate a relationship with any person, means

(a) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing or a currently exercisable option or right to purchase those shares or convertible securities;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which that person serves as a trustee or in a similar capacity;

(d) a spouse or child of that person; and

(e) a relative of that person or of that person's spouse if that relative has the same residence as that person;

"auditor" means an accountant and includes a partnership of accountants;

"bank" means a bank named in Schedule I or II to the *Bank Act* (Canada);

"bank mortgage subsidiary" means a wholly-owned, except for any directors' qualifying shares, subsidiary of a bank that receives deposits that are guaranteed by the bank and whose investments in mortgages equal at least 85% of its deposits;

"beneficial interest" means an interest arising out of the beneficial ownership of securities;

"beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

"body corporate" means a body corporate with or without share capital, wherever or however incorporated;

"branch" means an office of a company where it offers services to the public or where it provides fiduciary services;

"capital base" means the shareholders' equity of a company calculated in the manner prescribed by the regulations;

"commercial or business loan" includes a loan, investment and other financing in the form of leasing, guarantees, letters of credit or letters of guarantee, but does not include

(a) assets prescribed by regulations made pursuant to Section 50;

(b) loans that are fully secured by assets prescribed by regulations made pursuant to Section 50;

(c) letters of credit, letters of guarantee, and guarantees that are fully secured by assets prescribed by regulations made pursuant to Section 50;

(d) fully secured mortgage loans if the outstanding amount of the loan, together with any prior or equally ranking encumbrances and accrued interest, is either not in excess of 75% of the value of the property at the date of the mortgage or the excess is insured;

(e) debt securities and preferred shares that are widely distributed and common shares;

(f) loans to, loans fully secured by securities issued or guaranteed by, or securities issued or guaranteed by any foreign government that is a member of the Organization for Economic Cooperation and Development, or any of their agencies;

(g) the aggregate of loans, leasing, conditional sales contracts, letters of credit, guarantees, letters of guarantee and other financing to an individual in an amount of $250,000 or less;

(h) investments in equity, loans or other commitments that are subordinate to unsecured debt in subsidiaries or associates; and

(i) investments in real estate;

"common trust fund" means a fund maintained by a trust company in which money, other than deposits, belonging to various estates and trusts in its care is combined for the purpose of facilitating investment;

"company" means both a provincial and an extra-provincial company unless expressly restricted to a provincial company or an extra-provincial company, as the case may be, or unless the context otherwise requires and "licensed company" means both a provincial and an extra-provincial company licensed pursuant to this Act, unless expressly restricted to a licensed provincial company or a licensed extra-provincial company, as the case may be, or unless the context otherwise requires;

"corporation" means a body corporate that is not a loan company, trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor's estate or a mentally incompetent person's estate;

"Court" means the Supreme Court of Nova Scotia;

"debt obligation" means a bond, debenture, note or other evidence of indebtedness, whether secured or unsecured;

"deposit", in relation to a licensed provincial company, means money received by it pursuant to subsection 38(1) or (2) and includes a deposit within the meaning of the *Canada Deposit Insurance Corporation Act* and, in relation to a licensed extra-provincial company, means money received by it within the meaning of those subsections and includes a deposit within the meaning of that Act;

"director" means a person occupying the position of director of a body corporate by whatever name called;

"extra-provincial company" means a loan company or trust company incorporated under the laws of Canada or a province of Canada other than Nova Scotia or a body corporate authorized pursuant to those laws to execute the office of executor, administrator, trustee or guardian of a minor's estate or a mentally incompetent person's estate;

"improved real estate" means real estate

(a) on which there exists a building used or capable of being used for residential, financial, commercial, industrial, educational, professional, institutional, religious, charitable or recreational purposes;

(b) on which a building capable of being used for residential, commercial, financial, industrial, professional, institutional, educational, religious, charitable or recreational purposes is being or is about to be constructed;

(c) on which bona fide farming operations are being conducted; or

(d) consisting of vacant land within a municipality that is restricted by law in its use to commercial, industrial or residential purposes by zoning or otherwise;

"individual" means a natural person;

"instrument of incorporation" means original or restated letters patent of incorporation, letters patent of amalgamation, letters patent of continuance and any supplementary letters patent issued and any special Act or charter incorporating a body corporate and any amendments to the special Act or charter;

"lending value", in relation to real estate, means the market value of the real estate reduced by those amounts that are attributable to contingencies or assumptions the occurrence of which is remote and that have increased the market value of the real estate, multiplied by the lesser of

(a) 75%; and

(b) such percentage less than 75% as the company has determined in accordance with its prudent investment standards to be appropriate in the circumstances;

"licensed extra-provincial company" means an extra-provincial company licensed pursuant to this Act;

"licensed provincial company" means a provincial loan company or provincial trust company licensed pursuant to this Act;

"licensed provincial loan company" means a provincial loan company licensed as a loan company pursuant to this Act;

"licensed provincial trust company" means a provincial trust company licensed as a trust company pursuant to this Act;

"licensed trust company" means a trust company or any other body corporate licensed as a trust company pursuant to this Act;

"loan company" means a body corporate incorporated or operated for the purpose of receiving deposits from the public and lending or investing those deposits, but does not include a bank, a bank mortgage subsidiary, an insurance corporation, a trust company or a credit union incorporated pursuant to the *Credit Union Act;*

"market value" means the amount in terms of cash that would probably be realized for property in an arm's length sale in an open market under conditions requisite to a fair sale, the buyer and seller each acting knowledgeably and willingly;

"Minister" means the Minister of Finance and Treasury Board;

"mortgage" includes a charge or hypothec;

"mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

"officer" means the chair and any vice-chair of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, any other person designated an officer by bylaw or by resolution of the directors or any other individual who performs functions for the company similar to those normally performed by an individual occupying any of those offices;

"ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted at a meeting in respect of that resolution;

"provincial company" means a loan company or trust company incorporated or continued pursuant to this Act and includes a loan company, trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor's estate or a mentally incompetent person's estate, incorporated pursuant to a special Act of the Legislature on or after January 1, 1992, whether or not it is licensed pursuant to this Act;

"provincial loan company" means a loan company referred to in the definition of "provincial company";

"provincial trust company" means a trust company referred to in the definition of "provincial company";

"real estate" includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share of them, and any estate, right or interest in them but does not include hydrocarbons or minerals in or under the ground;

"redeemable share" means a share issued by a company

(a) that the company may purchase or redeem on the demand of the company; or

(b) that the company is required to purchase or redeem at a specified time or upon the demand of a shareholder;

"registered office" means

(a) the office of a provincial company located at the place specified in its instrument of incorporation; and

(b) in the case of an extra-provincial company, means the office located in the jurisdiction of incorporation of that extra-provincial company at the address specified in the charter or other incorporation document or documents of the extra-provincial company required to be filed by the laws of the incorporator's jurisdiction and includes the head office;

"restricted party" means a person who, with respect to a company is

(a) an officer or director of the company;

(b) a beneficial holder, directly or indirectly, of 10% or more of any class of voting shares of the company;

(c) a beneficial holder of 10% or more of any class of non-voting shares of the company;

(d) a beneficial holder, directly or indirectly, of 10% or more of any class of voting shares of an affiliate of the company;

(e) an affiliate of the company other than a subsidiary of the company;

(f) an employee of the company;

(g) an auditor of the company, if the auditor is a sole practitioner;

(h) a partner in the partnership of accountants that are the company's auditors, if the partner is actually engaged in auditing the company;

(i) a director or officer of a body corporate described in clause (b) or (c);

(j) a spouse or child of an individual described in clause (a), (b), (c) or (d);

(k) any relative of an individual referred to in clause (a), (b), (c) or (d) or the spouse of that individual if that relative has the same residence as that individual or the spouse of that individual;

(l) a body corporate in which a person described in clause (a) or (b) is the beneficial holder, directly or indirectly, of 10% or more of any class of voting shares;

(m) a body corporate in which a person described in clause (c), (f), (g), (h), (i) or (j) is the beneficial holder, directly or indirectly, of more than 50% of any class of voting shares;

(n) a person designated pursuant to Section 181 as a restricted party;

"security" means, except where the context otherwise requires, a share of any class of shares or a debt obligation of a body corporate and includes a certificate evidencing such a share or debt obligation and includes a warrant but does not include a deposit or any instrument evidencing a deposit in a company;

"send" includes deliver;

"series", in relation to shares, means a division of a class of shares;

"shareholder" includes the personal representative of a shareholder;

"special resolution" means a resolution passed by not less than two thirds of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution;

"spouse" means a person to whom an individual of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage;

"stated capital" is the aggregate amount of capital in all stated capital accounts;

"subordinated note" means a note issued pursuant to Section 41;

"Superintendent" means the Superintendent of Trust and Loan Companies appointed pursuant to Section 13 and includes a deputy superintendent appointed pursuant to that Section to carry out the duties and exercise the powers of the Superintendent pursuant to this Act;

"total assets" means the assets of a company calculated in the manner prescribed by the regulations and includes cash and securities earmarked and set aside pursuant to subsection 38(5);

"trust company" means a body corporate incorporated or operated for the purpose of offering its services to the public to act as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee or guardian of a minor's estate or a mentally incompetent person's estate and for the purpose of receiving deposits from the public and of lending or investing those deposits;

"voting share" means a share to which is attached one or more votes that may be cast to elect directors of a body corporate under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing.

(2) For the purpose of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and

(b) where two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

(3) For the purpose of this Act, a body corporate is deemed to be controlled by a person if

(a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held other than by way of security only by or for the benefit of that person; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(4) A body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

(5) For the purpose of this Act, a body corporate is deemed to be a subsidiary of another body corporate if

(a) it is controlled by

(i) that other,

(ii) that other and one or more bodies corporate each of which is controlled by that other, or

(iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary within the meaning of clause (a) of a body corporate that is that other's subsidiary.

(6) For the purpose of this Act, a person is deemed to own beneficially securities that are beneficially owned by a body corporate controlled by the person or by an affiliate of such a body corporate.

(7) For the purpose of this Act, where a person or group of persons owns beneficially, directly or indirectly, shares of a body corporate, that person or group of persons is deemed to own beneficially that proportion of shares of every other body corporate that is owned beneficially, directly or indirectly, by the first-mentioned body corporate, that is equal to the proportion of shares of the first-mentioned body corporate that is owned beneficially, directly or indirectly, by that person or group of persons. 1991, c. 7, s. 2.

Application of Act

3 This Act applies,

(a) to every provincial company;

(b) subject to Section 4, to every loan company, trust company and every other body corporate authorized to execute the office of executor, administrator, trustee, guardian of a minor's estate or a mentally incompetent person's estate, incorporated pursuant to a special or general Act of the Legislature before January 1, 1992; and

(c) subject to Section 8, to every extra-provincial company. 1991, c. 7, s. 3.

Requirement for body corporate referred to in clause 3(b)

4 **(1)** Every body corporate referred to in clause 3(b) shall, within one year after January 1, 1992,

(a) apply for letters patent of continuance in accordance with Section 30;

(b) subject to Sections 5 and 6, apply to be continued in another jurisdiction; or

(c) apply for a certificate of continuance pursuant Section 33 as if it were a provincial company and that Section applies with necessary changes to that application.

(2) A body corporate referred to in clause 3(b) and for which letters patent of continuance, a certificate referred to in subsection 5(2) or a certificate of discontinuance has not been issued pursuant to this Act within one year after January 1, 1992, is dissolved upon the expiry of that period and may not be revived and the Superintendent may issue a certificate acknowledging or confirming the dissolution, which certificate must be dated the date of dissolution.

(3) When a body corporate is dissolved pursuant to subsection (2), Sections 176 to 179 apply with necessary changes as if the body corporate were a provincial company pursuant to those Sections. 1991, c. 7, s. 4.

Continuance in another jurisdiction

5 **(1)** Every body corporate referred to in clause 3(b) that was not issued a certificate to commence business pursuant to the *Trust Companies Act* immediately before January 1, 1992, may, with the consent of the Superintendent, apply to the appropriate official or public body of any other jurisdiction requesting that it be continued as if it had been incorporated pursuant to the laws of that jurisdiction.

(2) Upon receipt of notice satisfactory to the Superintendent that a body corporate referred to in subsection (1) has been continued pursuant to the laws of another jurisdiction, the Superintendent shall file the notice and shall issue a certificate acknowledging or confirming that continuance outside the Province.

(3) This Act and any other Act of the Legislature cease to apply to the body corporate on the date shown in the certificate issued pursuant to subsection (2), which must be dated the date upon which it is continued pursuant to the laws of another jurisdiction.

(4) Notice of the issue of the certificate referred to in subsection (2) must be published by the Superintendent in the Royal Gazette. 1991, c. 7, s. 5.

Continuance of clause 3(b) company pursuant to Section 32

6 Every body corporate referred to in clause 3(b) that was issued a certificate to commence business pursuant to the former *Trust Companies Act* immediately before January 1, 1992, may apply to be continued pursuant to the laws of Canada or a province of Canada other than Nova Scotia, in accordance with Section 32, as if it were a provincial company and that Section applies with necessary changes to that application. 1991, c. 7, s. 6.

Act does not apply

7 This Act, except where it is otherwise expressly provided, does not apply to a body corporate

(a) incorporated pursuant to the *Co-operative Associations Act* or the *Credit Union Act*; or

(b) required to be licensed as an insurer pursuant to the *Insurance Act*. 1991, c. 7, s. 7.

Extra-provincial company

8 An extra-provincial company is subject to Sections 2 to 11 and Sections 193 to 211 and such other provisions of this Act as may be specified in this Act. 1991, c. 7, s. 8.

Applicability of Companies Act

9 The *Companies Act* does not apply to a provincial company to which this Act applies. 1991, c. 7, s. 9.

No revival of certain companies

10 No company that has had its registration revoked pursuant to the *Companies Act*, is wound up pursuant to the *Companies Winding Up Act* or dissolved pursuant to this Act may be revived pursuant to this Act. 1991, c. 7, s. 10.

Conflict with instrument or other Act

11 Where there is a conflict between this Act or the regulations and the instrument of incorporation of a provincial company or of any other Act of the Legislature in relation to a provincial company, this Act or the regulations, as the case may be, prevail. 1991, c. 7, s. 11.

Supervision of Act

12 The Minister has the general supervision and management of this Act and the regulations. 1991, c. 7, s. 12.

Superintendent of Trust and Loan Companies

13 **(1)** The Governor in Council shall appoint a person in the public service to be the Superintendent of Trust and Loan Companies and may appoint one or more deputy superintendents to carry out the purpose of this Act.

(2) The Minister or the Superintendent may authorize a deputy superintendent to carry out or exercise any duties or powers that may be carried out or exercised by the Superintendent pursuant to this Act.

(3) Notice of the appointment of the Superintendent and deputy superintendents, if any, must be published in the Royal Gazette. 1991, c. 7, s. 13.

Issue letters patent

14 **(1)** On application by one or more persons, the Minister may, subject to subsection (2) and with the approval of the Governor in Council, issue letters patent incorporating a loan company or trust company.

(2) The Minister shall not issue letters patent pursuant to subsection (1) unless

(a) in the case of a loan company, one or more responsible persons have subscribed in good faith for at least $3,000,000 of common shares;

(b) in the case of a trust company, one or more responsible persons have subscribed in good faith for shares of the company that, when issued and added to the stated capital account and the capital

base, will in both cases equal or exceed $5,000,000 of which at least $3,000,000 must be in common shares;

(c) it is shown to the satisfaction of the Minister that

(i) there exists a public benefit and advantage for establishing a loan company or trust company or an additional loan company or trust company,

(ii) the proposed management is fit, both as to character and as to competence, to manage a loan company or trust company,

(iii) each person subscribing for 10% or more of any class of shares of the proposed company can demonstrate the adequacy of that person's financial resources and is fit as to character to own 10% or more of that class of shares,

(iv) each proposed director is fit, both as to character and as to competence, to be a director of a loan company or trust company,

(v) the proposed plan of operations as a loan company or trust company is feasible, and

(vi) the proposed company intends to offer to the public, initially or within a reasonable time after incorporation, the service set out in the application for incorporation.

(3) Notwithstanding clauses (2)(a) and (b), the Minister may, with the approval of the Governor in Council, alter the stated capital account and capital base requirements set out in those clauses.

(4) On application by a provincial company, duly authorized by special resolution, the Minister may, subject to subsections (5) and (6) and with the approval of the Governor in Council, issue supplementary letters patent

(a) in the case of a provincial loan company, to continue it as a trust company; or

(b) in the case of a provincial trust company, to continue it as a loan company.

(5) The Minister shall not issue supplementary letters patent pursuant to clause (4)(a) or (b) unless the company meets the requirements for incorporating a loan or trust company, as the case may be, set out in subsection (2).

(6) The Minister shall not issue supplementary letters patent pursuant to clause (4)(b) unless it is shown to the Minister's satisfaction that arrangements have been made to transfer to another licensed trust company the business in relation to which the provincial trust company acted as a fiduciary and those arrangements are adequate to protect the persons in relation to which the provincial trust company acted in a fiduciary capacity.

(7) Subsection (6) does not apply so as to require a trust company that has applied to continue as a loan company to transfer money received by it as deposits.

(8) Supplementary letters patent issued pursuant to clause (4)(a) or (b) may effect any change in the provisions of the existing instrument of incorporation of the provincial company

(a) that could be made pursuant to subsection (9); and

(b) that was approved by the special resolution of the company authorizing the application for supplementary letters patent.

(9) On application by a provincial company, duly authorized by a special resolution and subject to Section 134, the Minister may issue supplementary letters patent to add, change or remove any provision that is permitted by this Act to be or that is set out in the instrument of incorporation of a company, including, without limiting the generality of the foregoing, to

(a) change its name;

(b) change the place in which its registered office is situated;

(c) add, change or remove any restriction upon the business or businesses that the company may carry on;

(d) increase or decrease the number, or minimum or maximum number, of directors;

(e) add, change or remove restrictions on the issue or transfer of shares of any class or series. 1991, c. 7, s. 14.

Application for letters patent

15 (1) An application for letters patent or supplementary letters patent pursuant to Section 14 must be filed with the Superintendent.

(2) No application for supplementary letters patent referred to in subsection 14(4) or (9) may be made, unless it has been authorized by a special resolution of the provincial company and the application has been filed with the Superintendent within three months after the time of the passing of the special resolution.

(3) The directors of a company may, if authorized by the shareholders in the special resolution authorizing an application referred to in subsection (2), abandon the application without further approval of the shareholders.

(4) An application for letters patent referred to in subsection 14(1) must set out

(a) the name of the company and the place in the Province where the registered office is to be situated;

(b) the classes and any maximum number of shares that the company is authorized to issue and any maximum aggregate amount for which such shares may be issued, and

(i) where there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares,

(ii) where a class of shares may be issued in series, the authority given to the directors to fix the number of shares

in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

(c) where the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;

(d) the full name, address or residence, citizenship and occupation of

(i) each of the first or incumbent directors of the company,

(ii) every person who subscribed for 10% or more of any class of shares of the company,

(iii) each of the applicants;

(e) the number, or minimum or maximum number, of directors;

(f) the restrictions, if any, on the powers the company may exercise or the business or businesses it may carry on;

(g) evidence of the requirements for the incorporation of a loan company or trust company, as the case may be, referred to in subsection 14(2); and

(h) such further information, material or evidence as may be required by the regulations or the Superintendent.

(5) An application for supplementary letters patent referred to in clause 14(4)(a) or (b) must set out

(a) evidence of the requirements for the incorporation of a loan company or trust company, as the case may be, set out in subsection 14(2); and

(b) such further information, material or evidence as may be required by the regulations or the Superintendent,

and must be accompanied by an application for a licence pursuant to this Act as a loan company or a trust company, as the case may be, in accordance with Sections 212 to 218.

(6) An application for supplementary letters patent referred to in subsection 14(9) must set out

(a) the change in, addition to or deletion from, the existing instrument of incorporation in respect of which the application is made; and

(b) such further information, material or evidence as may be required by the regulations or the Superintendent. 1991, c. 7, s. 15.

Decision of Minister

16 (1) The decision of the Minister to issue or not to issue letters patent or supplementary letters patent is final and not subject to appeal, but nothing in this subsection prevents an applicant from making a new application.

(2) The Superintendent shall immediately notify the applicant in writing of the Minister's decision referred to in subsection (1). 1991, c. 7, s. 16.

Taxes

17 The annual taxes and taxes for letters patent of incorporation and supplementary letters patent and the taxes in respect of the functions performed by the Superintendent under this Act or the regulations are as follows:

(a) the tax for

(i) filing and processing an application for letters patent or supplementary letters patent $663.45,

(ii) letters patent of incorporation for a trust or loan company $6,634.75,

(iii) supplementary letters patent

(A) to change a company's name $663.45,

(B) to continue a provincial loan company as a trust company $2,653.90,

(C) to continue a provincial trust company as a loan company $2,653.90,

(D) to change the municipality in which the principal place of business of the company is to be located $663.45,

(E) to amalgamate two or more companies and to continue them as one company $5,307.80,

(F) to modify or alter the share structure of the company $1,326.95;

(b) the tax for processing an application for

(i) initial licensing of a company $1,326.95,

(ii) changing a loan company to a trust company or changing a trust company to a loan company $1,326.95,

(iii) changing terms, conditions and restrictions of registration $1,326.95;

(c) the annual tax for companies to be paid as of June 30th in each year

(i) where the assets of the company do not exceed $50,000,000 ..... $3,980.85,

(ii) where the assets of the company are over $50,000,000 but do not exceed $100,000,000 ..... $5,678.60,

(iii) where the assets of the company are over $100,000,000 but do not exceed $500,000,000 ..... $6,634.75,

(iv) where the assets of the company are over $500,000,000 but do not exceed $1,000,000,000 ..... $7,961.70,

(v) where the assets of the company are over $1,000,000,000 but do not exceed $5,000,000,000 ..... $10,615.60,

(vi) where the assets of the company are over $5,000,000,000 ..... $13,269.50,

(vii) in addition to the amount prescribed in subclause (vi), for every $1,000,000,000 in assets in excess of $5,000,000,000 ..... $1,326.95;

(d) the tax for revival of licence after dissolution $1,326.95;

(e) the tax for processing an application for an increase in borrowing multiple $1,326.95;

(f) the tax for a copy of a decision of the Superintendent or Appeal Board, per page (minimum fee $10) $2.65;

(g) the tax for a certificate issued by the Superintendent with respect to the licence of a company $26.50;

(h) the tax for copies of extracts from documents filed with the Superintendent, per page (minimum fee $10) $2.65;

(i) the tax for a certificate issued by the Superintendent other than the certificate referred to in clause (g) $26.50;

(j) the tax for examining and passing on applications or documents not specifically referred to in the regulations $1,326.95;

(k) the tax for an application to obtain consent of the Superintendent to the transfer of shares other than an application referred to in clause (l) $331.75;

(l) the tax for an application to obtain consent of the Superintendent to the transfer of shares if such transfer results in the change of control of the company $2,653.90;

(m) the tax for examining the Loan or Trust Register or the public file of a company, per register or file ..... $13.30.

2015, c. 6, s. 54.

Contents of letters patent of provincial company

18 **(1)** The letters patent of a provincial company must set out the information referred to in clauses 15(4)(a) to (f) and may set out any provisions not contrary to this Act that the Minister considers advisable to take into account the particular circumstances of the company being incorporated.

(2) Supplementary letters patent issued pursuant to subsection 14(4) or (9)

(a) must set out the change in, addition to or deletion from, the existing instrument of incorporation in respect of which the application was made; and

(b) may set out any provisions not contrary to this Act that the Minister considers advisable to take into account the particular circumstances of the company. 1991, c. 7, s. 17.

Notice of issue of letters patent

19 Notice of the issue of letters patent or supplementary letters patent pursuant to Section 14 must be published by the Superintendent in the Royal Gazette. 1991, c. 7, s. 18.

Effective date, first directors, etc.

20 **(1)** A provincial company comes into existence on the date shown in its instrument of incorporation.

(2) The first directors of a provincial company are those named in its original instrument of incorporation.

(3) The instrument of incorporation of a provincial company expires and ceases to be in force, except for the sole purpose of effecting the liquidation and dissolution of the company,

(a) in the case of a provincial company incorporated pursuant to this Act, at the expiration of a period of two years after the date shown in the letters patent if it does not obtain a licence pursuant to this Act within that period; and

(b) in all cases, at the expiration of a period of two years during which the company has not held a licence pursuant to this Act.

(4) Supplementary letters patent become effective on the date shown in the supplementary letters patent.

(5) No issue of supplementary letters patent pursuant to subsection 14(4) or (9) affects an existing cause of action or claim or liability to prosecution in favour of or against a company or its directors or officers or any civil, criminal or administrative action or proceeding to which a company is, or its directors or officers are, a party. 1991, c. 7, s. 19.

Name of provincial loan or trust company

21 **(1)** The words “Loan Corporation”, “Corporation de prêt”, “Loan Corp.”, “Société de prêt”, “Loan Company” or “Compagnie de prêt” must be included in the name of every provincial loan company, and the words “Trust

Corporation", "Corporation de fiducie", "Trust Corp.", "Trust Co.", "Trustco", "Trustee Corp.", "Compagnie fiduciaire", "Trustee Company" or "Société fiduciaire" must be included in the name of every provincial trust company but, notwithstanding its legal name, a company may use and may be legally designated by either the full or the abbreviated form of those words.

(2) The Superintendent may exempt a body corporate continued pursuant to this Act from the provisions of subsection (1).

(3) Subject to subsection 23(1), the instrument of incorporation may set out the name of the company in an English form, a French form, an English form and a French form or in a combined English and French form and the company may use and may be legally designated by any such form, but where the name is set out in an English form and a French form or in a combined English and French form, the company may use and may be legally designated by any one of those forms.

(4) Subject to subsection 23(1), the instrument of incorporation may, for use outside Canada, set out the name of the company in any language form and the company may use and may be legally designated by its name in any such form outside Canada.

(5) A provincial company shall, in accordance with this Section, set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the company.

(6) Subject to subsection (5), a provincial company may carry on business under or identify itself by a name other than its corporate name if it has registered a business name under the *Partnerships and Business Names Registration Act*. 1991, c. 7, s. 20.

Reservation of name

22 The Superintendent may, upon request, reserve for 90 days a name for an intended provincial company or for a provincial company about to change its name. 1991, c. 7, s. 21.

Restrictions on name

23 (1) Subject to the regulations, neither letters patent nor supplementary letters patent may be issued to a provincial company if the company has a name that

(a) is prohibited by the regulations or contains a word or expression that is prohibited by the regulations;

(b) is identical to the name of

(i) a body corporate incorporated pursuant to the laws of the Province, whether in existence or not,

(ii) an extra-provincial body corporate registered in the Province, or

(iii) a body corporate incorporated by or pursuant to an Act of the Parliament of Canada;

(c) is similar to the name of

(i) a body corporate incorporated pursuant to the laws of the Province,

(ii) an extra-provincial body corporate registered in the Province, or

(iii) a body corporate incorporated by or pursuant to an Act of the Parliament of Canada,

if the use of that name is confusing or misleading;

(d) does not meet the requirements prescribed by the regulations;

(e) in the case of a trust company, does not include "trust" or "fiducie" together with "corporation", "company", "compagnie", "limited", "limitée" or "société".

(2) Subject to this Act and the regulations, a provincial company may have a name in an English form, a French form, an English form and a French form or a combined English and French form and it may be legally designated by any such name.

(3) Where, through inadvertence or otherwise, a provincial company

(a) comes into existence or is continued with a name; or

(b) upon an application to change its name, is granted a name,

that violates this Section, the Superintendent may, after giving the company an opportunity to be heard, direct the company to change its name in accordance with subsection 14(9).

(4) When a provincial company has been directed pursuant to subsection (3) to change its name and has not within 60 days after the service of the directive to that effect changed its name to a name that complies with this Act, the Superintendent may revoke the name of the company and assign it a name and, until changed in accordance with subsection 14(9), the name of the company is thereafter the name so assigned.

(5) When a provincial company gives an undertaking to change its name and does not carry out the undertaking or dissolve within the time specified, the Superintendent may, after giving the company an opportunity to be heard, revoke the name of the company and assign it a name and, until changed in accordance with subsection 14(9), the name of the company is thereafter the name so assigned.

(6) When a person who is not a provincial company gives an undertaking to change the name under which that person carries on business and does not carry out the undertaking or cease to carry on business under that name within the time specified, the Superintendent may, after giving the company that acquired the name by virtue of the undertaking an opportunity to be heard, revoke the name of the company and assign it a name and, until changed in accordance

with subsection 14(9), the name of the company is thereafter the name so assigned. 1991, c. 7, s. 22.

Supplementary letters patent showing new name

24 When a provincial company has had its name revoked by the Superintendent and a name assigned to it pursuant to Section 23, the Minister shall, on the recommendation of the Superintendent, issue supplementary letters patent showing the new name of the company and shall immediately give notice of the change of name in the Royal Gazette. 1991, c. 7, s. 23.

Rights and powers of provincial company

25 Subject to this Act and its instrument of incorporation and to any terms, conditions and restrictions imposed on its licence, a provincial company has

(a) the capacity and the rights, powers and privileges of a natural person; and

(b) where it holds a licence pursuant to this Act, the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside the Province, subject to any terms, conditions or restrictions imposed on its licence, to the extent that the laws of that jurisdiction permit. 1991, c. 7, s. 24.

Powers and effect of availability of document

26 (1) Unless otherwise provided in this Act, it is not necessary for a bylaw to be passed in order to confer any particular power on a provincial company or its directors.

(2) A provincial company shall not carry on any business or exercise any power that it is restricted by its instrument of incorporation from carrying on or exercising, nor shall the company exercise any of its powers in a manner contrary to its instrument of incorporation.

(3) No act of a provincial company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its instrument of incorporation.

(4) No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a provincial company by reason only that the document is available for inspection at an office of the company or has been filed with the Superintendent. 1991, c. 7, s. 25.

No assertion unless knowledge of facts

27 A provincial company, a guarantor of an obligation of the company or a person claiming through the company may not assert against a person dealing with the company or dealing with any person who has acquired rights from the company that

(a) the instrument of incorporation or bylaws have not been complied with;

(b) the persons named in the most recent notice of directors filed with the Superintendent are not the directors of the company;

(c) a person held out by the company as a director, an officer or an agent of the company

(i) has not been duly appointed, or

(ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform; or

(d) a document issued by a director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or by virtue of that person's position with or relationship to the company ought to have, knowledge of those facts at the relevant time. 1991, c. 7, s. 26.

Restated letters patent

28 (1) In this Section, "restated letters patent" means a consolidation of existing letters patent.

(2) A provincial company may at any time, and shall when reasonably so directed by the Superintendent, apply for restated letters patent.

(3) An application for restated letters patent must be made to the Superintendent in the form prescribed by the regulations and must be filed with the Superintendent.

(4) Upon receipt of the application, the Superintendent shall issue restated letters patent.

(5) Restated letters patent are effective on the date shown in the restated letters patent and supersede the original instrument of incorporation and all amendments to it. 1991, c. 7, s. 27.

Letters patent of continuance of extra-provincial company

29 (1) An extra-provincial company that is carrying on the business of a loan or trust company may apply to the Superintendent, in accordance with Section 15, for letters patent of continuance continuing it as if it had been incorporated pursuant to Section 14.

(2) On application by a company referred to in subsection (1), the Minister may, subject to subsections 14(2) and (6) and with the approval of the Governor in Council, issue letters patent of continuance continuing the company as a loan company or trust company, as the case may be.

(3) Letters patent of continuance may be issued in respect of a company only if it is authorized pursuant to the laws of Canada or the province of Canada in which it was incorporated to apply for letters patent continuing it as if it had been incorporated pursuant to an Act of the Legislature.

(4) When letters patent of continuance are issued, the Superintendent shall send a notice of the issue of the letters patent to the appropriate official or public body of the jurisdiction in which the company was incorporated. 1991, c. 7, s. 28.

Letters patent of continuance of certain bodies corporate

30 (1) A loan company or trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor's estate or a mentally incompetent person's estate, incorporated pursuant to a special or general Act of the Legislature before January 1, 1992, may, if it is duly authorized by special resolution, apply to the Superintendent in accordance with Section 15, for letters patent of continuance continuing it as if it had been incorporated pursuant to Section 14.

(2) On application by a company or any other body corporate referred to in subsection (1), the Minister may, subject to subsections 14(2) and (6), issue letters patent of continuance continuing the company as a loan company or trust company, as the case may be. 1991, c. 7, s. 29.

Effect of continuance

31 (1) On the date shown in the letters patent of continuance issued in respect of a body corporate pursuant to Section 29 or 30

(a) the body corporate becomes a provincial company to which this Act applies as if it had been incorporated pursuant to this Act;

(b) the letters patent of continuance are deemed to be the instrument of incorporation of the continued provincial company; and

(c) no Act that applied to the body corporate before that date applies to the provincial company on and after that date to any greater extent than it would apply if the body corporate had been incorporated pursuant to this Act.

(2) When a body corporate is continued as a provincial company pursuant to Section 29 or 30

(a) the property of the body corporate continues to be the property of the provincial company;

(b) the provincial company continues to be liable for the obligations of the body corporate;

(c) an existing cause of action, claim or liability to prosecution is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the body corporate or its directors or officers may be continued to be prosecuted by or against the provincial company or its directors or officers; and

(e) a conviction against, or a ruling, order or judgment in favour of or against, the body corporate or its directors or officers may be enforced by or against the provincial company or its directors or officers.

(3) Letters patent of continuance issued pursuant to Section 29 or 30 may effect any change in the existing instrument of incorporation of the company being continued

(a) that could be made pursuant to subsection 14(9); and

(b) that was approved by the special resolution of the company authorizing the application for letters patent of continuance,

and must set out any amendments to the existing instrument of incorporation necessary to comply with this Act.

(4) Sections 14 to 20 apply with necessary changes to an application for letters patent of continuance pursuant to Section 29 or 30 as if it were an application for letters patent or supplementary letters patent, as the case may be, pursuant to Section 14. 1991, c. 7, s. 30.

Application for continuance of provincial company

32 (1) Subject to subsection (8), a provincial company may, if it is authorized by the shareholders in accordance with this Section, and is established to the satisfaction of the Superintendent that its proposed continuance in another jurisdiction will not adversely affect creditors, shareholders or depositors of the company or persons for whom the company acts in a fiduciary capacity, apply to the appropriate officials or public body of another jurisdiction in Canada requesting that the company be continued as if it had been incorporated pursuant to the laws of Canada or a province of Canada other than Nova Scotia, as the case may be.

(2) Each share of the company carries the right to vote in respect of a continuance, whether or not it otherwise carries the right to vote.

(3) An application for continuance pursuant to subsection (1) becomes authorized when the shareholders voting on it have approved of the continuance by a special resolution.

(4) The directors of a company may, if authorized by the shareholders at the time of approving an application for continuance pursuant to this Section, abandon the application without further approval of the shareholders.

(5) Subject to subsection (1), upon receipt of notice satisfactory to the Superintendent that the company has been continued pursuant to the laws of another jurisdiction, the Superintendent shall file the notice and issue a certificate of discontinuance.

(6) This Act and any special Act of the Legislature incorporating the company or body corporate cease to apply to the company or body corporate on the date shown in the certificate of discontinuance, which must be dated the date upon which the company or body corporate is continued pursuant to the laws of another jurisdiction.

(7) Notice of the issue of the certificate of discontinuance must be published by the Superintendent in the Royal Gazette.

(8) A provincial company shall not apply pursuant to subsection (1) to be continued as a body corporate pursuant to the laws of another jurisdiction unless those laws provide in effect that

(a) the property of the provincial company continues to be the property of the body corporate;

(b) the body corporate continues to be liable for the obligations of the provincial company;

(c) an existing cause of action, claim or liability to prosecution is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the provincial company may be continued to be prosecuted by or against the body corporate; and

(e) a conviction against the provincial company may be enforced against the body corporate or a ruling, order or judgment in favour of or against the company may be enforced by or against the body corporate. 1991, c. 7, s. 31.

Continuance pursuant to Companies Act

33 (1) A provincial company may, with the approval in writing of the Superintendent, apply to the Registrar of Joint Stock Companies for a certificate of continuance pursuant to Section 148 of the *Companies Act*.

(2) The Superintendent shall not give approval pursuant to subsection (1) unless satisfied that

(a) the application for a certificate of continuance pursuant to the *Companies Act* has been authorized by a special resolution; and

(b) the company is not carrying on the business of a loan company, trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor's estate or a mentally incompetent person's estate.

(3) On the date shown in the certificate of continuance issued pursuant to the *Companies Act*, that Act applies and this Act and any special Act of the Legislature incorporating the company or the body corporate cease to apply to the corporation thereby continued.

(4) Upon receipt of notice satisfactory to the Superintendent that the company has been continued pursuant to the *Companies Act*, the Superintendent shall issue a certificate of discontinuance, which must be dated the date shown in the certificate of continuance referred to in subsection (3). 1991, c. 7, s. 32.

Meeting of directors

34 (1) On or after the day on which a provincial company is incorporated pursuant to this Act, a meeting of the directors must be held at which the directors may, subject to this Act,

(a) make bylaws;

(b) adopt forms of share certificates and corporate records;

(c) authorize the issue of securities of the company;

(d) appoint officers;

(e) appoint an auditor to hold office until the first meeting of shareholders;

(f) make banking arrangements; and

(g) transact any other business necessary to organize the company.

(2) An applicant for letters patent incorporating a provincial company or a director named in the letters patent may call the meeting of the directors referred to in subsection (1) by giving not less than five days notice of the meeting to each director, stating the time and place of the meeting. 1991, c. 7, s. 33.

Meeting of shareholders

35 (1) When the minimum amount of capital required by this Act has been received from the issue of its shares by a provincial company incorporated pursuant to this Act, the directors shall call a meeting of the shareholders of the company in accordance with the procedure set out in Section 127.

(2) The shareholders of a company shall, by ordinary resolution at the meeting of shareholders referred to in subsection (1),

(a) approve, amend or reject any bylaws made by the directors;

(b) subject to Section 102, elect directors to hold office until the first annual meeting of shareholders following the election; and

(c) appoint an auditor to hold office until the first annual meeting of shareholders.

(3) An auditor appointed pursuant to clause 34(1)(e) is eligible for appointment pursuant to subsection (2).

(4) A director named in the letters patent of a provincial company holds office until the election of directors at the meeting of shareholders referred to in subsection (1). 1991, c. 7, s. 34.

Restrictions on provincial company

36 (1) Except as provided by or pursuant to this Act, no provincial company shall, directly or indirectly, through a subsidiary or otherwise

(a) deal in goods, wares and merchandise or engage in any trade or business;

(b) guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless

(i) the sum of money is a fixed sum of money, with or without interest, and

(ii) the person on whose behalf the guarantee is given has an unqualified obligation to reimburse the company for the full amount of the payment or repayment to be guaranteed; or

(c) issue notes of the company payable to bearer on demand and intended for circulation.

(2) Subsection (1) does not apply in respect of an indemnification given pursuant to Section 119. 1991, c. 7, s. 35.

Duty in making investment decisions

37 (1) A licensed provincial company shall adhere to prudent investment standards in making investment decisions.

(2) For the purpose of this Act, prudent investment standards are those that would be applied by a person exercising the judgement and care that a person of prudence and discretion would exercise as a trustee of the property of others. 1991, c. 7, s. 36.

Debtor-creditor relationship

38 (1) A licensed provincial loan company and any other licensed loan company that has capacity to do so may, in a debtor and creditor relationship for the purpose of investment, receive money repayable

(a) on demand or after notice; or

(b) upon the expiry of a fixed term,

and the company may issue debentures or other evidences of indebtedness in respect thereof, appropriate to the debtor and creditor relationship created thereby.

(2) A licensed provincial trust company and any other licensed trust company that has capacity to do so may, for the purpose of investment, receive money repayable

(a) on demand or after notice; or

(b) upon the expiry of a fixed term,

and the company may issue investment certificates or other evidences of the money received, appropriate to the trust relationship created thereby.

(3) Money received by a trust company pursuant to subsection (2) is deemed to be held by it in trust for its depositors and it is deemed to guarantee the repayment thereof.

(4) Notwithstanding subsection (3), a trust company may retain the interest and profit resulting from the investment of money received by it pursuant to subsection (2) in excess of the amount of interest payable to its depositors in respect thereof.

(5) Every trust company receiving money as authorized by subsection (2) shall earmark in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof and, for the purpose of this subsection, "cash" includes money on deposit and "securities" includes investments authorized pursuant to Sections 45 to 49 and 53.

(6) An investment certificate or other evidence of money received, issued by a trust company, must indicate in a clearly visible manner that it is guaranteed only as against the assets of the company earmarked and set aside pursuant to subsection (5). 1991, c. 7, s. 37.

Requirement for receiving money as deposit and power to borrow

39 (1) No licensed provincial company shall receive money as a deposit unless the company is a member institution within the meaning of the

Canada Deposit Insurance Corporation Act, or the deposit is insured by some other public agency approved by the Superintendent.

(2) A company may, with the approval of the Superintendent, borrow money from the Canada Deposit Insurance Corporation or other similar public agency approved by the Superintendent, and for such purpose, the company may mortgage the cash and securities earmarked and set aside pursuant to Section 38. 1991, c. 7, s. 38.

Maintenance of capital base

40 (1) A provincial company shall maintain a capital base that meets the leverage ratio and risk weighed average ratio requirements and any other requirements as to the adequacy of the corporation's capital base set out in the regulations.

(2) A licensed company shall maintain its capital base at not less than the levels required pursuant to Section 14. 1991, c. 7, s. 39.

Issue of subordinated notes

41 (1) A licensed provincial company may borrow money by way of the issue of subordinated notes having a denomination of at least an amount prescribed by the regulations.

(2) A subordinated note issued pursuant to this Section is subject to the following provisions:

(a) the money borrowed by way of the issue of a subordinated note is not a deposit of the issuing company and is not insured by the Canada Deposit Insurance Corporation or other similar public agency; and

(b) in the event of the insolvency or liquidation of the company, the indebtedness evidenced by each subordinated note ranks equally with the indebtedness evidenced by all other subordinated notes of the company and is subordinated in right of payment to all other indebtedness of the company.

(3) A subordinated note must be evidenced by a certificate in a form approved for the company by the Superintendent and containing a statement of the terms set out in clauses (2)(a) and (b) and such other information as the Superintendent may require.

(4) A subordinated note may not be issued by a licensed provincial company except on application to the secretary of the company.

(5) No licensed provincial company or person acting on its behalf, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the company, shall refer to the note otherwise than as a subordinated note and the company or person, as the case may be, shall indicate clearly therein that the money borrowed by way of the issue of the subordinated note is not a deposit that is insured by the Canada Deposit Insurance Corporation or other similar public agency. 1991, c. 7, s. 40.

Pledge of assets as security

42 **(1)** A licensed provincial company may pledge any of its own assets as security for a debt obligation of the company if the debt obligation is issued in respect of money borrowed to enable the company to meet short term requirements for liquid funds arising from its operations and if the total debt obligation of the company in relation to which assets are so pledged does not exceed 50% of the capital base.

(2) Subsection (1) does not apply so as to prevent a pledge of assets to the Government of Canada with respect to the sale of Canada Savings Bonds or any other transactions as may be prescribed by the regulations.

(3) A company pledging an asset pursuant to subsection (1) shall immediately notify the Superintendent, in writing, of the amount so secured and of the nature of the asset pledged as security.

(4) A licensed provincial company shall not borrow money except from a bank or a licensed company unless it is borrowing

(a) by way of the issue of subordinated notes; or

(b) money as authorized by subsection (1).

(5) Except with respect to assets pledged as security pursuant to subsection (1) or (2), any agreement under which a creditor of a licensed provincial company is authorized to appoint a receiver or acquire control of the company or of any asset of the company by reason of the failure of the company to make payment in respect of a debt obligation is void.

(6) A licensed provincial company shall not pledge any of its assets to a restricted party of the company. 1991, c. 7, s. 41.

Requirement to maintain liquidity

43 A licensed provincial company shall at all times maintain liquidity in the form and amount and in the manner prescribed by the regulations or, notwithstanding any regulation, as may be ordered by the Superintendent. 1991, c. 7, s. 42.

Prudent investment standards

44 **(1)** Notwithstanding any other provision of this Act, a licensed trust company shall, with respect to funds held by it as a fiduciary, other than deposits, adhere to the prudent investment standards set out in Section 37 with respect to those funds.

(2) No licensed provincial company shall, with respect to its total assets, participate in or enter into an investment or pledge any of those assets except in accordance with Sections 45 to 55.

(3) Notwithstanding subsection (2), a licensed provincial company shall, with respect to its total assets, adhere to the prudent investment standards set out in Section 37 with respect to its total assets.

(4) No licensed provincial company shall purchase, directly or indirectly,

(a) shares or subordinated notes of any other company except pursuant to Section 52 or 159; or

(b) shares of any bank unless the shares are listed on a stock exchange prescribed by the regulations. 1991, c. 7, s. 43.

Investment

45 (1) A licensed provincial company may invest by way of purchase of or loans on the security of

(a) mortgages on improved real estate in Canada if the amount paid for or advanced on any mortgage, together with the amount of indebtedness under any mortgages, on the real estate ranking equally with or prior to the mortgage in which the purchase or loan is made, does not exceed the lending value of the real estate to which the mortgage relates unless

(i) the loan for which the mortgage is security is an approved loan or an insured loan pursuant to the *National Housing Act* (Canada), or

(ii) the excess is guaranteed or insured through an agency of the Government of Canada or the government of a province or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered pursuant to the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada), the *Insurance Act* or similar legislation of any province;

(b) bonds, debentures or other evidences of indebtedness

(i) of or guaranteed by the Government of Canada or the government of a province,

(ii) of or guaranteed by a foreign country or state forming part of such foreign country where the interest on the securities of such foreign country or state has been paid regularly when due for the previous 10 years,

(iii) of a municipality or school board in Canada or guaranteed by a municipality in Canada, or secured by rates or taxes levied pursuant to the laws of any province on property in such province and collectable by or through the municipality or school board for the jurisdiction in which the property is situated,

(iv) of a corporation that are secured by a mortgage to a trust company in Canada, either singly or jointly with another trustee on improved real estate of that corporation or other assets of that corporation of the classes in clause (a) or subclause (i), (ii), (iii) or (v),

(v) of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if those payments are sufficient to meet

the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity,

but if the investment is by way of loan, the amount of the loan must not exceed, at the date of the loan, the market value of the security given as collateral;

(c) unless those securities are prohibited by the regulations, securities of or guaranteed by any corporation, but where the investment is by way of a loan, the amount of the loan must not exceed at the date of the loan the market value of the security given as collateral;

(d) mortgages or assignments of life insurance policies but only by way of loan and only if at the date of the loan such policy has an ascertained cash surrender value admitted by the insurer at least equal to the amount of the loan;

(e) deposits in or receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or endorsed by a bank, but where the investment is by way of loan, the amount of the loan must not exceed at the date of the loan the market value of security given as collateral;

(f) deposits in a licensed company or in a credit union incorporated pursuant to the *Credit Union Act* or any former *Credit Union Act*, but where the investment is by way of loan, the amount of the loan must not exceed at the date of the loan the market value of the security given as collateral;

(g) investments by way of purchase of personal property and the lease of it to a lessee or by way of loan to a lessee or conditional purchaser where the evidence of the investment is a lease of personal property or an instrument similar to a lease of personal property or a conditional sales contract, but only if the investment is for a fixed term and the lessee or conditional purchaser is the Government of Canada or the government of a province or any agency of that government or any municipality in Canada; and

(h) such other investments as may be prescribed by the regulations.

(2) A licensed provincial company may invest

(a) where designated as a bank or a lender, as the case may be, pursuant to the *Canada Student Loans Act* (Canada), the *Canadian Agricultural Loans Act* (Canada), the *Fisheries Improvement Loans Act* (Canada), the *Canada Small Business Financing Act* (Canada) or pursuant to any other Act of the Parliament of Canada or of a province designated by the regulations, by lending money by way of guaranteed loans pursuant to and in accordance with the Acts for which it has been designated;

(b) by making personal loans to individuals, with or without security, not exceeding such amounts as may be prescribed by the regulations;

(c) by making commercial or business loans not authorized by any other provision of this Act payable on demand or in less than one year to corporations, partnerships, sole proprietorships and joint ventures; and

(d) by way of purchase of personal property and the lease of it to a lessee or by way of loan to a lessee or conditional purchaser where the evidence of the investment is a lease of personal property or an instrument similar to a lease of personal property or a conditional sales contract, but only if the investment is for a fixed term and the lessee or conditional purchaser is

(i) a corporation, partnership, sole proprietorship or joint venture, or

(ii) an individual and the balance payable under the lease or instrument does not exceed such amounts as may be prescribed by the regulations.

(3) A licensed provincial company shall not make investments

(a) pursuant to clause (2)(b) or (c) or subclause (2)(d)(i) or (ii) unless

(i) it is authorized by its licence to make that class of investments, and

(ii) it complies with the terms, conditions and restrictions, if any, imposed on its licence with respect to that class of investments;

(b) pursuant to clause (2)(b) or subclause (2)(d)(ii) unless the aggregate total of such investments is 20% or less of the total assets of the company or such other percentage as may be authorized by its licence; or

(c) pursuant to clause (2)(c) or subclause (2)(d)(i) unless the aggregate total of such investments is 20% or less of the total assets of the company or such other percentage as may be authorized by its licence. 1991, c. 7, s. 44.

Investment in real estate

46 (1) A licensed provincial company may, by way of purchase, invest in improved real estate in Canada for the production of income.

(2) The total book value on a gross basis of all investments in real estate pursuant to this Section and Section 47, whether by a company or by a subsidiary of the company, must not exceed 10% of the total assets of the company and not more than one per cent of the total assets of the company may be invested in any one parcel of real estate purchased pursuant to this Section. 1991, c. 7, s. 45.

Real estate for own use

47 (1) Subject to subsection 46(2), a licensed provincial company may, by way of purchase, invest in improved real estate in Canada that is or is to be occupied by the company for its own use.

(2) For the purpose of this Section, real estate purchased by a subsidiary of a licensed provincial company that is occupied and used by the subsidiary for either or both its own purposes and the purposes of the company is deemed to be real estate purchased by the company pursuant to this Section. 1991, c. 7, s. 46.

Mortgaged real estate

48 (1) The book value of real estate that has been mortgaged to a company or any of its subsidiaries and that has been acquired by the company or the subsidiary to protect its investment and of real estate that has been conveyed to it or any of its subsidiaries in satisfaction of debts previously contracted in the course of the company's business or that of the subsidiary need not be included in determining total book value of real estate for the purpose of subsection 46(2).

(2) Where real estate has been mortgaged to a company or any of its subsidiaries and the real estate has been acquired by the company or the subsidiary to protect its investment, the company or subsidiary may sell the real estate and take back a mortgage of it even though the mortgage does not satisfy the requirements of clause 45(1)(a). 1991, c. 7, s. 47.

Investments not authorized by Sections 45 to 47

49 (1) A licensed provincial company may, by way of purchase or loan, make investments not authorized by Sections 45 to 47 if the investment is not prohibited pursuant to any other provision of this Act or the regulations, but the total book value of investments made pursuant to this Section and held by the company must not exceed five per cent of the total assets of the company.

(2) Subsection (1) does not apply so as to

(a) enlarge the authority conferred by this Act to invest in mortgages, or to lend on the security of real estate; or

(b) affect the limit of 10% of the total assets that may be invested in real estate pursuant to Section 46.

(3) Where a company is authorized by its licence to make the class of investments set out in clause 45(2)(b) or (c) or subclause 45(2)(d)(i) or (ii), the company shall not make any such investments pursuant to subsection (1). 1991, c. 7, s. 48.

Restrictions on investments

50 (1) Notwithstanding any other provision of this Act, a licensed provincial company shall, at all times, except where the Minister has approved the purchase of shares pursuant to Section 159, maintain at least such per cent, as is prescribed in the regulations, of its total assets, excluding assets of subsidiaries, in such investments as are prescribed in the regulations.

(2) Investments by a licensed provincial company in third and subsequent mortgages are limited to two per cent of the total assets of the company.

(3) For the purpose of subsection (2), an investment in a third or subsequent mortgage by a subsidiary of a licensed provincial company is deemed to be an investment in the mortgage by the company.

(4) No licensed provincial company shall make an investment in securities of a corporation if, after the investment, its holding of securities of all corporations carried on its books would exceed 25% of its total assets.

(5) For the purpose of subsection (4), an investment in shares, bonds or debentures by a subsidiary of a licensed provincial company, other than a mutual fund or securities dealer subsidiary, is deemed to be an investment by the company. 1991, c. 7, s. 49.

Prohibited investments

51 **(1)** No licensed provincial company shall, directly or indirectly,

(a) invest, by way of purchases from or loans to any one person or to two or more persons that to the knowledge of the company are associated, an amount exceeding the greater of $250,000 or one per cent of the company's total assets; or

(b) subject to clause 53(f), make an investment the effect of which will be that the company will hold more than 10% of the issued and outstanding shares of a class of voting shares of any one body corporate other than a subsidiary or associated company as defined in Section 52.

(2) Clause (1)(a) does not apply so as to restrict investments in

(a) securities issued or guaranteed by the Government of Canada, including mortgages insured pursuant to the *National Housing Act* (Canada), by the government of any province or by any municipality in Canada; or

(b) debt instruments issued or endorsed by a bank.

(3) For the purpose of this Section, a person is associated with

(a) a body corporate which that person controls and every affiliate of that body corporate;

(b) a partner of that person who has an interest of 50% or more in a partnership in which that person has an interest of 50% or more;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which that person serves as trustee or in a similar capacity;

(d) a spouse or child of that person;

(e) a relative or in-law of that person or of that person's spouse if that relative or in-law has the same residence as that person. 1991, c. 7, s. 50.

Establishment of company as subsidiary

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

"associated company" means a corporation more than 10% and less than 51% of the voting shares of which are owned by a licensed provincial company;

"subsidiary" means a corporation 51% or more of the voting shares of which are owned by a licensed provincial company.

(2) Subject to such terms and conditions concerning subsidiaries as may be prescribed by the regulations, a licensed provincial company may establish or acquire as a subsidiary or associated company such companies as are prescribed by the regulations.

(3) A subsidiary described in subsection (2) shall not invest its funds except as provided for licensed provincial companies in this Act.

(4) A licensed company shall not make an investment in or guarantee an obligation of a subsidiary of the company if, after the making of the investment or the giving of the guarantee, the total book value of all of those investments and guarantees will exceed five per cent of the total assets of the company.

(5) Subsection (4) does not apply to a trust company or a loan company. 1991, c. 7, s. 51.

Authorization of assets not fulfilling requirements

53 The Superintendent may authorize the acceptance by a licensed provincial company of bonds, notes, shares, debentures or other assets not fulfilling the requirements of this Act

(a) obtained in payment or part payment for securities sold by the company;

(b) obtained pursuant to a bona fide arrangement for the reorganization of a body corporate whose securities were previously owned by or pledged to the company;

(c) obtained pursuant to an amalgamation with another body corporate of the body corporate whose securities were previously owned by the company;

(d) obtained for the bona fide purpose of protecting investments of the company;

(e) obtained by virtue of the purchase by the company of the assets of another company; or

(f) obtained by virtue of realizing on the security for a loan where the security is shares in a body corporate and the effect of realizing on the security is that the licensed provincial company will hold more than 10% of the issued and outstanding shares of a class of voting shares in any one body corporate,

but the bonds, notes, shares or debentures or other assets whose acceptance is so authorized must be sold and disposed of within five years after their acquisition or such longer period not exceeding one year as the Superintendent may order, unless it can be shown to the satisfaction of the Superintendent that the bonds, notes, shares, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted. 1991, c. 7, s. 52.

Property as collateral security

54 A licensed provincial company may take real or personal property as collateral security for any advance or for any debt due to the company in addition to any other security for the advance or debt required by this Act. 1991, c. 7, s. 53.

Single loan considered as separate loans

55 A single loan, that is secured by two or more assets or classes of assets that, but for this Section, would not be an investment of the licensed provincial company permitted by or pursuant to this Act, may be divided into different amounts and considered as separate loans with respect to each asset or class of assets for the purpose of determining whether the loan is permitted by or pursuant to this Act. 1991, c. 7, s. 54.

Common trust fund

56 (1) Notwithstanding this or any other Act, every licensed provincial trust company may, unless the trust instrument otherwise directs, invest money held by it as a fiduciary, other than deposits, in one or more common trust funds of the trust company.

(2) No licensed provincial trust company shall include in a common trust fund authorized pursuant to subsection (1) any money in relation to a trust established exclusively for savings plans registered pursuant to the *Income Tax Act* (Canada).

(3) No licensed provincial trust company shall establish or operate a common trust fund except as provided for in the regulations.

(4) A licensed provincial trust company may at any time and shall, when required in writing by the Superintendent to do so pursuant to subsection (5), file with the Superintendent and pass an account of its dealings with respect to a common trust fund in the Court and the Court on the passing of the account has, subject to this Section, the same duties and powers as the probate court would have in the case of the passing of personal representatives' accounts.

(5) An account filed with the Superintendent in accordance with the regulations, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account, unless within six months after the date upon which the account is so filed, the Superintendent requires, in writing, that the account be filed and passed in the Court.

(6) Notwithstanding any other Act, a licensed provincial trust company is not required to render an account of its dealings with a common trust fund except as provided in this Section or the regulations.

(7) Upon the filing of an account pursuant to this Section, the Court shall fix a time and place for the passing of the account, and the trust company shall cause a written notice of the appointment and a copy of the account to be served upon the Superintendent at least 14 days before the date fixed for the passing, and the trust company is not required to give any other notice of the appointment.

(8) For the purpose of an accounting pursuant to this Section, an account may be filed in the form of audited accounts filed with the Superintendent in accordance with the regulations.

(9) Upon the passing of an account pursuant to this Section, the Superintendent shall represent all persons having an interest in the funds invested in the common trust fund, but any interested person is entitled at that person's own expense to appear and be heard in person or to be separately represented.

(10) Where an account filed pursuant to this Section has been approved by the Court, the approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account.

(11) The costs of passing an account pursuant to this Section must be charged to principal and income of the common trust fund in such proportions as the Court considers proper. 1991, c. 7, s. 55.

Mutual funds, brokers or salespersons and securities

57 (1) No licensed provincial trust company or subsidiary of a licensed provincial trust company shall promote or operate a mutual fund unless the company or subsidiary

(a) gives notice to the Superintendent at least 90 days before starting to promote or operate the mutual fund and provides such information respecting the mutual fund as the Superintendent may require; and

(b) has received the approval of the Superintendent and the company or subsidiary complies with any terms or conditions imposed with respect to the approval by the Superintendent.

(2) No licensed provincial company or subsidiary of a licensed provincial company may be registered as a broker, salesperson or sub-agent pursuant to the *Securities Act* or the regulations pursuant to that Act unless the company or subsidiary has received the approval of the Superintendent and the company or subsidiary complies with any terms or conditions imposed with respect to the approval by the Superintendent.

(3) Where a certificate of the Registrar pursuant to the *Securities Act* is required pursuant to that Act, no provincial company may trade in its securities where that trade would be in the course of a primary distribution to the public of its securities unless the company has received the approval of the Superintendent. 1991, c. 7, s. 56.

Trust company as executor, trustee, receiver, etc.

58 (1) The liability of a trust company to persons interested in an estate held by the trust company as executor, administrator, trustee, receiver, liquidator, assignee or guardian is the same as if the estate had been held by an individual in the like capacity, and the company's powers are the same.

(2) Where a licensed trust company is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee or guardian,

every court or judge having authority to appoint such an officer may, with the consent of the company, appoint the company to exercise any of those offices in respect of any estate or person under the authority of that court or judge, or may grant to the company probate of any will in which the company is named as an executor.

(3) A licensed trust company may

(a) except where the trust instrument otherwise requires, be appointed to be a sole trustee;

(b) be appointed to any of the offices mentioned in subsection (2) jointly with another person,

and the appointment may be made whether the trustee is required pursuant to a deed, will or document creating a trust or whether the appointment is pursuant to the *Judicature Act* or any other Act of the Legislature.

(4) Notwithstanding any rule, practice or statutory provision, it is not necessary for a licensed trust company to give security for the due performance of its duty as executor, administrator, trustee, receiver, liquidator, assignee or guardian unless so ordered by a court or judge.

(5) No court or judge may appoint a body corporate other than a licensed trust company to execute the office of executor, administrator, trustee or guardian. 1991, c. 7, s. 57.

Duty respecting deposit

59 (1) A licensed company is not bound to see to the execution of any trust, whether express, implied or constructive, to which any of its deposits are subject, other than a trust to which the company is a party.

(2) The receipt of the person in whose name any deposit stands in the books of a licensed company is a sufficient discharge to the company for any payment made in respect of the deposit, and a direction to transfer, signed by the person in whose name any such deposit stands in the books of the company, is sufficient authority to the company for any transfer made in respect of the deposit, notwithstanding any trust to which the same may then be subject and whether the company has or has not had notice of the trust.

(3) A company is not bound to see to the application of any money paid upon a receipt pursuant to subsection (2). 1991, c. 7, s. 58.

Registered office

60 (1) A provincial company shall at all times have a registered office in the place within the Province specified in its instrument of incorporation.

(2) The directors of a provincial company may change the place of the registered office by applying for supplementary letters patent pursuant to subsection 14(9).

(3) The directors of a provincial company may change the address of the registered office within the place specified in the instrument of incorporation.

(4) A provincial company shall file with the Superintendent, within 15 days after any change of address of its registered office, a notice in the form prescribed by the regulations. 1991, c. 7, s. 59.

Preparation and maintenance of records

61 (1) A provincial company shall prepare and maintain at its registered office, or at any other place in the Province designated by the directors and approved by the Superintendent, records containing

(a) copies of its instrument of incorporation and the bylaws and all amendments to them;

(b) minutes of all meetings and resolutions of shareholders;

(c) a share register in accordance with Section 48 of the *Companies Act*; and

(d) the names and addresses of all persons who are or have been directors of the company with the dates at which each became or ceased to be a director.

(2) In addition to the records referred to in subsection (1), a provincial company shall prepare and maintain

(a) adequate accounting records as required by this Act or the regulations;

(b) minutes of meetings and resolutions of the directors, the audit committee, the investment committee and any other committee of the board;

(c) a record of all investments held by the company;

(d) copies of all returns to the Superintendent required by this Act or the regulations;

(e) a record of all depositors, their names and addresses as far as are known and the sums deposited by the depositors;

(f) where the company is a trust company, full and adequate records relating to the fiduciary activities of the company, the names and addresses as far as are known of all persons for whom the company acts in a fiduciary capacity and the sums received and held in trust by the company on their behalf; and

(g) a copy of the written procedures referred to in Section 122.

(3) For the purpose of subsections (1) and (2), where a body corporate is continued pursuant to this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.

(4) The records referred to in subsection (2) must be kept at the registered office of the provincial company or at any other place the directors think fit and that is approved by the Superintendent. 1991, c. 7, s. 60.

Examination of records

62 (1) The directors and shareholders of a provincial company, their agents, their legal representatives and the Superintendent or the Minister may examine the records referred to in subsection 61(1) during the usual business hours of the company without charge.

(2) A shareholder of a provincial company is entitled upon request and without charge to one copy of the instrument of incorporation and the bylaws and amendments to them.

(3) A creditor of a provincial company or a judgment creditor of a shareholder and any agent or legal representative of that creditor or judgment creditor may examine the records referred to in clauses 61(1)(a), (c) and (d) during the usual business hours of the company upon payment of a reasonable fee and may make copies of those records.

(4) The directors of a provincial company and the Superintendent or the Minister may examine the records referred to in subsection 61(2) during the usual business hours of the company without charge. 1991, c. 7, s. 61.

Form of records

63 (1) All registers, financial statements and other records required by this Act or the regulations to be prepared and maintained may be in a bound or loose-leaf form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) A provincial company and its agents shall take reasonable precautions to

(a) prevent loss or destruction of;

(b) prevent falsification of entries in;

(c) facilitate detection and correction of inaccuracies in,

the registers, financial statements and other records required by this Act or the regulations to be prepared and maintained.

(3) A person who without reasonable cause violates this Section is guilty of an offence.

(4) An instrument or agreement executed on behalf of a provincial company by a director, an officer or an agent of the company is not invalid merely because a corporate seal is not affixed to it. 1991, c. 7, s. 62.

Duty to provide information

64 A provincial company shall, at the times prescribed by the regulations, provide to the Superintendent such financial or other information, including unconsolidated financial statements, as may be prescribed by the regulations. 1991, c. 7, s. 63.

Annual return

65 **(1)** A provincial company shall prepare annually for the information of the Superintendent an annual return, in the form prescribed by the regulations, outlining the financial condition and affairs of the company for the financial year of the company and the return must be filed with the Superintendent within 90 days after the end of the period to which it relates.

(2) The return referred to in subsection (1) must have attached to it the financial statements for the year to which the annual return relates.

(3) The return referred to in subsection (1) must have attached to it a report of the auditor, which report must be prepared in accordance with the regulations.

(4) The return referred to in subsection (1) must be accompanied by a certified copy of a resolution of the directors showing that the return was approved by the directors. 1991, c. 7, s. 64.

Duty to file financial statements furnished to shareholders

66 Except as otherwise provided in this Act, a provincial company shall file with the Superintendent a copy of every statement of a financial nature furnished to its shareholders within seven days after the distribution of the statement to the shareholders. 1991, c. 7, s. 65.

Duty to file documents

67 A provincial company shall file with the Superintendent copies of

(a) all applications and supporting documents of any nature made pursuant to the laws of Canada or any province for any change in its licensing or registration status and shall also file with the Superintendent a copy of any approval or refusal of that application within seven days after filing or receipt, as the case may be; and

(b) any changes made in its licence or registration pursuant to the laws of Canada or any province within seven days after the effective date of the change. 1991, c. 7, s. 66.

Duty to make annual return

68 **(1)** A provincial company shall, within 15 days after each annual meeting, make a return to the Superintendent showing the

(a) name and address of each director holding office immediately following the meeting;

(b) bodies corporate of which each director referred to in clause (a) is an officer or director and the partnerships of which each director is a member;

(c) name of the chief executive officer, the name of the chair of the board of directors, the name of the president and the name of any other officer of the company who is a director of the company; and

(d) name of any director who is a full-time employee of the company.

(2) Where any information relating to a director of a provincial company shown in the latest return made to the Superintendent pursuant to subsection (1), other than information referred to in clause (1)(b), becomes inaccurate or incomplete or a vacancy in the board of directors of the company occurs or is filled, the company shall immediately file a notice with the Superintendent. 1991, c. 7, s. 67.

Duty to send bylaws

69 Except where otherwise provided, a provincial company shall send to the Superintendent a copy of all bylaws and amendments to them within 15 days after their making. 1991, c. 7, s. 68.

Additional information on request

70 In addition to the statements and returns required by this Act or the regulations, a provincial company shall, when requested to do so by the Superintendent or the Minister, furnish the Superintendent or the Minister with such additional statements and information, at such times and in such form as the Superintendent or Minister considers necessary, to enable the Superintendent or Minister to ascertain whether the company is complying with this Act and the regulations or any requirement, order, direction or other request made pursuant to this Act or the regulations. 1991, c. 7, s. 69.

File on each licensed company

71 (1) The Superintendent shall maintain a file on each licensed company that contains such information as may be prescribed by the regulations.

(2) Upon payment of the fee prescribed by the regulations, any person, during usual office hours, may examine the registers referred to in Section 218 and the file referred to in subsection (1) and may take extracts from, or obtain copies of, the registers and the file. 1991, c. 7, s. 70.

Deposits deemed to be liability

72 For the purpose of Sections 80, 81 and 87, deposits in a company is deemed to be a liability of the company notwithstanding that the deposit is held by it as trustee. 1991, c. 7, s. 71.

Shares

73 (1) Shares of a provincial company may be with nominal or par value or without nominal or par value or of both kinds.

(2) A provincial company shall have one class of shares in which the rights of the holders of those shares are equal in all respects and include the rights to

(a) vote at any meeting of shareholders of the company;

(b) receive any dividends declared by the company on those shares; and

(c) receive the remaining property of the company on dissolution,

and those shares must be designated as common shares.

(3) The instrument of incorporation of a provincial company may provide for classes of shares in addition to those referred to in subsection (2), and if it so provides, the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the instrument of incorporation, but those shares may not be designated as common shares or by words of like import.

(4) No class of shares may be designated as preference shares or by words of like import unless that class has attached to it a preference or right over some other class of shares.

(5) The shares of a company are personal property.

(6) Subject to subsection 74(2), shares issued by a provincial company must be fully paid in Canadian currency and are non-assessable and the holders are not liable to the company or to its creditors in respect of those shares. 1991, c. 7, s. 72.

Share issue

74 **(1)** Subject to this Act and the instrument of incorporation, shares of a provincial company may be issued at such times, to such persons and for such consideration as the directors may determine.

(2) No share of any class of shares of a provincial company may be issued until it is fully paid for in money unless that share is issued

(a) pursuant to the exercise of conversion privileges, options or rights previously granted by the company;

(b) as a share dividend;

(c) in accordance with the terms of an amalgamation pursuant to Sections 152 to 179;

(d) by way of consideration in accordance with the terms of a sale agreement pursuant to Section 157;

(e) by way of consideration in any purchase of shares pursuant to Section 159.

(3) Where shares of any class of shares of a provincial company have a nominal or par value, the company shall not issue those shares

(a) except for a consideration at least equal to the par value of those shares; or

(b) if, after the issue, the total number of issued and outstanding shares of that class would be in excess of the maximum number of shares set out in the company's instrument of incorporation for that class of shares.

(4) Where shares of any class of shares of a provincial company are without nominal or par value, the company shall not issue those shares if, after the issue

(a) the total number of issued and outstanding shares of that class would be in excess of the maximum number of shares set out in the company's instrument of incorporation for shares of that class; or

(b) the aggregate consideration received by the company from the issue of shares of that class would be in excess of the aggregate consideration set out in the company's instrument of incorporation for which all the shares of that class may be issued.

(5) On the issue of a share, a provincial company shall not add to a stated capital account in respect of the share it issues an amount greater than the amount of the consideration it received for the share. 1991, c. 7, s. 73.

Separate stated capital account

75 (1) A provincial company shall maintain a separate stated capital account for each class and series of shares it issues.

(2) A provincial company shall add to the appropriate stated capital account the full amount of any consideration it receives for any shares it issues, with or without par value, including the full amount of any consideration it receives in excess of the par value for any shares it issues with par value.

(3) A body corporate continued pursuant to this Act

(a) shall add to a stated capital account any consideration received by it for a share it issued without nominal or par value; and

(b) may add to that account any amount it credited to a retained earnings account or other surplus account.

(4) When a body corporate is continued pursuant to this Act, subsection (2) does not apply to the consideration received by it before it was so continued unless the share in respect of which the consideration is received is issued after the body corporate is so continued.

(5) When a body corporate is continued pursuant to this Act, any amount unpaid in respect of a share issued by the body corporate before it was so continued and paid after it was so continued must be added to the stated capital account maintained for the shares of that class or series.

(6) A company shall not reduce its stated capital or any stated capital account except in the manner provided in this Act. 1991, c. 7, s. 74.

Class of shares other than common shares

76 (1) The instrument of incorporation may authorize the issue of any class of shares other than common shares in one or more series and may authorize the directors to fix the number of shares in, and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the instrument of incorporation.

(2) Where any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares confers on a series a priority in respect of dividends or return of capital over any other series of shares of the same class that are outstanding.

(4) Before the issue of shares of a series authorized pursuant to this Section, the directors shall send to the Minister an application for supplementary letters patent in the form prescribed by the regulations to designate a series of shares.

(5) Upon receipt of an application for supplementary letters patent designating a series of shares, the Minister shall issue supplementary letters patent. 1991, c. 7, s. 75.

Right to purchase shares or other securities

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

"equity shares" means shares of any class, whether or not preferred as to dividends or assets, that have unlimited dividend rights;

"preemptive right" means the right to purchase shares or other securities to be issued or subjected to rights or options to purchase, as such right is defined in this Section;

"unlimited dividend right" means the right without limitation as to the amount either to all or to a share of the balance of any dividends after the payment of dividends on any shares entitled to a preference, and includes the right to all or to a share of the balance of any surplus upon winding up after the repayment of capital;

"voting right" means the right to vote for the election of one or more directors, but does not include a right to vote that is dependent on the happening of an event specified in the instrument of incorporation or this Act;

"voting shares" means the shares of any class that have voting rights as defined in this Section.

(2) Except as otherwise provided in the instrument of incorporation and except as provided in this Section, the holders of equity shares of any class, in the case of the proposed issuance by the provincial company of, or the proposed granting by the company of rights or options to purchase, its equity shares of any class or any shares or other securities convertible into or carrying rights or options to purchase its equity shares of any class shall, if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the unlimited dividend rights of such holders, have the right during a reasonable time and on reasonable conditions, both to be fixed by the board of directors, to purchase such shares or other securities in such proportions as is determined as provided in this Section.

(3) Except as otherwise provided in the instrument of incorporation and except as provided in this Section, the holders of voting shares of any class, in the case of the proposed issuance by the provincial company of, or the proposed granting by the company of rights or options to purchase, its voting shares of any class, or any shares or options to purchase its voting shares of any class shall, if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the right during a reasonable time and on reasonable conditions, both to be fixed by the board of directors, to purchase

such shares or other securities in such proportions as is determined as provided in this Section.

(4) The preemptive right provided for in subsections (2) and (3) entitle shareholders having such rights to purchase the shares or other securities to be offered or optioned for sale as nearly as practicable in such proportions as would, if such preemptive right were exercised, preserve the relative unlimited dividend rights and voting rights of such holders and at a price or prices not less favourable at which such shares or other securities are proposed to be offered for sale to others, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares or other securities by underwriters or dealers as may lawfully be paid by the provincial company.

(5) In case each of the shares entitling the holders of the shares to preemptive rights does not confer the same unlimited dividend right or voting right, the board of directors shall apportion the shares or other securities to be offered or optioned for sale among the shareholders having the preemptive rights to purchase them in such proportions as, in the opinion of the board, preserve as far as practicable the relative unlimited dividend rights and voting rights of the holders at the time of such offering.

(6) The apportionment made by the board of directors is, in the absence of fraud or bad faith, binding upon all shareholders.

(7) Notwithstanding subsection (2) or (3), a shareholder has no preemptive right in respect of shares to be issued

(a) where the issue of shares to the shareholder is prohibited by this Act;

(b) pursuant to the exercise of conversion privileges, options or rights previously granted by the company;

(c) as a share dividend;

(d) in accordance with the terms of an amalgamation pursuant to Sections 152 to 179;

(e) by way of consideration in accordance with the terms of a sale agreement pursuant to Section 157;

(f) by way of consideration in any purchase of shares pursuant to Section 159. 1991, c. 7, s. 76.

Issue of warrants or options

78 (1) Subject to Sections 74 and 77 and in accordance with the requirements of subsection (7) concerning the consideration payable for converted shares on the exercise of any outstanding options or rights issued pursuant to subsection (3), a provincial company may issue certificates, warrants or other evidences of conversion privileges and shall set out the conditions of those privileges

(a) in the certificates, warrants or other evidences; or

(b) in certificates evidencing the securities to which the conversion privileges are attached.

(2) Conversion privileges may be made transferable or non-transferable.

(3) Subject to Sections 74 and 77, a provincial company may issue options or rights to acquire shares of the company to

(a) the officers and employees engaged by the company during the first five years following the issue of a first licence to the company if such options or rights are issued before the end of that five-year period; and

(b) the person or persons named in the application for incorporation of the company, if such options or rights are issued before the end of the five-year period referred to in clause (a),

but no option or right may be issued pursuant to this subsection where the company exists on January 1, 1992, or by reason of an amalgamation pursuant to Sections 152 to 179.

(4) Subject to subsection (5), no option or right issued pursuant to subsection (3) may be transferred or transmitted.

(5) Where the holder of an option or right issued pursuant to subsection (3) dies, becomes bankrupt or is declared mentally incompetent or incapable of managing the holder's own affairs and a person is appointed as the holder's representative, the option or right vests in the administrator of the holder's estate, trustee in bankruptcy or appointed representative for a period of two years after the date of death, bankruptcy or appointment, at the end of which period the option or right lapses.

(6) Where shares subject to an option or right issued pursuant to subsection (3) are split or consolidated into a greater or lesser number of similar shares, the holder of the option or right is entitled, after completion of the split or consolidation, to a proportionately lesser or greater consideration per share.

(7) Where shares subject to an option or right issued pursuant to subsection (3) are converted to an equal, greater or lesser number of different shares, the holder of the option or right is entitled, after completion of the conversion, to the same or a proportionately greater or lesser number of the different shares, and the consideration payable for that number of different shares is the consideration set for the unconverted shares under the option agreement**.**

(8) The Minister may specify the manner in which the options or rights may be issued pursuant to subsection (3), the maximum number of options and rights that may be so issued and any conditions attaching to such options or rights.

(9) Where a provincial company has granted privileges to convert any securities issued by the company into shares, or into shares of another class or series, or has issued or granted options or rights, whether conditional or unconditional, to acquire shares, the company shall reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights. 1991, c. 7, s. 77.

Restriction on holding own or parent's shares

79 (1) Except as provided in Sections 80 and 81, a provincial company shall not

(a) hold shares in itself or in its holding body corporate; and

(b) permit any of its subsidiaries to hold shares in the company or in the holding body corporate of the company.

(2) Subsection (1) does not apply to shares held in contravention of subsection (1) immediately before January 1, 1992. 1991, c. 7, s. 78.

Restriction on purchase or redemption of own shares

80 (1) Except as provided in this Section or Section 81, a provincial company shall not purchase, redeem or otherwise acquire shares issued by it.

(2) Where the instrument of incorporation of a provincial company authorizes it to issue redeemable shares, the company may, subject to subsection (4), redeem such shares at prices not exceeding the redemption price stated in the terms of issue.

(3) Subject to subsection (4), a provincial company may purchase or otherwise acquire shares issued by it to

(a) settle or compromise a debt or claim asserted by or against the company;

(b) eliminate fractional shares; or

(c) fulfill the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a current or former director, officer or employee of the company.

(4) A provincial company shall not make a payment to purchase or redeem or otherwise acquire shares issued by it if there are reasonable grounds for believing that

(a) the company is or, after the payment, would be unable to pay its liabilities as they become due;

(b) after the payment, the realizable value of the company's assets would be less than the aggregate of its

(i) liabilities, and

(ii) stated capital of all classes; or

(c) the effect of the purchase, redemption or acquisition would be to cause the company to be in violation of this Act or the regulations. 1991, c. 7, s. 79.

Reduction of stated capital

81 (1) Notwithstanding Section 80 but subject to Section 134, a provincial company may, by special resolution, reduce the stated capital of the company.

(2) A company shall not reduce its stated capital pursuant to subsection (1) if there are reasonable grounds for believing that

(a) the company is or, after the taking of such action, would be unable to pay its liabilities as they become due;

(b) after the taking of such action, the realizable value of the company's assets would be less than the aggregate of its liabilities; or

(c) the effect of the reduction would be to cause the company to be in violation of this Act or the regulations.

(3) A special resolution pursuant to this Section has no effect until it is approved, in writing, by the Minister.

(4) No approval may be given by the Minister pursuant to subsection (3) unless application for the approval is made within three months after the time of the passing of the special resolution.

(5) A special resolution pursuant to this Section must specify the stated capital account or accounts from which the reduction of capital effected by the special resolution will be deducted.

(6) In addition to evidence of the passing of the special resolution pursuant to this Section, statements showing in respect of the company

(a) the number of its shares issued and outstanding;

(b) the number of its shares of the class or classes to which the special resolution applies represented by the shareholders who voted for the special resolution;

(c) its assets and liabilities; and

(d) the reason why the reduction is sought,

must be submitted to the Minister at the time of the application for approval of the special resolution.

(7) Nothing in this Section precludes the Minister from refusing to approve a special resolution pursuant to this Section.

(8) The stated capital of the company may not be reduced below the amount stated in its instrument of incorporation and required before a licence may be issued to it pursuant to Sections 212 to 218.

(9) A shareholder, creditor or depositor of a provincial company may apply to the Court for an order compelling a shareholder or other recipient to pay or deliver to the company any money that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of the stated capital made contrary to this Section.

(10) An action to enforce a liability imposed by this Section may not be commenced after two years after the date of the act complained of.

(11) This Section does not affect a liability that arises pursuant to Section 116. 1991, c. 7, s. 80.

Adjustment of stated capital account

82 (1) On a purchase, redemption or other acquisition by a provincial company pursuant to Section 80 of shares issued by it, the company shall deduct from the stated capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fraction thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) In like manner to the manner referred to in subsection (1), a provincial company shall adjust its stated capital account or accounts in accordance with a special resolution referred to in subsection 81(1). 1991, c. 7, s. 81.

Conversion or change of shares

83 (1) Upon a conversion of shares or a change pursuant to subsection 14(9) or Section 253 of issued shares of a provincial company into shares of another class or series or kind, the company shall

(a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed, divided by the number of issued shares of that class or series immediately before the change; and

(b) add the result obtained pursuant to clause (a) and any additional consideration received by the company pursuant to the change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed.

(2) For the purpose of subsection (1) and subject to its instrument of incorporation, if a provincial company issues two classes of shares without nominal or par value and there is attached to each class a right to convert a share of the one class into a share of the other class and a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share of either class is the aggregate of the share capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

(3) Shares issued by a provincial company and converted or changed pursuant to subsection 14(9) or Section 253 into shares of another class or series become issued shares of the class or series of shares into which the shares have been changed.

(4) Where the instrument of incorporation limits the number of authorized shares of a class or series of shares of a provincial company and issued shares of that class or series have become, pursuant to subsection (3), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series is, unless the supplementary letters patent otherwise provide, increased by the number of shares that, pursuant to subsection (3), became shares of another class or series. 1991, c. 7, s. 82.

Cancellation of shares

84 Shares or fractions of shares issued by a provincial company and purchased, redeemed or otherwise acquired by it may be cancelled or, if the instrument of incorporation limits the number of authorized shares, may be restored to the status of authorized but unissued shares. 1991, c. 7, s. 83.

Contract to purchase own shares

85 (1) A contract with a provincial company providing for the purchase by it of its own shares is specifically enforceable against it except to the extent that it cannot perform the contract without being in breach of Section 80 or 81.

(2) In an action brought on a contract referred to in subsection (1), the provincial company has the burden of proving that performance of the contract is prevented by Section 80 or 81.

(3) Until the provincial company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or in a liquidation to be ranked subordinate to the rights of depositors, creditors and holders of subordinated notes but in priority to the other shareholders. 1991, c. 7, s. 84.

Commission for purchase of shares

86 The directors of a provincial company may authorize the company to pay a reasonable commission to any person in consideration of the person's purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares. 1991, c. 7, s. 85.

Declaration or payment of dividend

87 A provincial company may declare or pay a dividend unless there are reasonable grounds for believing that

(a) the company is or, after the payment, would be unable to pay its liabilities as they become due;

(b) after the payment, the realizable value of the company's assets would be less than the aggregate of

(i) its liabilities, and

(ii) its stated capital of all classes; or

(c) the effect of the payment would be to cause the company to be in violation of this Act or the regulations. 1991, c. 7, s. 86.

Manner of payment of dividend

88 (1) Subject to Section 87, a provincial company may pay a dividend in money or property or by issuing fully-paid shares of the company.

(2) Where shares of a provincial company are issued in payment of a dividend, the amount of the dividend stated as an amount in money must, in accordance with Section 75, be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend. 1991, c. 7, s. 87.

Acceptance of share as gift

89 A provincial company may accept from any shareholder a share of the company surrendered to it as a gift. 1991, c. 7, s. 88.

Liability of shareholders

90 The shareholders of a provincial company are not, as shareholders, liable for any liability, act or default of the company, except pursuant to subsection 81(9) or 176(5). 1991, c. 7, s. 89.

Restriction on entry in share register

91 **(1)** No transfer or issue of voting shares of a provincial company may be entered in its share register until the consent of the Superintendent has been received by the company if

(a) where the total number of shares of a class of voting shares of the company held by a person and by other shareholders who are associates of the person, if any, exceeds 10% of the total number of the issued and outstanding shares of that class, the transfer or issue would increase the percentage of shares that class held by such person and by other shareholders who are associates of the person, if any; or

(b) where the total number of shares of a class of voting shares of the provincial company held by a person and by other shareholders who are associates of the person, if any, is 10% or less of the total number of issued and outstanding shares of that class, the transfer or issue would cause the total number of shares of that class held by such person and by other shareholders who are associates of the person, if any, to exceed 10% of the issued and outstanding shares of that class,

and until the consent of the Superintendent is received by the company, no person shall, in person or by proxy, exercise the voting rights pertaining to any of the voting shares that are held by or in the name of the shareholder or by or in the name of any person who is an associate of the shareholder.

(2) Notwithstanding subsection (1), where a consent is given pursuant to subsection (1) with respect to a person and other persons related to the person, no consent pursuant to subsection (1) is required with respect to those persons in respect of a subsequent transfer or issue of voting shares unless, as a result of the entry of the transfer or issue, the shareholdings or beneficial ownership of those persons calculated pursuant to subsection (1) would undergo an increase of more than five per cent from the shareholdings or beneficial ownership calculated immediately after the previous consent was given.

(3) The exception set out in subsection (2) does not apply

(a) to a transfer or issue of shares that would result in a change of control of the provincial company;

(b) where, since the previous consent was given pursuant to this Section, the shareholdings or beneficial ownership of the person and other persons related to the person calculated pursuant to subsection (1) have decreased by more than five per cent from the

shareholdings or beneficial ownership calculated immediately after the previous consent was given.

(4) A person to whom shares are to be transferred or issued in circumstances that require the consent of the Superintendent may apply in writing for the consent and, for the purpose of the application, the person shall provide the Superintendent with any information the Superintendent may request.

(5) On an application pursuant to subsection (4), the Superintendent may refuse consent where, in the Superintendent's opinion, it would be in the public interest to do so, and without limiting the generality of the foregoing, the Superintendent may refuse consent where the shareholder or any person who is an associate of the shareholder

(a) is or has been bankrupt;

(b) has been convicted of a criminal offence, an offence pursuant to this Act or an offence pursuant to the *Securities Act* or any similar legislation of another jurisdiction;

(c) is or has been subject to a cease trading order or an injunction from trading pursuant to the *Securities Act* or any similar legislation of another jurisdiction;

(d) is subject to an examination pursuant to Section 227 or an investigation pursuant to Section 249;

(e) is violating a provision of this Act or the regulations or any similar legislation of another jurisdiction or an undertaking given or an agreement made with the Superintendent pursuant to this Act; or

(f) has failed to provide the information requested pursuant to subsection (4).

(6) The consent of the Superintendent pursuant to this Section takes effect on the date shown in the consent and the effective date may be a date before the date the consent is given. 1991, c. 7, s. 90.

Requirement for declaration

92 The Superintendent may, in writing, direct a provincial company to obtain from any person in whose name a share of the company is held or beneficially owned a declaration containing information

(a) concerning the ownership or beneficial ownership of such share;

(b) as to whether such share is held or beneficially owned by a person who is an associate of any other person and the name of that other person where applicable;

(c) concerning the ownership or beneficial ownership of the shares of a holding corporation; and

(d) concerning such other matters as are specified by the Superintendent,

and as soon as possible after the receipt of a direction from the Superintendent pursuant to this Section, the directors of the company shall comply with the direction

and every person who is requested by the company to provide a declaration in the form prescribed by the regulations containing information referred to in this Section shall immediately comply with the request by submitting the completed declaration to the company and the Superintendent. 1991, c. 7, s. 91.

Appeal of refusal to consent under Section 89

93 **(1)** Where the Superintendent proposes to refuse consent pursuant to Section 89, the Superintendent shall advise the applicant of the right to appeal.

(2) Upon the petition of the applicant, filed with the Minister within 28 days after the decision of the Superintendent, the Minister may

(a) confirm, vary or rescind the whole or any part of the decision; or

(b) hold a public hearing on the whole or any part of the application upon which the decision of the Superintendent was made,

and the decision of the Minister after the public hearing pursuant to clause (b) is not subject to petition pursuant to this Section.

(3) Except as provided in subsection (2), a decision of the Minister pursuant to this Section is final and that decision or the decision as confirmed or varied pursuant to subsection (2) is not subject to appeal. 1991, c. 7, s. 92.

Exemption from Section 91

94 The Superintendent may, by order, exempt any provincial company or other person from the application of Section 91, in whole or in part, on such terms and conditions as are set out in the order, and where any such order is filed with the company named in the order, it is deemed to be a consent of the Superintendent for the purpose of Section 91, if the terms and conditions of the order have been complied with. 1991, c. 7, s. 93.

Bylaws respecting shareholders

95 **(1)** The directors of a provincial company may make bylaws

(a) requiring any person holding any voting share of the company to submit written declarations

(i) with respect to the ownership of a share of the company or of the holding body corporate,

(ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,

(iii) as to whether the shareholder is associated with any other shareholder, and

(iv) with respect to such other matters as the directors consider relevant for the purpose of Sections 91 and 92;

(b) prescribing the times at which and the manner in which any declarations required pursuant to clause (a) are to be submitted; and

(c) requiring any person desiring to have a transfer of a share to the person entered in the securities register of the company to submit such a declaration as may be required pursuant to this Section in the case of a shareholder.

(2) Where, pursuant to a bylaw made pursuant to subsection (1), a declaration is required to be submitted by a shareholder or person in respect of the transfer of any share, the directors may prohibit the entry of the transfer in the securities register of the company until the required declaration has been submitted.

(3) In determining for the purpose relevant to the performance of their duties pursuant to Sections 91 and 92, the directors of the provincial company and any other person acting as proxy for a shareholder of the provincial company may rely upon any statement made in any declarations or rely upon their own knowledge of the circumstances and the directors and any such person are not liable in action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1991, c. 7, s. 94.

Share transfer prohibited by regulations

96 No transfer or issue of voting shares of a provincial company may be entered in its share register if the transfer or issue of such shares is prohibited by the regulations. 1991, c. 7, s. 95.

Application of Companies Act

97 Except where the provisions of the *Companies Act* dealing with share certificates, transfers and registers are inconsistent with this Act, those provisions apply with necessary changes to share certificates, transfers and registers in respect of the shares of a provincial company as if that company were a corporation pursuant to that Act. 1991, c. 7, s. 96.

Restrictions on shares

98 A provincial company may not impose restrictions on the issue, transfer or ownership of shares of any class or series except those transactions as are authorized by its instrument of incorporation and this Act. 1991, c. 7, s. 97.

Prohibition respecting list of shareholders

99 No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the holders of shares of a provincial company. 1991, c. 7, s. 98.

Management of provincial company by directors

100 (1) Subject to this Act, the directors shall manage the business and affairs of a provincial company.

(2) The number of directors must not be fewer than five.

(3) Subject to the instrument of incorporation and subsection (2), the number of directors is as specified by the bylaws. 1991, c. 7, s. 99.

Disqualification from being director

101 (1) The following persons are disqualified from being a director of a provincial company:

(a) a person who is not an individual;

(b) an individual who is less than 19 years of age;

(c) an individual who is of unsound mind and has been so found by a court in Canada or elsewhere;

(d) an individual who has the status of a bankrupt;

(e) an individual convicted of an offence pursuant to the *Criminal Code* (Canada) or the criminal law of any jurisdiction outside of Canada,

(i) in connection with the promotion, formation or management of a body corporate, or

(ii) involving fraud,

unless five years have elapsed since the expiration of the period fixed for suspension of the passing of sentence without sentencing or since a fine was imposed, or unless the term of imprisonment and probation imposed, if any, was concluded, whichever is the latest, but the disability imposed by this clause ceases upon a pardon being granted;

(f) an individual who is a Minister of the Crown in right of Canada or in right of a province;

(g) an individual who is an agent or employee of the Crown in right of Canada or in right of a province;

(h) an individual who is an employee of the government of a foreign state or any political subdivision of that state;

(i) an individual who is a director of a trust or loan company not affiliated with the company of which the individual wishes to become a director; and

(j) such other individuals as may be prescribed by the regulations.

(2) A director of a provincial company is not required to hold shares issued by the company.

(3) A person who is elected or appointed a director is not a director unless

(a) the person was present at the meeting when the person was elected or appointed and did not refuse to act as a director; or

(b) if the person was not present at the meeting when the person was elected or appointed

(i) the person consented, in writing, to act as a director before the election or appointment or within 10 days after the election or appointment, or

(ii) the person has acted as a director pursuant to the election or appointment. 1991, c. 7, s. 100.

Election of directors

102 (1) Each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner.

(2) A separate vote of shareholders must be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution.

(3) Where a shareholder has voted for more than one candidate without specifying the distribution of the votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates for whom the shareholder voted.

(4) Where the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled.

(5) Each director ceases to hold office at the close of the first annual meeting of shareholders following the director's election.

(6) Notwithstanding subsection (5), where directors are not elected at a meeting of shareholders the incumbent directors continue in office until their successors are elected.

(7) A director may not be removed from office if the votes cast against the removal would be sufficient to elect the director and such votes could be voted pursuant to subsection (1) at an election at which the same total number of votes were cast and the number of directors required by the bylaws or the instrument of incorporation or pursuant to Section 100 were then being elected. 1991, c. 7, s. 101.

Approval of and restrictions on election or appointment

103 (1) The election or appointment of a person to the board of directors of a provincial company does not take effect until the company has satisfied the Superintendent that the person is fit, both as to character and competence, to be a director of a company and the Superintendent has approved the election or appointment of the person as a director.

(2) The Superintendent may require a provincial company to provide such information, material and evidence as the Superintendent may consider necessary to decide the fitness of a person to be a director.

(3) Where the Superintendent does not notify a company within 30 days of being asked to approve the appointment or election of a proposed director that the Superintendent is satisfied that the proposed director is fit to be a director or give notice of the time and place of a hearing on the matter, the Superintendent is deemed to be satisfied as to the person's fitness to be a director.

(4) Subsections (1) to (3) do not apply

(a) to a person who, on January 1, 1992, is a director of a company while that person remains a director of the company; or

(b) to a person who has been approved pursuant to this Section while that person remains a director of the company.

(5) At least two of the directors of a provincial company must be ordinarily resident in the Province and a majority of the directors must be ordinarily resident in Canada.

(6) At least one third of the directors of a provincial company must be outside directors unless the Superintendent otherwise directs.

(7) For the purpose of Sections 100 to 123, an individual is not eligible to be an outside director if the individual

(a) holds more than 10% of the voting shares of the company or of any of its affiliates;

(b) is an officer or employee of the company or any of its affiliates or has been an officer or employee of the company or any of its affiliates within two years of the date on which the individual would become or became a director;

(c) is a spouse or child of an individual described in clause (a) or (b); or

(d) is an individual prescribed by the regulations.

(8) The election or appointment of any person as a director of a provincial company is void if the composition of the board of directors would, as a result of the election or appointment, fail to comply with subsection (5) or (6).

(9) Where a meeting of shareholders fails to elect the number of directors required by the bylaws or the instrument of incorporation or pursuant to Section 100 by reason of the disqualification, incapacity or death of any candidate, the directors elected at that meeting may exercise all the powers of the directors if the number so elected constitute a quorum. 1991, c. 7, s. 102.

Director ceases to hold office

104 (1) A director of a provincial company ceases to hold office if the director

(a) dies or resigns;

(b) is removed in accordance with Section 105; or

(c) becomes disqualified pursuant to subsection 101(1).

(2) The resignation of a director must be in writing and becomes effective at the time the resignation is sent to the company or at the time specified in the resignation, whichever is later. 1991, c. 7, s. 103.

Removal of director and filling of vacancy

105 (1) Subject to subsection 102(7), the shareholders of a provincial company may, by ordinary resolution at a special meeting, remove any director from office.

(2) Where the holders of any class or series of shares of a provincial company have the exclusive right to elect one or more directors, a director so elected may be removed only by an ordinary resolution at a meeting of the shareholders of that class or series.

(3) Subject to subsections 102(1) and (4), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled pursuant to Section 107. 1991, c. 7, s. 104.

Entitlement of director respecting meeting of shareholders

106 (1) A director of a provincial company is entitled to receive notice of and to attend and be heard at every meeting of shareholders.

(2) A director who

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the director from office; or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the director's resignation or removal or because the director's term of office has expired or is about to expire,

is entitled to submit to the company a written statement giving the reasons for the resignation or the reasons why the director opposes any proposed action or resolution.

(3) A provincial company shall immediately send a copy of the statement referred to in subsection (2) to shareholders entitled to receive notice of any meeting referred to in subsection (1) and to the Superintendent.

(4) No provincial company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3). 1991, c. 7, s. 105.

Filling of vacancy among directors

107 (1) Subject to subsections (3), (4) and (5), a quorum of directors may fill a vacancy among the directors, except a vacancy among the directors resulting from an increase in the number of directors or from a failure to elect the number of directors required by the bylaws or the instrument of incorporation or pursuant to Section 100.

(2) Where there is not a quorum of directors, or where there has been a failure to elect the number of directors required by the bylaws or the instrument of incorporation or pursuant to Section 100, the directors then in office shall

immediately call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting, the meeting may be called by any shareholder.

(3) Where the holders of any class or series of shares of a provincial company have an exclusive right to elect one or more directors and a vacancy occurs among those directors

(a) subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy, except a vacancy resulting from an increase in the number of directors for that class or series or from a failure to elect the number of directors for that class or series;

(b) where there are no such remaining directors and, by reason of the vacancy, the composition of the board of directors fails to meet the requirement of subsection 103(5), the remaining directors may fill that vacancy; and

(c) where there are no such remaining directors and clause (b) does not apply, any holder of shares of that class or series may call a meeting of the holders of those shares for the purpose of filling the vacancy, and if no such holder of shares calls a meeting, the meeting may be called by the directors then in office.

(4) The bylaws of a company may provide that a vacancy among the directors may be filled only by a vote of the shareholders or by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series.

(5) Notwithstanding subsection (4), where by reason of a vacancy the composition of the board of directors fails to meet the requirement of subsection 103(5), the directors who in the absence of any bylaw would be empowered to fill that vacancy shall do so immediately.

(6) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor. 1991, c. 7, s. 106.

Number of directors

108 (1) Subject to this Act and the instrument of incorporation, the directors of a provincial company shall, by bylaw, determine the number of directors.

(2) The bylaw enacted pursuant to subsection (1) that provides for the number of directors may provide that the number of directors to be elected at any annual meeting of the shareholders shall be such number as is fixed by the directors before the annual meeting and may provide that the directors may at any time appoint a director to fill any vacancy existing because the number of directors is less than the number fixed by the bylaw.

(3) A bylaw or an amendment or a repeal of a bylaw made pursuant to subsection (1) is not effective and must not be acted on until it has been submitted to the shareholders at the next meeting of shareholders following its enactment, and at such meeting the shareholders may, by ordinary resolution, confirm, reject or amend the bylaw, amendment or repeal.

(4) The shareholders of a company may amend the instrument of incorporation or bylaws to increase or, subject to subsection (5), to decrease the number of directors, or the minimum or maximum number of directors, but no decrease may shorten the term of an incumbent director.

(5) The number of directors required by the bylaws or the instrument of incorporation or pursuant to Section 100 may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and such votes could be voted in accordance with subsection 102(1) at an election at which the same total number of votes were cast and the number of directors required by the bylaws or the instrument of incorporation or pursuant to Section 100 were then being elected. 1991, c. 7, s. 107.

Meeting of directors

109 (1) Unless the bylaws otherwise provide, the directors may meet at any place and on such notice as the bylaws require.

(2) Subject to the bylaws and instrument of incorporation of a provincial company, a majority of the directors required by the bylaws or the instrument of incorporation or pursuant to Section 100 constitute a quorum at any meeting of directors and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) A notice of a meeting of directors must specify each matter referred to in subsection 111(3) that is to be dealt with at the meeting, but, unless the bylaws otherwise provide, need not otherwise specify the purpose of or the business to be transacted at the meeting.

(4) A director may in any manner waive a notice of a meeting of directors and attendance of a director at a meeting of directors is a waiver of notice of a meeting except where a director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(5) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

(6) Where authorized by bylaw, a meeting of directors or of a committee of directors may be held by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a director participating in such a meeting by such means is deemed, for the purpose of this Act, to be present at that meeting. 1991, c. 7, s. 108.

Making, amendment or repeal of bylaws

110 (1) Unless the instrument of incorporation or the bylaws otherwise provide, the directors may, by resolution, make, amend or repeal any bylaws that regulate the business or affairs of the company in any respect that is not contrary to this Act or to anything set out in the instrument of incorporation.

(2) The directors shall submit a bylaw, or any amendment or a repeal of a bylaw, made pursuant to subsection (1) to the shareholders at the next

meeting of shareholders, and the shareholders may, by ordinary resolution, confirm or reject the bylaw, amendment or repeal.

(3) Where a bylaw is made, amended or repealed pursuant to subsection (1), the bylaw, amendment or repeal is effective from the date of the resolution of the directors until it is confirmed or rejected by the shareholders pursuant to subsection (2) or until it ceases to be effective pursuant to subsection (4), and where the bylaw is confirmed, it continues in effect in the form in which it was so confirmed.

(4) Where a bylaw, amendment or repeal is rejected by the shareholders, or where the directors do not submit a bylaw, amendment or repeal to the shareholders as required pursuant to subsection (2), the bylaw, amendment or repeal ceases to be effective and no subsequent resolution of the directors, within two years after the date on which the bylaw, amendment or repeal ceases to be effective, to enact, amend or repeal a bylaw having substantially the same purpose or effect is effective until it is confirmed by the shareholders.

(5) A shareholder may, in accordance with Section 129, make a proposal to make, amend or repeal a bylaw.

(6) Subject to subsection (7), where a bylaw of a provincial company was in effect on January 1, 1992, it continues in effect until amended or repealed unless it is contrary to a provision of this Act.

(7) A bylaw of a provincial company respecting the remuneration of the directors of the company, as directors, in effect on January 1, 1992, ceases to have effect after that day on which the first annual meeting is held following that date. 1991, c. 7, s. 109.

Chair and executive committee

111 (1) The directors of a provincial company shall elect from their number a chair and, subject to subsections (3) and (4), may delegate to that chair any of the powers of the directors.

(2) Where the bylaws of a company so provide, the directors may appoint from their number an executive committee of not fewer than three directors, at least one of whom, unless the Superintendent otherwise directs, is an outside director, and subject to subsection (3), may delegate to that committee any of the powers of the directors.

(3) A chair or executive committee appointed pursuant to this Section has no authority to

(a) submit to the shareholders a question or matter requiring the approval of the shareholders;

(b) fill a vacancy among the directors or a committee of directors or in the office of auditor;

(c) issue or cause to be issued securities except in the manner and on terms authorized by the directors;

(d) declare a dividend;

(e) purchase, redeem or otherwise acquire shares issued by the company;

(f) pay a commission referred to in Section 86;

(g) except as provided in subsection 140(4), approve a financial statement referred to in Section 140;

(h) adopt, amend or repeal bylaws;

(i) approve the written procedures described in Section 122; or

(j) approve any item requiring approval of the board of directors pursuant to Sections 180 to 192.

(4) The election of a chair or the appointment of an executive committee of directors does not relieve the directors of a provincial company from any liability imposed by law.

(5) Subject to the instrument of incorporation and where authorized to do so by a special resolution, the directors of a provincial trust company may delegate, with or without the power of sub-delegation, to the chair of the company the exercise of all or any of the powers or authorities, whether discretionary or otherwise, that may arise through the performance by the company of its responsibilities under any will, trust, deed, contract or other instrument and the exercise of any such power or authority by the chair or a delegate of the chair, if any, shall in all instances constitute a performance by the company of its responsibilities under the will, trust, deed, contract or other instrument, as the case may be. 1991, c. 7, s. 110.

Audit committee and investment committee

112 The directors of a provincial company shall appoint, in accordance with Sections 120 and 121, an audit committee and an investment committee, which committees shall fulfill those duties required pursuant to this Act and the regulations. 1991, c. 7, s. 111.

Offices and officers

113 (1) The directors of a provincial company may, subject to the bylaws, designate the offices of the company, appoint officers to those offices, specify the duties of those officers and delegate to them powers, except the powers referred to in subsection 111(3).

(2) Where the regulations prescribe the qualifications for appointment as an officer, the directors shall not appoint a person who does not have those qualifications.

(3) Two or more offices of a provincial company may be held by the same person. 1991, c. 7, s. 112.

Remuneration of directors, officers and employees

114 (1) Subject to subsection (2) and the bylaws, the directors of a provincial company may fix the remuneration of the directors, officers and employees of the company.

(2) No remuneration may be paid to a director as director until a bylaw fixing the aggregate of all amounts that may be paid to all directors in respect of that remuneration during a fixed period of time has been confirmed by special resolution. 1991, c. 7, s. 113.

Action valid notwithstanding irregularity

115 An act of a director or officer of a provincial company is valid notwithstanding an irregularity in the election or appointment of, or a defect in the qualifications of, the director or officer. 1991, c. 7, s. 114.

Liability of directors

116 (1) Directors of a provincial company who vote for or consent to a resolution authorizing

(a) a purchase, redemption or other acquisition of shares contrary to Section 80;

(b) a reduction in the stated capital of the company contrary to Section 81;

(c) a commission contrary to Section 86;

(d) a payment of a dividend contrary to Section 87;

(e) a payment of an indemnity contrary to Section 119;

(f) an investment or other transaction contrary to Sections 180 to 192;

(g) a payment to a shareholder contrary to an order pursuant to Section 253; or

(h) any other payment to a shareholder, director or officer of the company the effect of which is to reduce the capital base of the company to an amount that is less than that required pursuant to this Act,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

(2) A director who has satisfied a judgment rendered pursuant to this Section is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

(3) A director liable pursuant to subsection (1) is entitled to apply to the Court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to Section 80, 81, 86, 87 or 119, 180 to 192 or 253.

(4) Where an application is made to the Court pursuant to subsection (3), the Court may, where it is satisfied that it is equitable to do so,

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient;

(b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

(5) An action to enforce a liability imposed pursuant to this Section may not be commenced after two years after the date of the resolution authorizing the action complained of. 1991, c. 7, s. 115.

Duties of directors and officers

117 (1) For the purpose of this Section, a director or officer includes a person acting in a capacity similar to, or performing functions of, a director or officer.

(2) Every director and officer of a provincial company in exercising the powers of, and in discharging the duties of, director or officer shall

(a) act honestly and in good faith with a view to the best interests of the company as a whole; and

(b) exercise the care, diligence and skill of a reasonably prudent director or officer under comparable circumstances.

(3) In considering whether a particular transaction or course of action is in the best interests of the provincial company as a whole, a director or officer shall have due regard to the interests of the depositors as well as the shareholders of the company and, in the case of a trust company, shall also have due regard to the interests of the persons for whom it acts in a fiduciary capacity.

(4) Every director and officer of a provincial company shall comply with this Act and the regulations and the company's instrument of incorporation and bylaws.

(5) No provision in a contract, the instrument of incorporation or the bylaws or a resolution relieves a director or officer of a provincial company from the duty to act in accordance with this Act and the regulations or relieves the director or officer from liability for a breach of this Act or the regulations. 1991, c. 7, s. 116.

Deemed consent by director

118 (1) A director who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless the director

(a) requests that a dissent be entered or the director's dissent is entered in the minutes of the meeting;

(b) sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) sends a dissent by registered mail or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for or consents to a resolution is not entitled to dissent pursuant to subsection (1).

(3) A director who is not present at a meeting at which a resolution is passed or action taken is deemed to have consented to the resolution or action unless, within seven days after becoming aware of the resolution or action, the director

(a) causes a dissent to be placed with the minutes of the meeting; or

(b) sends a dissent by registered mail or delivers it to the registered office of the company.

(4) A director is not liable pursuant to Section 116 if the director reasonably relies in good faith on

(a) the financial statement of the company represented to the director by an officer of the company or in a written report of the auditor of the company fairly to reflect the financial condition of the company; or

(b) a report of an accountant, lawyer, appraiser or other person whose profession lends credibility to a statement made by the accountant, lawyer, appraiser or other person. 1991, c. 7, s. 117.

Indemnification of director, officer, etc.

119 (1) Except in respect of an action by or on behalf of the company or body corporate to procure a judgment in its favour, a provincial company may indemnify a director or an officer of the company, a former director or officer of the company or a person who acts or who acted at the company's request as a director or an officer of a body corporate of which the company is or was a shareholder or creditor, and the heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of such company or body corporate if

(a) the person acted honestly and in good faith with a view to the best interests of the company as a whole; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that the conduct was lawful.

(2) A provincial company may, with the approval of the Court, indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the company or body corporate to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the company or body corporate against all costs, charges and expenses reasonably incurred by the person in connection with such action if the person fulfills the conditions set out in clauses (1)(a) and (b).

(3) Notwithstanding anything in this Section, a person referred to in subsection (1) is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by the person in connection with the

defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of the company or body corporate, if the person seeking indemnity

(a) was substantially successful on the merits in the defence of the action or proceeding;

(b) fulfills the conditions set out in clauses (1)(a) and (b); and

(c) is fairly and reasonably entitled to indemnity.

(4) A provincial company may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by the person

(a) in the person's capacity as a director or officer of the company, except where the liability relates to the failure to act honestly and in good faith with a view to the best interests of the company; or

(b) in the person's capacity as a director or officer of another body corporate if the person acts or acted in that capacity at the company's request, except where the liability relates to the failure to act honestly and in good faith with a view to the best interests of that body corporate.

(5) A company or a person referred to in subsection (1) may apply to the Court for an order approving an indemnity pursuant to this Section and the Court may so order and make any further order it thinks fit.

(6) An applicant pursuant to subsection (5) shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel.

(7) On an application pursuant to subsection (5), the Court may order notice to be given to any interested person and such person is entitled to appear and be heard in person or by counsel. 1991, c. 7, s. 118.

Audit committee

120 (1) Subject to subsection (2), the directors of a provincial company shall appoint from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom the majority, unless the Superintendent otherwise directs, must be outside directors, to hold office for one year or such additional period for which any of its members are reappointed.

(2) Where there are fewer than 10 directors, a provincial company may apply to the Superintendent to dispense with an audit committee, and the Superintendent may, if satisfied that the public interest will not be prejudiced, authorize the company to dispense with an audit committee on such conditions as the Superintendent thinks fit.

(3) Where the Superintendent authorizes the company to dispense with an audit committee pursuant to subsection (2), the board of directors shall act in the place and stead of the audit committee in accordance with this Section.

(4) The audit committee shall meet at least twice each year to review

(a) any financial statements distributed to the shareholders;

(b) the annual return of the company filed with the Superintendent pursuant to subsection 65(1);

(c) all reports of the auditor pursuant to Section 148; and

(d) any reports of transactions required by the regulations to be reviewed by the audit committee.

(5) In the case of statements and returns that by or pursuant to this Act must be approved by the board of directors of a provincial company, the audit committee shall report on those statements and returns to the board before the approval is given. 1991, c. 7, s. 119.

Investment committee

121 (1) Subject to subsection (2), the directors of a provincial company shall appoint from among their number a committee to be known as the investment committee to be composed of not fewer than three directors, of whom the majority, unless the Superintendent otherwise directs, must be outside directors, to hold office for one year or such additional period for which its members are reappointed.

(2) Where there are fewer than 10 directors, a company may apply to the Superintendent for authority to dispense with an investment committee, and the Superintendent may, if satisfied that the public interest will not be prejudiced, authorize the company to dispense with an investment committee on such conditions as the Superintendent thinks fit.

(3) Where the Superintendent authorizes the company to dispense with an investment committee pursuant to subsection (2), the board of directors shall act in the place and stead of the investment committee in accordance with Section 122. 1991, c. 7, s. 120.

Establishment of procedures

122 (1) Subject to this Act and the regulations, a provincial company shall establish

(a) written procedures to ensure that prudent investment standards are applied by the company in making investment decisions;

(b) written review and approval procedures to be followed by the company to ensure compliance with Sections 180 to 192;

(c) such systems and written procedures as may be necessary to define the levels of authority and responsibility of its officers and employees with respect to an investment or other financial decision of the company and to ensure that those systems and procedures are communicated to its officers and employees; and

(d) such other procedures as may be prescribed by the regulations.

(2) The procedures and systems referred to in subsection (1) must be developed by the investment committee of the board of directors of the company and must be reviewed at least twice each year by the investment committee.

(3) The investment committee shall report on its review and its recommendations, if any, with respect to the procedures and systems referred to in subsection (1) to the board of directors.

(4) The procedures referred to in subsection (1) are subject to the approval of the board of directors and the board, upon receipt of a report or recommendations from the investment committee, shall review such procedures and systems and make such changes as may be necessary. 1991, c. 7, s. 121.

Record of directors' attendance at meetings

123 (1) A provincial company shall keep a record of the total number of meetings of the directors and of the audit and investment committees and the number of such meetings attended by each director.

(2) A summary of the record kept pursuant to subsection (1) must be sent to each shareholder and to the Superintendent with the notice of the annual meeting and must be available on request to any depositor of the company. 1991, c. 7, s. 122.

Place of shareholders' meetings

124 (1) Meetings of shareholders of a provincial company must be held at the place within the Province provided in the bylaws or, in the absence of such provision, at the place within the Province that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a provincial company may be held outside the Province if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends a meeting of shareholders held outside the Province is deemed to have so agreed, except when the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held. 1991, c. 7, s. 123.

Annual and special meetings

125 (1) The directors of a provincial company

(a) shall call an annual meeting of shareholders to be held not later than 15 months after the first organizational meeting of shareholders held pursuant to Section 35 and subsequent annual meetings not later than 15 months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders.

(2) Notwithstanding subsection (1), the company may apply to the Court for an order extending the time within which the first or a subsequent annual meeting of the company must be held.

(3) A shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by means of telephone or other com-

munication facilities that permit all persons participating in the meeting to hear each other if

(a) the bylaws so provide; or

(b) subject to the bylaws, all the shareholders entitled to vote at the meeting consent,

and a person participating in such a meeting by those means is deemed for the purpose of this Act to be present at the meeting. 1991, c. 7, s. 124.

Record date

126 (1) For the purpose of determining shareholders

(a) entitled to receive payment of a dividend; or

(b) entitled to participate in a liquidation distribution,

or for any other purpose except the right to receive notice of or to vote at a meeting, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date must not precede by more than 50 days the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date must not precede by more than 50 days or by fewer than 21 days the date on which the meeting is to be held.

(3) Where no record date is fixed

(a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders is

(i) at the close of business on the day immediately preceding the day on which the notice is given, or

(ii) where no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose, other than to establish a shareholder's right to receive a notice of a meeting or to vote, is at the close of business on the day on which the directors pass the resolution relating thereto. 1991, c. 7, s. 125.

Notice of shareholders' meeting

127 (1) Notice of the time and place of a meeting of shareholders must be sent not fewer than 21 days nor more than 50 days before the meeting

(a) to each shareholder entitled to vote at the meeting;

(b) to each director;

(c) to the auditor; and

(d) in the case of the annual meeting, to the Superintendent.

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the company or its transfer agent on the

record date determined pursuant to subsection 126(2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(3) Where a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 60 days or more, notice of the adjourned meeting must be given as for an original meeting.

(4) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and reappointment of the incumbent auditor and remuneration of the directors and auditor, is deemed to be special business.

(5) Notice of a meeting of shareholders at which special business is to be transacted must state

(a) the nature of the business in sufficient detail to permit the shareholder to form a reasoned judgment on it; and

(b) the text of any special resolution to be submitted to the meeting. 1991, c. 7, s. 126.

Waiver of notice of shareholders' meeting

128 A shareholder and any other person entitled to attend a meeting of shareholders may in any manner, either before or after the meeting, waive notice of a meeting of shareholders and attendance of any such person at a meeting of shareholders is a waiver of notice of the meeting, except where that person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. 1991, c. 7, s. 127.

Power of shareholders

129 (1) A shareholder entitled to vote at an annual meeting of shareholders may

(a) submit to the provincial company notice of any matter that the shareholder proposes to raise at the meeting, referred to in this Section as a proposal; and

(b) discuss at the meeting any matter in respect of which the shareholder would have been entitled to submit a proposal.

(2) A provincial company shall set out the proposal in the notice of meeting required by Section 127 or attach the proposal to the notice.

(3) Where so requested by the shareholder, the company shall include in the notice of meeting or attach to the notice a statement by the shareholder of not more than 200 words in support of the proposal and the name and address of the shareholder.

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than five per cent of the shares or five per cent of the shares of a class of shares of the company entitled to vote at the meeting to which the proposal

is to be presented, but this subsection does not preclude nominations made at a meeting of shareholders.

(5) A provincial company is not required to comply with subsections (2) and (3) if

(a) the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of shareholders;

(b) it appears to the directors that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers or shareholders, or for a purpose that is not related in any significant way to the business or affairs of the company;

(c) the company, at the shareholder's request, included a proposal in a notice of meeting relating to a meeting of shareholders held within two years preceding the receipt of such request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(d) substantially the same proposal was submitted to shareholders in a notice of meeting relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or

(e) the rights conferred by this Section are being abused to secure publicity.

(6) No provincial company or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this Section.

(7) Where a provincial company refuses to include a proposal in a notice of meeting, the company shall, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the notice of meeting and send to the shareholder a statement of the reasons for the refusal.

(8) On the application of a shareholder claiming to be aggrieved by a company's refusal pursuant to subsection (7), the Court may restrain the holding of the meeting to which the proposal is sought to be presented and make any other or further order it thinks fit.

(9) The company or any person claiming to be aggrieved by a proposal may apply to the Court for an order permitting the company to omit the proposal from the notice of meeting, and the Court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

(10) An applicant pursuant to subsection (8) or (9) shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel. 1991, c. 7, s. 128.

List of shareholders

130 (1) A provincial company shall prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder

(a) where a record date is fixed pursuant to subsection 126(2), not later than 10 days after that date; or

(b) where no record date is fixed

(i) at the close of business on the day immediately preceding the day on which the notice is given, or

(ii) where no notice is given, on the day on which the meeting is held.

(2) Where a company fixed a record date pursuant to subsection 126(2), a person named in the list prepared pursuant to clause (1)(a) is entitled to vote the shares shown opposite that person's name at the meeting to which the list relates, except to the extent that

(a) that person has transferred the ownership of any of those shares after the record date; and

(b) subject to subsection 91(1) and Section 96, the transferee of those shares

(i) produces a certificate in the transferee's name or properly endorsed share certificates, or

(ii) otherwise establishes that the transferee owns the shares,

and demands, not later than 10 days before the meeting or such shorter period before the meeting as the bylaws of the company may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

(3) Where a company does not fix a record date pursuant to subsection 126(2), a person named in a list prepared pursuant to clause (1)(b) is entitled to vote the shares shown opposite that person's name at the meeting to which the list relates except to the extent that

(a) the person has transferred the ownership of any of the person's shares after the date on which a list referred to in subclause (1)(b)(i) is prepared; and

(b) subject to subsection 91(1) and Section 96, the transferee of those shares

(i) produces a share certificate in the transferee's name or properly endorsed share certificates, or

(ii) otherwise established that the transferee owns the shares,

and demands, not later than 10 days before the meeting or such shorter period before the meeting as the bylaws of the company may

provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

(4) A shareholder may examine the list of shareholders

(a) during usual business hours at the registered office of the company or at the place where its central share register is maintained; and

(b) at the meeting of shareholders for which the list was prepared. 1991, c. 7, s. 129.

Quorum at shareholders' meeting

131 (1) Unless the bylaws otherwise provide, the holder or holders of the majority of the shares entitled to vote at a meeting of shareholders present in person or by proxy constitute a quorum.

(2) Where a quorum is present at the opening of a meeting of shareholders, the shareholders present in person or represented by proxy may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) Where a quorum is not present at the opening of a meeting of shareholders, the shareholders present in person or represented by proxy may adjourn the meeting to a fixed time and place but not transact any other business. 1991, c. 7, s. 130.

Entitlement to vote

132 (1) Unless the instrument of incorporation otherwise provides, each share of a provincial company entitles the holder of that share to one vote at a meeting of shareholders.

(2) Where a body corporate or association is a shareholder of a provincial company, the company shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(3) An individual authorized pursuant to subsection (2) may exercise on behalf of the body corporate or association that individual represents all the powers it could exercise if it were an individual shareholder.

(4) Where two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the others, vote the shares, but if two or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them. 1991, c. 7, s. 131.

Voting by show of hands

133 (1) Voting at a meeting of shareholders is by show of hands, except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

(2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands. 1991, c. 7, s. 132.

Vote on special resolution

134 (1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the instrument of incorporation otherwise provides in the case of an amendment referred to in clause (a), (b) or (e), entitled to vote separately as a class or series on a special resolution to authorize an application pursuant to subsection 14(9) for the issue of supplementary letters patent to

(a) increase or decrease any maximum number of authorized shares of that class or series, or increase any maximum number of authorized shares of a class or series having rights or privileges equal or superior to the shares of that class or series;

(b) effect an exchange, reclassification or cancellation of all or part of the shares of that class or series;

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class or series and, without limiting the generality of the foregoing,

(i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,

(ii) add, remove or change prejudicially redemption rights,

(iii) reduce or remove a dividend preference or a liquidation preference, or

(iv) add, remove or change prejudicially conversion privileges, options, voting rights, or rights to acquire securities of a company or sinking fund provisions;

(d) increase the rights or privileges of any class or series of shares having rights or privileges equal or superior to the shares of that class or series;

(e) create a new class of shares equal or superior to the shares of that class or series;

(f) make any class of shares having rights or privileges inferior to the shares of that class or series equal or superior to the shares of that class or series;

(g) effect an exchange or create a right of exchange of all or part of the shares of another class or series into shares of that class or series; or

(h) add, change or remove restrictions on the transfer or issue of that class or series.

(2) The holders of a series of shares of a class are entitled to vote separately as a series pursuant to subsection (1) only if that series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A special resolution referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the special resolution as a class or series have approved the resolution. 1991, c. 7, s. 133.

Resolution signed by all shareholders entitled to vote

135 (1) Except where a written statement is submitted by a director pursuant to subsection 106(2) or where representations in writing are submitted by an auditor pursuant to subsection 145(6), a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders.

(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders or signed counterparts of such resolutions by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders duly called, constituted and held.

(3) A copy of every resolution or counterpart of a resolution referred to in subsection (1) must be kept with the minutes of the meetings of shareholders. 1991, c. 7, s. 134.

Requisition to call meeting of shareholders

136 (1) On notice to the Superintendent, the holders of not less than five per cent of the issued shares of a provincial company that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purpose stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the company.

(3) On receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless

(a) a record date has been fixed pursuant to subsection 126(2);

(b) the directors have called a meeting of shareholders and have given notice of the meeting pursuant to Section 127; or

(c) the business of the meeting as stated in the requisition includes matters described in clauses 129(5)(b) to (e).

(4) Except where subsection (3) applies, if the directors do not within 21 days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

(5) A meeting called pursuant to this Section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the bylaws and Sections 124 to 139.

(6) Unless the shareholders otherwise resolve at a meeting called by requisitionists pursuant to subsection (4), the company shall

(a) reimburse the requisitionists the expenses reasonably incurred by them in requisitioning, calling and holding the meeting unless they have not acted in good faith and in the interest of the shareholders of the company generally; and

(b) withhold rateably the amount the requisitionists were reimbursed from money due or to become due by way of fees or other remuneration to each director who was in default in not calling the meeting. 1991, c. 7, s. 135.

Meeting of shareholders by order of court

137 (1) Where for any reason it is impracticable to call a meeting of shareholders of a provincial company in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the manner prescribed by the bylaws or by this Act, or if for any reason the Court thinks fit, the Court, on the application of a director, a shareholder entitled to vote at the meeting or the Superintendent, may order a meeting to be called, held and conducted in any manner the Court directs.

(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this Section.

(3) A meeting called, held and conducted pursuant to this Section is for all purposes a meeting of shareholders of the company duly called, held and conducted.

(4) A director or shareholder who makes an application to the Court pursuant to subsection (1) shall give notice to the Superintendent before the hearing and deliver a copy of the Court's order, if any, to the Superintendent. 1991, c. 7, s. 136.

Application to determine controversy respecting election or appointment

138 (1) A provincial company, a director or shareholder of a provincial company or the Superintendent may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) On an application pursuant to this Section, the Court may make any order it thinks fit, including, without limiting the generality of the foregoing, an order

(a) restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) declaring the result of the disputed election or appointment;

(c) requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held or appointment made;

(d) determining the voting rights of shareholders and of persons claiming to own shares.

(3) A provincial company or a director or shareholder who makes an application to the Court pursuant to subsection (1) shall give notice to the Superintendent before the hearing and deliver a copy of the Court's order, if any, to the Superintendent. 1991, c. 7, s. 137.

Proxy

139 (1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or one or more alternative proxyholders who are not required to be shareholders, which proxyholders have all the rights of the shareholder to attend and act at the meeting in the place and stead of the shareholder except to the extent limited by the proxy.

(2) A proxy must be executed by the shareholder or by the shareholder's attorney authorized in writing.

(3) A proxy is valid at

(a) the meeting in respect of which it is given or any adjournment thereof; or

(b) any meeting held during the period specified in a proxy which period shall not exceed 14 months but a proxy is valid for only one annual meeting during that period.

(4) A shareholder may revoke a proxy

(a) by depositing a written instrument of revocation or a proxy of later date executed by the shareholder or by the shareholder's attorney authorized in writing

(i) at a registered office of the provincial company at any time up to and including the last business day preceding the day of the meeting, or an adjournment thereof, at which the proxy is to be used, or

(ii) with the chair of the meeting on the day of the meeting or an adjournment thereof; or

(b) in any other manner permitted by law.

(5) The directors may specify in a notice calling a meeting of shareholders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or adjournment thereof before which time proxies to be used at the meeting must be deposited with the provincial company or its agent. 1991, c. 7, s. 138.

Financial year and statements

140 (1) Subject to subsection (2), the financial year of a provincial company ends on the expiration of December 31st in each year, but when a company obtains a first licence after July 1st in any year, the first financial year of the company shall be a 12-month period ending on the expiration of December 31st in the next calendar year.

(2) A provincial company may, by bylaw that has been confirmed by a special resolution and approved in writing by the Superintendent, provide that the financial year of the company ends at the expiration of the last day of any month.

(3) The directors of a provincial company shall place before each annual meeting of the shareholders

(a) an annual financial statement consisting of financial statements in consolidated form for the financial year ending immediately preceding the annual meeting, including

(i) a statement of income for the year,

(ii) a statement of retained earnings for the year,

(iii) a statement of changes in financial position for the year,

(iv) a balance sheet as at the end of the year, and

(v) for the second and subsequent financial years, the comparative figures for the preceding year;

(b) the report of the auditor to the shareholders on the statements referred to in subclauses (a)(i) to (iv);

(c) the financial statement of the company in consolidated form;

(d) the financial statement in consolidated form of every subsidiary of the company, which statements may be presented in condensed form; and

(e) any further information respecting the financial position and the business and affairs of the company and the results of its operations required by its instrument of incorporation or its bylaws or by this Act or the regulations.

(4) The financial statements of a provincial company must be approved by the board of directors and the approval must be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, at least one of whom must be a member of the audit committee, and the auditor's report must be attached to or accompany the financial statements.

(5) A provincial company shall not issue, publish or circulate copies of an annual financial statement unless it is

(a) approved and signed in accordance with subsection (4); and

(b) accompanied by the report of the auditor of the company.

(6) A provincial company that violates subsection (5) commits an offence and every director, officer or employee or a company who wilfully participates in an offence committed by the company pursuant to that subsection is, whether or not that company has been prosecuted or convicted for the offence, a party to the offence and guilty of an offence.

(7) A provincial company shall send without charge a copy of the annual financial statement and the report of the auditor to every depositor who, in writing, requests a copy. 1991, c. 7, s. 139.

Copies of statements and information to shareholder

141 (1) A provincial company shall, at least 21 days before the date of each annual meeting send to each shareholder at the shareholder's recorded address a copy of the statements and information referred to in subsection 140(3).

(2) Where a provincial company fails to send to each shareholder who is entitled to receive notice of a meeting pursuant to subsection 127(1) or (2), a copy of the statements and information referred to in subsection 140(3), as required by subsection (1), at least 21 days before the date of the annual meeting at which the statements and information are to be considered, the meeting must be adjourned until such time as the requirement has been complied with. 1991, c. 7, s. 140.

Generally accepted accounting principles

142 The financial statements required pursuant to this Act must be prepared in accordance with this Act and the regulations and, except as otherwise required by this Act and the regulations, in accordance with generally accepted accounting principles, including the accounting recommendations found in the CPA Canada Handbook. 1991, c. 7, s. 141; 2015, c. 30, s. 153.

Auditor

143 (1) The shareholders of a provincial company shall, by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the next annual meeting.

(2) An auditor appointed pursuant to subsection 35(2) is eligible for appointment pursuant to subsection (1).

(3) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, or if the auditor is appointed by the directors or the Minister pursuant to subsection 144(6), may be fixed by the directors or the Minister, as the case may be.

(4) A person is disqualified from being an auditor of a provincial company if the person is not an accountant and if the person is not independent of

(a) the company and its affiliates; and

(b) the directors and officers of the company and its affiliates.

(5) For the purpose of subsection (4),

(a) independence is a question of fact; and

(b) a person is deemed not to be independent of a company if that person, any business partner of that person or any member of a partnership of accountants of which that person is a member

(i) is a director, an officer or an employee of the company or of an affiliate of the company, or is a business

partner of a director, officer or employee of the company or of an affiliate of the company,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the company or of an affiliate of the company, or

(iii) has been a liquidator, trustee in bankruptcy, receiver or receiver-manager of an affiliate of the company within two years of the proposed appointment as auditor of the company.

(6) No person is disqualified from acting as the auditor of a provincial company solely on the grounds that the person is a depositor in the company.

(7) An auditor who ceases to be qualified pursuant to this Section shall resign immediately after becoming aware that the auditor has ceased to be so qualified.

(8) An interested person or the Superintendent may apply to the Court for an order declaring an auditor to have ceased to be qualified pursuant to this Section and the office of auditor to be vacant. 1991, c. 7, s. 142.

Auditor ceases to hold office

144 (1) Except where the auditor has been appointed by the Minister pursuant to subsection (6), the shareholders of a provincial company may, by ordinary resolution at a special meeting, revoke the appointment of an auditor.

(2) A vacancy created by the revocation of the appointment of an auditor may be filled at the meeting at which the appointment was revoked pursuant to subsection (1) and, if not so filled, may be filled by the directors pursuant to subsection (5).

(3) An auditor of a provincial company ceases to hold office when

(a) the auditor resigns or, in the case of an individual, dies; or

(b) the appointment of the auditor is revoked pursuant to this Section.

(4) A resignation of an auditor becomes effective at the time a written resignation is sent to the company or at the time specified in the resignation, whichever is later.

(5) Subject to subsection (2), where a vacancy occurs in the office of the auditor of a provincial company or where the shareholders fail to appoint an auditor pursuant to subsection 143(1), the directors shall immediately fill the vacancy or make the appointment and the auditor so appointed holds office until the next annual meeting.

(6) Where the directors fail to fill a vacancy or make the appointment in accordance with subsection (5), the Minister may fill the vacancy or make the appointment and the auditor so appointed holds office until the next annual meeting.

(7) A provincial company shall immediately after the appointment of a person as auditor give written notice of the appointment to the person and to the Superintendent.

(8) Where a provincial company has a vacancy in the office of auditor, it shall immediately give notice of the vacancy to the Superintendent. 1991, c. 7, s. 143.

Attendance of auditor at meetings of shareholders

145 (1) The auditor of a provincial company is entitled to receive notice of every meeting of shareholders and, at the expense of the company, to attend and be heard at the meeting on matters relating to the auditor's duties.

(2) Where a director or shareholder of a provincial company, whether or not the shareholder is entitled to vote at the meeting, gives written notice not fewer than 10 days before a meeting of shareholders to an auditor or former auditor of the company, the auditor or former auditor shall attend the meeting at the expense of the company and answer questions relating to the auditor's duties.

(3) An auditor is not required to comply with subsection (2) where it clearly appears that the request pursuant to that subsection is made primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or any of its directors, officers or security holders, or for a purpose that is not relating in any significant way to the auditor's duties.

(4) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the company.

(5) Before calling a special meeting for the purpose specified in subsection 144(1) or an annual or special meeting where the board is not recommending the reappointment of the incumbent auditor, the company shall, 15 days or more before the mailing of the notice of the meeting, give to the auditor

(a) written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) An auditor of a provincial company has the right to make to the company, three days or more before the mailing of the notice of the meeting, representations in writing concerning

(a) the auditor's proposed removal;

(b) the appointment or election of another person to fill the office of auditor; or

(c) the auditor's resignation,

and the company, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting and to the Superintendent.

(7) No person shall accept appointment or consent to be appointed as auditor of a provincial company if the person is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances and reasons why, in the auditor's opinion, the auditor is to be replaced.

(8) Notwithstanding subsection (7), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a provincial company if, within 15 days after making the request referred to in that subsection, the person does not receive a reply.

(9) A person receiving a statement pursuant to subsection (7) shall immediately deliver a copy of the statement to the Superintendent and if no statement is received from the auditor being replaced within 15 days after the request referred to in subsection (7), the persons requesting the statement shall immediately give notice to the Superintendent of this fact.

(10) Any interested person may apply to the Court for an order declaring the office of auditor of a provincial company to be vacant if the auditor has not complied with subsection (7) unless subsection (8) applies with respect to the appointment of the auditor.

(11) The auditor of a provincial company is the auditor of any subsidiary of the company and the company shall take all necessary steps to ensure that its auditor is appointed auditor of its subsidiaries but this Section does not apply in the case of a subsidiary that carries on its operations in a country other than Canada if the law of that country makes provision with respect to auditors. 1991, c. 7, s. 144.

Examination of financial statements by auditor

146 (1) The auditor of a provincial company shall make the examination that is, in the auditor's opinion, necessary to enable the auditor to report on

(a) the annual financial statement and any other financial statements required by this Act or the regulations to be placed before the shareholders; and

(b) the annual return to be filed with the Superintendent pursuant to subsection 65(1),

and the auditor shall report in accordance with this Act and the regulations and generally accepted auditing standards, including the auditing recommendations found in the CPA Canada Handbook.

(2) On the demand of the auditor of a provincial company, the current or former directors, officers, employees or agents of the company and the former auditors of the company shall

(a) permit access to such records, minutes, accounts, cash, securities, documents and vouchers of the company or any subsidiary of the company, and to any security held by the company; and

(b) furnish such information and explanations,

as are, in the opinion of the auditor, necessary to enable the auditor to perform the auditor's duties and that the directors, officers, employees or agents or former auditors are reasonably able to furnish.

(3) On the demand of the auditor of a provincial company, the directors of the company shall

(a) obtain from the current or former directors, officers, employees and agents or former auditors of any subsidiary of the company, the information and explanations that the current or former directors, officers or employees and agents or former auditors are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to perform the auditor's duties; and

(b) furnish the information and explanations so obtained to the auditor.

(4) A person who in good faith makes an oral or written communication pursuant to subsection (2) or (3) is not liable in any civil action arising from the communication. 1991, c. 7, s. 145; 2015, c. 30, s. 154.

Report of auditor

147 (1) The auditor of a provincial company shall, in accordance with this Act and the regulations, make a report in writing on

(a) the annual return to the Superintendent on or before the day that the return is required pursuant to subsection 65(1);

(b) the annual financial statement referred to in Section 140, to the shareholders of the company not fewer than 21 days before the date of the annual meeting of the shareholders; and

(c) any other financial statement required by this Act or the regulations to be placed before the shareholders on or before the date that the statement is distributed.

(2) In each report required pursuant to subsection (1), the auditor shall state whether, in the auditor's opinion, the financial statement or return referred to in the report presents fairly the financial position of the company as at the end of the financial year or other period to which it relates and the results of its operation for that year or other period and whether

(a) the auditor has obtained all the information and explanations required;

(b) the examination has been made in accordance with generally accepted auditing standards;

(c) reliance has been placed on the reports of other auditors.

(3) A director or an officer of a provincial company shall immediately notify the audit committee and the auditor or the former auditor, if applicable, of any error or misstatement of which the director or officer becomes aware in a financial statement or return filed with the Superintendent that the auditor or the former auditor has reported upon if the error or misstatement in all the circumstances appears to be material.

(4) Where an auditor or former auditor of a provincial company is notified or becomes aware of an error or misstatement in a financial statement or return filed with the Superintendent upon which the auditor or former auditor has

reported, and if in the opinion of the auditor or former auditor the error or misstatement is material, the auditor or former auditor shall inform each director.

(5) When, pursuant to subsection (4), the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors shall immediately prepare and issue revised financial statements or otherwise inform the shareholders and the Superintendent.

(6) When, pursuant to subsection (4), the auditor or former auditor informs the directors of an error or misstatement in a return filed with the Superintendent, the directors shall immediately notify the Superintendent. 1991, c. 7, s. 146.

Report by auditor to board of directors

148 (1) The auditor of a provincial company shall report to the board of directors of the company whenever, in the auditor's opinion, there has been

(a) any change in the circumstances of the company that might materially and adversely affect the financial position of the company or the company's ability to carry on or transact business;

(b) a violation of this Act or the regulations; or

(c) a violation of the *Criminal Code* (Canada), the *Income Tax Act* (Canada) or the *Securities Act*.

(2) The auditor shall make a report pursuant to subsection (1) immediately upon becoming aware of a change or violation referred to in that subsection.

(3) The auditor shall report to the Superintendent any matter dealt with in a report pursuant to subsection (1), that, in the opinion of the auditor, could affect the well-being of the provincial company and has not been corrected or appropriately responded to by the board of directors within 30 days after the day that the matter was reported to the board of directors.

(4) An auditor is not required to make a report pursuant to this Section unless the auditor becomes aware of the change or violation described in subsection (1) in the ordinary course of the auditor's duties. 1991, c. 7, s. 147.

Power of Superintendent respecting auditor

149 (1) The Superintendent may, at any time, in writing, require that the auditor of a provincial company report to the Superintendent on the adequacy of the procedure adopted by the company for the safety of its creditors, shareholders, depositors and persons for whom the company acts in a fiduciary capacity and the auditor shall comply with any such requirements by the Superintendent.

(2) The Superintendent may, at any time, in writing, require that the scope of an annual audit of a provincial company be enlarged or extended in any manner that the Superintendent thinks fit.

(3) The Superintendent may, at any time, in writing, require the auditor of a provincial company to inspect or audit the accounts of the company for the purpose of determining whether the company is complying with this Act and the regulations and any terms, conditions and restrictions imposed on its licence.

(4) The company shall pay the costs and expenses incurred in connection with a report or audit required pursuant to subsection (1), (2) or (3). 1991, c. 7, s. 148.

Attendance of auditor at meetings of audit committee and board

150 (1) The auditor of a provincial company is entitled to receive notice of every meeting of the audit committee and, at the expense of the company, to attend and be heard at the meeting and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the auditor's term of office.

(2) The auditor of a provincial company may call a meeting of the audit committee at any time.

(3) The auditor of a provincial company is entitled to attend and be heard at meetings of the board of directors on matters relating to the auditor's duties.

(4) The board of directors and the audit committee of a provincial company shall give reasonable notice of their meetings to the company's auditor. 1991, c. 7, s. 149.

Liability of auditor

151 (1) An auditor or former auditor of a provincial company who in good faith makes an oral or written statement or report pursuant to this Act is not liable in any civil action arising from the statement or report.

(2) Subsection (1) does not relieve an auditor or former auditor from liability in connection with a report referred to in subsection 146(1) or clause 140(3)(b). 1991, c. 7, s. 150.

Agreement to amalgamate companies

152 (1) Two or more provincial companies may, with the prior approval of the Superintendent, enter into an agreement to amalgamate and continue as one company but no such agreement is effective until it is confirmed by letters patent issued pursuant to subsection 155(1).

(2) An amalgamation agreement must set out the terms and means of effecting the amalgamation and, in particular, must set out

(a) the provisions that are required to be included in letters patent pursuant to subsection 18(1);

(b) subject to subsection (3), the basis upon which and manner in which the holders of the issued shares of each amalgamating company are to receive

(i) securities of the amalgamated company,

(ii) money, and

(iii) securities of any body corporate other than the amalgamated company,

in the amalgamation;

(c) the manner of payment of money in lieu of the issue of fractional shares of the amalgamated company or of any other body corporate the securities of which are to be received in the amalgamation;

(d) whether the bylaws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed bylaws; and

(e) details of any other matter necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(3) Where shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies other than in a fiduciary capacity, the amalgamation agreement must provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares, and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated company. 1991, c. 7, s. 151.

Approval of amalgamation agreement

153 (1) The directors of each amalgamating company shall submit the amalgamation agreement for approval to a meeting of shareholders of the amalgamating company of which they are a director and, subject to subsection (4), to the holders of each class or series of shares.

(2) A notice of a meeting of shareholders complying with subsection 127(1) must be sent in accordance with that subsection to each shareholder of each amalgamating company and the Superintendent and must include or be accompanied by a copy of the amalgamation agreement.

(3) Each share of an amalgamating company carries the right to vote in respect of an amalgamation, whether or not it otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in an application for supplementary letters patent, would entitle the holders to vote separately as a class or series pursuant to Section 134.

(5) Subject to subsection (4), an amalgamation agreement is approved when the shareholders of each amalgamating company have approved of the amalgamation by special resolutions.

(6) An amalgamation agreement may provide that at any time before letters patent confirming the agreement are issued pursuant to subsection 155(1), the agreement may be terminated by the directors of an amalgamating company, notwithstanding the adoption of the agreement by the shareholders of all or any of the amalgamating companies. 1991, c. 7, s. 152.

Application for letters patent of amalgamation

154 (1) Unless an amalgamation agreement is terminated in accordance with subsection 153(6), the amalgamating companies shall, within six months

after the approval of the agreement in accordance with subsection 153(5), jointly apply for letters patent of amalgamation confirming the amalgamation agreement amalgamating the companies and continuing them as one provincial company.

(2) An application for letters patent of amalgamation amalgamating two or more provincial companies must be filed with the Superintendent.

(3) No application for the issue of letters patent of amalgamation pursuant to subsection (1) may be made unless

(a) notice of intention to make application has been published in the Royal Gazette and at least once a week for two consecutive weeks in a newspaper published or distributed in the place where each amalgamating company has its registered office; and

(b) one of the amalgamating companies has sent to the Superintendent

(i) a certified copy of the agreement,

(ii) certified copies of the reports on which the agreement is founded,

(iii) verification by the secretary, or other officer designated for the purpose by the directors, of each amalgamating company that the amalgamation agreement has been approved at a meeting of shareholders in accordance with subsection 153(5), and

(iv) evidence by the directors of one of the amalgamating companies that

(A) there exists a public benefit and advantage for the amalgamation of the companies,

(B) the proposed management is fit, both as to character and as to competence, to manage the amalgamated company,

(C) each person who will be a holder of 10% or more of any class of shares of the amalgamated company immediately after the amalgamation can demonstrate the adequacy of that person's financial resources and is fit as to character to own 10% or more of that class of shares,

(D) each proposed director is fit as to character and as to competence to be a director of the amalgamated company,

(E) the proposed plan of operations for the amalgamated company is feasible,

(F) the amalgamated company intends to offer to the public, initially or within a reasonable time after the amalgamation, the services set out in the amalgamation agreement,

(G) where one of the parties to the agreement is a trust company and the amalgamated com-

pany is a loan company, the arrangements referred to in Section 158 are adequate to protect the persons for whom the amalgamating trust company is acting in a fiduciary capacity, and

(H) where

(I) the amalgamated company is a loan company, the amalgamated company immediately after the amalgamation will have a capital base of at least $3,000,000,

(II) the amalgamation company is a trust company, the amalgamated company immediately after the amalgamation will have a capital base of at least $5,000,000. 1991, c. 7, s. 153.

Issue of letters patent of amalgamation

155 (1) Where an application has been made to the Superintendent pursuant to subsection 154(2), the Minister may, subject to subsection (2), issue letters patent confirming the amalgamation agreement and amalgamating the companies and continuing them as one company.

(2) The Minister shall not issue letters patent pursuant to subsection (1), unless the evidence referred to in subclause 154(3)(b)(iv) establishes to the satisfaction of the Minister that the requirements set out in that subclause have been met.

(3) Notwithstanding subparagraphs 154(3)(b)(iv)(H)(I) and (II), the Minister may, with the approval of the Governor in Council, alter the capital base requirements specified in those subparagraphs.

(4) The Superintendent shall publish notice of the issue of letters patent pursuant to subsection (1) in the Royal Gazette. 1991, c. 7, s. 154.

Effect of letters patent of amalgamation

156 On the date shown in the letters patent issued pursuant to subsection 155(1)

(a) the amalgamation of the amalgamating companies and their continuance as one company becomes effective;

(b) the property of each amalgamating company continues to be the property of the amalgamated company;

(c) the amalgamated company continues to be liable for the obligations of each amalgamating company;

(d) an existing cause of action, claim or liability to prosecution is unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating provincial company may be continued to be prosecuted by or against the amalgamated company;

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company;

(g) where a licence has been issued pursuant to this Act to one or more of the amalgamating companies, a licence is deemed to have been issued to the amalgamated company on the earliest date that one of the amalgamating companies was issued a licence and the Superintendent shall issue the appropriate licence for which the amalgamated company would qualify pursuant to subsection 214(1);

(h) where any director or officer of an amalgamating company continues as a director or officer of the amalgamated company, any disclosure by that director or officer of an interest in an investment or other transaction made to the amalgamating company pursuant to Section 187 is deemed to be disclosure to the amalgamated company and any such disclosure must be recorded in the minutes of the first meeting of directors of the amalgamated company; and

(i) the letters patent of amalgamation are deemed to be the instrument of incorporation of the amalgamated company. 1991, c. 7, s. 155.

Sale or acquisition of business or property

157 (1) A provincial company may enter into an agreement to

(a) sell or otherwise dispose of all or any part of its business, rights and property to any other body corporate for such consideration as the company thinks fit; or

(b) acquire all or any part of the business, rights and property of any other body corporate the business of which the company is authorized to carry on and to assume such duties, obligations and liabilities of that body corporate with respect to such business, rights and property as are not performed by, or not applicable to, the other body corporate.

(2) An agreement entered into pursuant to subsection (1) is not effective until it is approved, in writing, by the Minister.

(3) This Section does not apply to the purchase or sale by a company of an asset made in the ordinary course of business of the company.

(4) Where a company enters into an agreement pursuant to clause (1)(a), subsections 153(1) to (5) apply with necessary changes to and in respect of the company as if the company were an amalgamating company and the agreement were an amalgamation agreement and for the purpose of subsection 153(2), a summary of the agreement may be sent to the shareholders.

(5) Notwithstanding anything in this Act, the consideration for a sale or disposal of all or any part of the business, rights and property of a company pursuant to subsection (1) may be fully paid shares of the purchasing body corporate or in part cash and in part fully paid shares of the purchasing body corporate or such other consideration as may be provided for in the agreement.

(6) The consideration for the acquisition of all or any part of the business, rights and property of a body corporate pursuant to subsection (1) may be cash or shares of the company or in part shares of the company or such other consideration as may be provided for in the agreement. 1991, c. 7, s. 156.

Transfer to another trust company

158 Where

(a) one or more of the companies that are parties to an amalgamation is a trust company and the amalgamated company is not a trust company; or

(b) a trust company has entered into an agreement pursuant to clause 157(1)(a) and the purchasing body corporate is not a trust company,

the parties to the transaction shall make such arrangements as may be necessary to transfer to another trust company the business in relation to which the trust company acted as a fiduciary, but this Section does not apply so as to require the trust company to transfer to another trust company money received by it as deposits. 1991, c. 7, s. 157.

Purchase of shares of another body corporate

159 (1) Notwithstanding anything in this Act, a provincial company may, for the purpose of amalgamating with another provincial company or for the purpose of acquiring all or substantially all of the business, rights and property of another body corporate, purchase not less than 67% of the voting shares and any number of the shares of any other class of shares of the other company or other body corporate, subject to the following provisions:

(a) no shares may be purchased by the company until approved, in writing, by the Minister;

(b) the Minister shall not approve the purchase unless satisfied that

(i) there exists a public benefit and advantage for the purchase,

(ii) the management of the purchasing company is fit both as to character and as to competence, to manage the company as it will exist after it completes the purchase of the business, rights and property of the body corporate or the amalgamation,

(iii) each person who holds 10% or more of any class of shares of the purchasing company can demonstrate the adequacy of that person's financial resources and is fit as to character to own 10% or more of that class of shares,

(iv) each director is fit as to character and as to competence to be a director of the company as it will exist after it completes the purchase of the business, rights and property of the body corporate or the amalgamation, and

(v) the proposed plan of operations for the company as it will exist after it completes the purchase of the business, rights and property of the body corporate or the amalgamation is feasible;

(c) the Minister may approve the purchase where an offer to purchase has been made to all the holders of voting shares of the company or other body corporate and has been accepted by the holders of at least 67% of the outstanding voting shares of the company or other body corporate, the evidence of such acceptance being

(i) in the form of written agreements,

(ii) in the form of a resolution signed by or on behalf of the holders of voting shares of the other company or body corporate voting on the resolution, in person or by proxy, at a meeting of shareholders of that company or body corporate, or

(iii) partly in one such form and partly in the other;

(d) when a provincial company has purchased shares of a company or any other body corporate pursuant to this Section, the company shall

(i) amalgamate with the company pursuant to Sections 152 to 179, or

(ii) acquire all or substantially all the business, rights and property and assume the related obligations and liabilities of the company or other body corporate, as the case may be,

within a period of two years after the purchase has been authorized by the Minister, but, on being satisfied that the circumstances so warrant, the Minister may extend that period from time to time; and

(e) after the expiration of the period referred to in clause (d) or any extension of that period given by the Minister, the shares shall not be allowed as assets of the purchasing company in the calculation of the capital base and the Minister may, in writing, require the company to sell or otherwise dispose of the shares.

(2) Nothing in this Section authorizes a provincial company to purchase or acquire its own shares. 1991, c. 7, s. 158.

Take-over bids

160 (1) Subject to subsection (2), the provisions of the *Securities Act* dealing with take-over bids apply with necessary changes to a take-over bid made in respect of a provincial company.

(2) No take over bid referred to in subsection (1) may be made except with the prior written approval of the Minister. 1991, c. 7, s. 159.

Bankruptcy or insolvency

161 (1) Sections 161 to 179 do not apply to a provincial company that is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

(2) Any proceedings taken pursuant to this Act to dissolve or to liquidate and dissolve a provincial company are stayed if the company is at any time found to be insolvent in a proceeding pursuant to the *Winding-Up and Restructuring*

Act (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any Act of Canada or the Province that provides for the dissolution of a body corporate. 1991, c. 7, s. 160.

Furnishing of information to Superintendent by liquidator

162 A liquidator appointed to liquidate the business of a provincial company shall furnish the Superintendent with such information relating to the business and affairs of the company as the Superintendent may require, in such form as the Superintendent may require. 1991, c. 7, s. 161.

Payment to Minister before final liquidation

163 (1) Where the business of a provincial company is being liquidated, the liquidator or the company shall, subject to Section 178, pay to the Minister on demand and in any event before the final liquidation of the business of the company, any amount that is payable by the liquidator or the company to a creditor or shareholder of the company to whom payment of the amount has not, for any reason, been made.

(2) Payment by a liquidator or a company to the Minister pursuant to this Section discharges the liquidator and the company in respect of which the amount is made from all liability for the amount so paid. 1991, c. 7, s. 162.

Letters patent to dissolve provincial company

164 (1) A provincial company that has no property and no liabilities may, if authorized by a special resolution of the shareholders, or where it has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote, or if there are no shareholders, by a resolution of the directors, apply to the Superintendent for letters patent dissolving the company.

(2) Where the Superintendent has received an application pursuant to subsection (1) and is satisfied that all the circumstances so warrant, the Minister may issue letters patent dissolving the company.

(3) A company in respect of which letters patent are issued pursuant to subsection (2) ceases to exist on the date shown in the letters patent. 1991, c. 7, s. 163.

Dissolution of provincial company where instrument of incorporation expires

165 Where the instrument of incorporation of a provincial company expires and ceases to be in force in accordance with subsection 20(3), the Minister may

(a) dissolve the company by issuing letters patent dissolving the company; or

(b) apply to the Court for an order dissolving the company, in which case Section 168 applies. 1991, c. 7, s. 164.

Proposal for voluntary liquidation and dissolution

166 (1) The directors of a provincial company may propose or a shareholder who is entitled to vote at an annual meeting of shareholders of the

company may make a proposal for the voluntary liquidation and dissolution of the company.

(2) Notice of a meeting of shareholders at which voluntary liquidation and dissolution are to be proposed must set out the terms of the proposal.

(3) A provincial company proposing voluntary liquidation and dissolution may, if authorized by a special resolution of the shareholders ratifying a proposal or, where the company has issued more than one class of shares, by special resolutions of holders of each class, whether or not they are otherwise entitled to vote, apply to the Superintendent for letters patent dissolving the company.

(4) No action directed towards the voluntary liquidation and dissolution of a provincial company may be taken by a company, other than as provided in subsections (1) to (3), until an application made by the company pursuant to subsection (3) has been approved by the Superintendent.

(5) Where the Superintendent is satisfied on the basis of an application made by the company pursuant to subsection (3) that the circumstances warrant the voluntary liquidation and dissolution of the company, the Minister may, in writing, approve the application.

(6) Where the Minister has approved an application made by a company pursuant to subsection (3), the company shall not carry on business except to the extent necessary to complete the voluntary liquidation of the company.

(7) Where the Minister has approved an application made pursuant to subsection (3), the company shall

(a) cause notice of the Minister's approval of its application to be sent to each known claimant against and creditor of the company;

(b) publish notice of the Minister's approval of the application in the Royal Gazette and at least once a week for four consecutive weeks in a newspaper published or distributed in the place where the company has its registered office;

(c) proceed to collect its property, dispose of properties that are not to be distributed in kind to its shareholders, discharge all its obligations and do all other acts required to liquidate its business; and

(d) after giving the notice required pursuant to clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

(8) Unless the Court has made an order in accordance with Section 167, the Minister may, if satisfied that the company has complied with subsection (7) and that all the circumstances so warrant, issue letters patent dissolving the company.

(9) A provincial company in respect of which letters patent are issued pursuant to subsection (8) ceases to exist on the date shown in the letters patent. 1991, c. 7, s. 165.

Liquidation under court supervision

167 (1) The Superintendent or an interested person may, at any time during the liquidation of a company, apply to the Court for an order that the liquidation be continued under the supervision of the Court in accordance with Sections 168 to 173 and on such application the Court may so order and make any further order it thinks fit.

(2) An application to the Court to supervise a voluntary liquidation and dissolution pursuant to subsection (1) must state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation and dissolution.

(3) An applicant pursuant to subsection (1), other than the Superintendent, shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel.

(4) Where the Court makes an order applied for pursuant to subsection (1), the liquidation and dissolution of the company continues under the supervision of the Court in accordance with this Act.

(5) The liquidation of a company pursuant to an order made pursuant to subsection (1) commences on the date the order is made. 1991, c. 7, s. 166.

Powers of court regarding liquidation

168 In connection with the liquidation and dissolution of a provincial company, the Court may, if it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including, without limiting the generality of the foregoing,

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, fixing the liquidator's remuneration or replacing a liquidator;

(c) in the case of a trust company, an order appointing another licensed trust company as trustee for the purpose of administering any funds, other than deposits, held in trust by the company;

(d) an order appointing inspectors or referees, specifying their powers, fixing their remuneration or replacing inspectors or referees;

(e) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(f) an order determining the validity of any claims made against the company;

(g) an order, at any stage of the proceedings, restraining the directors and officers from

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the company, and from paying out or transferring any property of the company, except as permitted by the Court;

(h) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder,

(i) to the company, or

(ii) for an obligation of the company;

(i) an order approving the payment, satisfaction or compromise of claims against the company and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the company, whether liquidated, unliquidated, future or contingent;

(j) an order disposing of or destroying the documents and records of the company;

(k) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(l) after notice has been given to all interested parties, an order relieving the liquidator from any omission or default on such terms as the Court thinks fit and confirming any act of the liquidator;

(m) subject to subsections 172(5) to (10), an order approving any proposed, interim or final distribution to shareholders in money or in property;

(n) an order disposing of any property belonging to creditors and shareholders who cannot be found;

(o) on the application of any director, officer, shareholder, creditor or the liquidator,

(i) an order staying the liquidation on such terms and conditions as the Court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the company all its remaining property; or

(p) after the liquidator has rendered the final account to the Court, an order directing the company to apply to the Superintendent for letters patent dissolving the company. 1991, c. 7, s. 167.

Effect of order for liquidation

169 (1) Where the Court makes an order for liquidation of a provincial company,

(a) the company continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors, officers and shareholders, cease and vest in the liquidator, except as specifically authorized by the Court.

(2) The liquidator may delegate any of the powers vested in the liquidator by clause (1)(b) to the directors or shareholders, if any. 1991, c. 7, s. 168.

Court appointment of liquidator

170 (1) When making an order for the liquidation of a company or at any time after the making of an order, the Court may appoint any person, including a director, an officer or a shareholder of the company or any other body corporate, as liquidator of the company.

(2) Where an order for the liquidation of a company has been made and the office of liquidator is or becomes vacant, the property of the company is under the control of the Court until the office of liquidator is filled. 1991, c. 7, s. 169.

Duties of liquidator

171 A liquidator shall

(a) immediately after the liquidator's appointment, give notice of the appointment to the Superintendent and to each claimant and creditor known to the liquidator;

(b) immediately after the liquidator's appointment, publish a notice once in the Royal Gazette and at least once a week for four consecutive weeks in a newspaper published or distributed in the place in which the company has its registered office and in such other places and manner as the Court may direct, requiring any person

(i) indebted to the company, to render an account and pay to the liquidator at the time and place specified any amount owing,

(ii) possessing property of the company, to deliver it to the liquidator at the time and place specified, and

(iii) having a claim against the company, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice;

(c) subject to the appointment of a trustee pursuant to clause 168(c), take into custody and control the property of the company;

(d) open and maintain a trust account for the money of the company;

(e) keep accounts of the money of the company received and paid out by the liquidator;

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the company;

(g) where at any time the liquidator determines that the company is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions;

(h) deliver to the Court and to the Superintendent, at least once in every 12-month period after the liquidator's appointment or more often as the Court may require, financial statements of the company prepared in the manner described in subsection 140(3) or in such other manner as the liquidator may think proper or as the Court may require; and

(i) after the final accounts are approved by the Court, distribute any remaining property of the company among the shareholders according to their respective rights. 1991, c. 7, s. 170.

Powers of liquidator and approval of final accounts

172 **(1)** A liquidator may

(a) retain lawyers, accountants, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the company;

(c) carry on the business of the company as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the company;

(e) do all acts and execute any documents in the name and on behalf of the company;

(f) borrow money on the security of the property of the company;

(g) settle or compromise any claims by or against the company; and

(h) do all other things necessary for the liquidation of the company and distribution of its property.

(2) A liquidator is not liable if the liquidator relies in good faith on

(a) financial statements of the company represented to the liquidator by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company; or

(b) an opinion, a report or a statement of a lawyer, an accountant, appraiser or other professional advisor retained by the liquidator.

(3) A liquidator who has reason to believe that a person has in the person's possession or under the person's control, or has concealed, withheld or misappropriated, any property of the company may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

(4) Where the examination referred to in subsection (3) discloses that a person has in the person's possession or under the person's control, or has concealed, withheld or misappropriated, property of the company, the Court may order that person to restore it or pay compensation to the liquidator.

(5) A liquidator shall pay the costs of liquidation out of the property of the company and shall pay or make adequate provision for all claims against the company.

(6) Within one year after the liquidator's appointment, and after paying or making adequate provision for all claims against the company, the liquidator shall apply to the Court for

(a) approval of the final accounts and for an order permitting the distribution in money or in kind of the remaining property of the company to its shareholders according to their respective rights; or

(b) an extension of time, setting out the reasons for the extension.

(7) Where a liquidator fails to make the application required by subsection (6), a shareholder of the company may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(8) A liquidator shall give notice of the intention to make an application pursuant to subsection (6) to the Superintendent, each inspector appointed pursuant to Section 168, each shareholder and any person who provided a security or fidelity bond for the liquidation and shall publish the notice in the Royal Gazette and in a newspaper published or distributed in the place where the company has its registered office or as otherwise directed by the Court.

(9) Where the Court approves the final accounts rendered by a liquidator, the Court shall make an order

(a) directing the company to apply to the Superintendent for letters patent dissolving the company;

(b) directing the custody or disposal of the documents and records of the company; and

(c) discharging the liquidator except in respect of the duty of a liquidator pursuant to subsection (10).

(10) The liquidator shall immediately send a certified copy of the order referred to in subsection (9) to the Superintendent. 1991, c. 7, s. 171.

Application for distribution in money

173 (1) If, in the course of liquidation of a company, the shareholders resolve or the liquidator proposes to

(a) exchange all or substantially all the property of the company for securities of another body corporate that are to be distributed to the shareholders; and

(b) distribute all or part of the property of the company to the shareholders in kind,

a shareholder may apply to the Court for an order requiring the distribution of the property of the company to be in money.

(2) On an application pursuant to subsection (1), the Court may order that

(a) all the property of the company be converted into and distributed in money; or

(b) the claims of any shareholder applying pursuant to this Section be satisfied by a distribution in money or such other manner as the Court may order.

(3) Where an order is made by the Court pursuant to clause (2)(b), the Court

(a) shall fix a fair value on the share of the property of the company attributable to the shareholder;

(b) may, in its discretion, appoint one or more appraisers to assist the Court to fix a fair value in accordance with clause (a); and

(c) shall render a final order against the company in favour of the shareholder for the amount of the share of the property of the company attributable to the shareholder. 1991, c. 7, s. 172.

Letters patent to dissolve pursuant to order under clause 172(9)(a)

174 (1) On an application pursuant to an order made pursuant to clause 172(9)(a), the Minister may issue letters patent dissolving the company.

(2) A provincial company in respect of which letters patent are issued pursuant to subsection (1) ceases to exist on the date shown in the letters patent. 1991, c. 7, s. 173.

Production of documents and records of dissolved company

175 (1) A person who has been granted custody of the documents and records of a dissolved company remains liable to produce those documents and records for six years following the date of its dissolution or until the expiry of such other shorter period as may be ordered pursuant to subsection 172(9).

(2) A person who, without reasonable cause, violates subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment of a term not exceeding six months or to both. 1991, c. 7, s. 174.

Legal proceeding after dissolution

176 (1) In this Section, "shareholder" includes the heirs and legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a provincial company pursuant to this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the company within two years after its dissolution as if the company had not been dissolved; and

(c) any property distributed to shareholders that would otherwise have been available to satisfy any judgment or order if the company had not been dissolved remains available for that purpose.

(3) Service of a document on a company after its dissolution may be effected by serving the document on a person shown as a director in the last return filed with the Superintendent pursuant to Section 68 or, if no return has been filed, in the instrument of incorporation of the company.

(4) Notwithstanding the dissolution of a provincial company, a shareholder to whom any of its property has been distributed is liable to any person claiming pursuant to subsection (2) to the extent of the amount received by that shareholder on that distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the company.

(5) The Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the Court thinks fit and, if the plaintiff establishes the claim, the Court may refer the proceedings to a special referee who may

(a) add as a party to the proceedings each person who was a shareholder found by the plaintiff;

(b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined. 1991, c. 7, s. 175.

Creditor or shareholder who cannot be found

177 (1) Upon the dissolution of a company and subject to Section 178, the portion of the property distributable to a creditor or shareholder who cannot be found must be converted into money and paid to the Minister in accordance with and subject to Section 163.

(2) A payment pursuant to subsection (1) is deemed to be in satisfaction of a debt or claim of such creditor or shareholder.

(3) If at any time a person establishes that the person is entitled to any money paid in accordance with subsection (1), the Minister shall pay an equivalent amount to that person out of the General Revenue Fund. 1991, c. 7, s. 176.

Property held in trust before dissolution

178 (1) Notwithstanding Sections 161 to 179, and if no trustee has been appointed pursuant to clause 168(c), all property that immediately before the dissolution of a provincial trust company was being held in trust by it other than deposits, must be sent immediately by the persons who were its officers and directors before its dissolution or by the liquidators, if any, to a licensed trust company appointed as trustee by the Court for that purpose.

(2) Where property is not delivered as required pursuant to subsection (1), the trustee shall do such things as may be necessary to obtain the property.

(3) All property received by the trustee pursuant to subsections (1) and (2) must be held in trust by the trustee for the beneficiaries of the trusts.

(4) Where a licensed trust company has not been appointed pursuant to clause 168(c), the officers or directors of the company or the liquidator, if any, shall apply to the Court for an order appointing a trustee for the purpose of subsection (1).

(5) Where a licensed trust company has not been appointed pursuant to clause 168(c) and where an application is not made pursuant to subsection (4) before the dissolution of a provincial trust company, the Superintendent shall make the application. 1991, c. 7, s. 177.

Property vests in the Crown

179 Subject to subsection 176(2) and Sections 177 and 178, any property of a provincial company that has not been disposed of at the date of its dissolution vests in the Crown in right of the Province. 1991, c. 7, s. 178.

Specific confidential information

180 A person who, in connection with a transaction in a security of a provincial company or any of its affiliates, makes use of any specific confidential information for the person's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known, or in the exercise of reasonable diligence could have been known, to that person at the time of the transaction. 1991, c. 7, s. 179.

Designation of restricted party

181 For the purpose of Sections 182 to 192, the Superintendent may designate

(a) a person to be a restricted party of a provincial company if the Superintendent is of the opinion that

(i) the person is acting in concert with a restricted party of the company to participate in or enter into an investment or other transaction with the company that would be prohibited or restricted if entered into with the company by the restricted party, or

(ii) there exists between the person and the company such an interest or relationship as might reasonably be expected to affect the exercise of the best judgment of the company with respect to an investment or other transaction; or

(b) a shareholder of a provincial company or of an affiliate of a provincial company to be a restricted party of the company if the Superintendent is of the opinion that the shareholder is acting in concert with one or more other shareholders of the provincial company or of an affiliate to control, directly or indirectly, 10% or more of any class of shares of the company. 1991, c. 7, s. 180.

Restriction on investment

182 (1) Except as provided in this Section and Sections 183 to 192,

(a) no licensed provincial company or subsidiary of a licensed company shall, directly or indirectly, participate in, or enter

into, any investment or other transaction with a restricted party of the company; and

(b) no restricted party of a licensed provincial company shall, directly or indirectly, participate in, or enter into, an investment or other transaction with the company or a subsidiary of the company.

(2) Except as provided in clause 183(1)(a), no licensed provincial company or subsidiary of a licensed provincial company shall wilfully invest by way of purchase of or loans on the security of real estate that at any time in the period of 36 months preceding the date of advance of any funds by the company or its subsidiary was owned by a director or the spouse or child of the director or any relative of the director or spouse if that relative has the same residence as the director.

(3) Sections 181 to 192 do not apply so as to prevent the payment of director's fees of the licensed provincial company or of a subsidiary of the licensed provincial company if the fees have been approved by the shareholders of the licensed provincial company. 1991, c. 7, s. 181.

Powers of licensed provincial company or subsidiary

183 (1) Subject to the prior approval of the board of directors of the licensed provincial company, a licensed provincial company or a subsidiary of a licensed provincial company may

(a) make a loan to a director, officer or employee of the company, the spouse or any child of a director or officer of the company or any relative of a director or officer of the company or of the spouse of a director or officer of the company on the security of the residence of the person to whom the loan is made if

(i) the loan qualifies as an investment pursuant to clause 45(1)(a),

(ii) the amount of the loan does not exceed one half of one per cent of the capital base of the company, and

(iii) in the case of a director who is not an employee or officer of the company or the spouse or child of the director, the terms of the loan are no more favourable than those offered by the company in the ordinary course of business;

(b) make a personal loan to an officer or employee of the company, the spouse or any child of an officer of the company or any relative of an officer of the company or of the spouse of an officer of the company if the loan qualifies as an investment pursuant to clause 45(2)(b);

(c) enter into written contracts with a restricted party for the provision of management services to or by the company or subsidiary if

(i) the consideration is at or exceeds competitive and fair rates where the services are provided by the company or the subsidiary and is otherwise reasonable for the services provided, and

(ii) the consideration does not exceed competitive and fair rates where the services are provided to the company or the subsidiary and is otherwise not unreasonable for the services provided;

(d) enter into a written lease of real estate or personal property with a restricted party for the use of the company or the subsidiary in carrying out its business if

(i) the rent does not exceed fair rental value,

(ii) the term of the lease and all renewals does not exceed five years, and

(iii) the terms of the lease are otherwise competitive and not unreasonable;

(e) enter in written contracts with a restricted party for pension and benefit plans and other reasonable commitments incidental to the employment of officers and employees of the company or the subsidiary;

(f) enter into employment contracts with officers or future officers of the company or the subsidiary;

(g) enter into written contracts with a restricted party for the purchase of goods or services, other than management services, used or required by the company or the subsidiary in carrying on its business, if the price paid for such goods or services is competitive and at market value or fair rates, supported by appropriate documentation of such value or rates;

(h) enter into such investments or other transactions with a restricted party as may be prescribed by the regulations.

(2) Notwithstanding clause (1)(a) or (b), a licensed provincial company may make a loan to an employee of the company who is not a director or officer of the company or to the employee's spouse or child without obtaining the approval of the board of directors if the amount of the loan does not exceed such amounts as may be prescribed by the regulations and there is compliance with subclauses (1)(a)(i) and (ii) or clause (1)(b), as the case may be.

(3) A licensed provincial company or a subsidiary of a licensed provincial company, without the approval of the board of directors, may enter into

(a) employment contracts with persons who are not directors or officers of the company or the subsidiary;

(b) transactions with a restricted party which involve nominal or immaterial expenditures by the company or the subsidiary;

(c) transactions with a restricted party for the sale of goods or the provision of services normally provided to the public by the company or the subsidiary in the ordinary course of business if the prices and rates charged by the company or subsidiary are competitive and at fair rates;

(d) such investments or other transactions with a restricted party as may be prescribed by the regulations. 1991, c. 7, s. 182.

Onus on restricted party and licensed provincial company

184 The onus is upon the restricted party and the licensed provincial company or its subsidiary to demonstrate

(a) for the purpose of subclause 183(1)(a)(iii), that the terms of the loan are no more favourable than those offered by the company in the ordinary course of business;

(b) for the purpose of clause 183(1)(c), that it is reasonable that the services be obtained or supplied;

(c) for the purpose of subclause 183(1)(c)(i), that the consideration is at or exceeds competitive and fair rates;

(d) for the purpose of subclause 183(1)(c)(ii), that the consideration does not exceed competitive and fair rates;

(e) for the purpose of clause 183(1)(d), that the rent does not exceed fair rental value and the terms of the lease are otherwise competitive and not unreasonable;

(f) for the purpose of clause 183(1)(g), that the price paid is competitive and at market value or fair rates;

(g) for the purpose of clause 183(3)(b), that expenditures are nominal or immaterial; and

(h) for the purpose of clause 183(3)(c), that services are normally provided to the public in the ordinary course of business and that the prices and rates are competitive and at fair rates. 1991, c. 7, s. 183.

Company as fiduciary

185 (1) A licensed provincial trust company shall not participate in or enter into an investment or other transaction with its subsidiaries or restricted parties using funds held by the company as a fiduciary, other than deposits.

(2) Except as provided in this Section, a licensed provincial trust company shall not invest funds held by the company as a fiduciary in any class of securities of the company or its subsidiaries or restricted parties.

(3) A licensed provincial trust company may act as a fiduciary of one or more trusts or estates that own securities of the company or its subsidiaries or restricted parties if the securities were acquired before the company assumed responsibility as a fiduciary.

(4) Nothing in this Section authorizes a licensed provincial trust company to perform any act as a fiduciary that is otherwise prohibited.

(5) Nothing in this Section prevents a licensed provincial trust company from

(a) fulfilling a specific direction or permission of a court or of an instrument creating a fiduciary duty that the company should or may purchase or sell securities of the company or its subsidiaries or restricted parties or participate in, or enter into, any investment or other transaction with its subsidiaries or restricted parties, but a general power to invest in the discretion of the fiduciary shall not be con-

sidered to be a specific direction or permission for the purpose of this clause;

(b) investing funds held by it as a fiduciary in the securities of its restricted parties if those securities are listed on a stock exchange prescribed by the regulations;

(c) participating in or entering into an investment that a co-fiduciary or the co-fiduciaries of the company can direct to be made without the agreement of the company and that the co-fiduciary or co-fiduciaries have directed to be made. 1991, c. 7, s. 184.

Consent of Superintendent to transaction with restricted party

186 (1) Upon the application of a licensed provincial company, the Superintendent may, subject to such terms and conditions as the Superintendent may impose, consent to an investment or other transaction set out in Sections 182 to 192, with a restricted party, if, in the Superintendent's opinion, the investment or other transaction is necessary to the well-being of the company and is not prejudicial to the interests of its depositors or persons in respect of whom the company acts in a fiduciary capacity.

(2) Subsection (1) does not apply so as to permit the Superintendent to consent to an investment or other transaction that is prohibited by Section 185. 1991, c. 7, s. 185.

Disclosure

187 (1) A restricted party who is a party to an investment or other transaction with a licensed provincial company or a subsidiary of a licensed provincial company or to a proposed investment or other transaction with the company or the subsidiary for which the approval of the board of directors of the company is required, whether pursuant to this Act or otherwise, shall disclose in writing to the company the nature of the restricted party's interest in that investment or other transaction.

(2) A director or officer of a licensed provincial company, with respect to an investment or other transaction with the licensed provincial company or a subsidiary of the licensed provincial company or with respect to a proposed investment or other transaction with the company or the subsidiary, shall disclose the nature of the interest in that investment or other transaction if the director or officer

(a) is a director or an officer of a body corporate that is a party to an investment or other transaction of the licensed provincial company or the subsidiary or a proposed investment or other transaction of the company or subsidiary; or

(b) holds 10% or more of the shares of a body corporate referred to in clause (a).

(3) The disclosure required by subsection (1) or (2) must be made, in the case of a director,

(a) at the meeting at which a proposed investment or other transaction is first considered;

(b) where the director was not then interested in a proposed investment or other transaction, at the first meeting after becoming so interested;

(c) where the director becomes interested after a proposed investment or other transaction is entered into, at the first meeting after becoming so interested; or

(d) where a person who is interested in a proposed investment or other transaction later becomes a director, at the first meeting after becoming a director.

(4) The disclosure required by subsection (1) or (2) must be made, in the case of a restricted party who is not a director,

(a) immediately after becoming aware that the proposed investment or other transaction is to be considered or has been considered at a meeting of directors;

(b) where the restricted party becomes interested after an investment or other transaction is entered into, immediately after becoming interested; or

(c) where a person who is interested in an investment or other transaction later becomes a restricted party, immediately after becoming a restricted party.

(5) A director required by subsection (1) or (2) to make a disclosure shall not take part in the discussion or vote on any resolution to approve an investment or transaction in relation to which disclosure is required pursuant to subsection (1) or (2) and the director shall not be present at any meeting of the board while it is dealing with the matter.

(6) A director referred to in subsection (5) shall not attempt in any way to influence the voting on any resolution to approve an investment or other transaction.

(7) For the purpose of this Section, a general notice to the directors by a director or officer, declaring that the director or officer is a director or officer of, or has an interest in, a person and is to be regarded as interested in an investment or other transaction made with that person, is a sufficient declaration of interest in relation to an investment or other transaction so entered into. 1991, c. 7, s. 186.

Failure to comply with Sections 182 to 192

188 Where a restricted party or a licensed provincial company or a subsidiary of a licensed provincial company fails to comply with Sections 182 to 192, and where an investment or other transaction that is prohibited by Sections 182 to 192 takes place, the company or the Superintendent may apply to the Court for an order setting aside the investment or other transaction and directing that the restricted party account to the company for any profit or gain realized, and upon such application the Court may so order or make such order as it thinks fit, including compensation for loss or damage suffered by the company and punitive or exemplary damages from the restricted party. 1991, c. 7, s. 187.

Application to Court for payment

189 (1) Where an investment or other transaction that is prohibited pursuant to Sections 182 to 192 takes place, a licensed provincial company or the Superintendent may apply to the Court for an order that each person who participated in or facilitated that investment or other transaction made in violation of Sections 182 to 192 pay, on a joint and several basis,

(a) damages;

(b) the face value of the investment; or

(c) the amount expended by the company in the transaction.

(2) Subsection (1) does not apply to a person who is not a director unless the person knew or ought reasonably to have known that the investment or other transaction was made in violation of Sections 182 to 192. 1991, c. 7, s. 188.

Duty of auditor to report breach

190 An auditor shall immediately report to the board of directors and the Superintendent any breach of a provision of Sections 182 to 192 of which the auditor is aware or is made aware pursuant to Section 91 and, if the board of directors does not act to rectify the breach within a reasonable period of time, the auditor shall immediately report the failure to rectify to the Superintendent. 1991, c. 7, s. 189.

Duty of professional adviser to report breach

191 (1) A person who provides professional advice and services for or on behalf of the licensed provincial company, other than an auditor pursuant to Section 190, who in providing the professional services becomes aware of a violation of any of the provisions of Sections 182 to 192 in the course of providing such advice and services shall immediately advise the board of directors and the auditor.

(2) No person referred to in subsection (1) shall advise or perform services for a company with respect to an investment or other transaction to which that person is a party or in which that person has a direct or indirect beneficial interest in the subject matter of the investment or transaction.

(3) Nothing in Sections 182 to 192 affects the privilege that exists in respect of a solicitor and client. 1991, c. 7, s. 190.

No liability

192 A person who in good faith makes a report pursuant to subsection 191(1) is not liable in any civil action arising from the making of the report. 1991, c. 7, s. 191.

Application to extra-provincial company

193 A licensed extra-provincial company is subject to the provisions of Sections 2 to 11 and 193 to 277, except where those provisions are limited in application to a provincial company. 1991, c. 7, s. 192.

Licensing of extra-provincial company

194 (1) Unless it registers a business name in accordance with the *Partnerships and Business Names Registration Act* under which it will carry on business in the Province, no extra-provincial company shall be licensed in its own name pursuant to this Act except in accordance with subsections 21(1) and 23(1) and those subsections apply with necessary changes to an extra-provincial company as if it were a provincial company.

(2) The Superintendent may exempt an extra-provincial company from the provisions of subsection 21(1).

(3) Where, through inadvertence or otherwise, an extra-provincial company is licensed in violation of subsection (1), the Superintendent may, after giving the company an opportunity to be heard, require the company to register, in accordance with the *Partnerships and Business Names Registration Act,* a business name that the Superintendent approves within 60 days after the Superintendent so requires and the extra-provincial company shall comply with that requirement.

(4) An extra-provincial company that carries on business in the Province under a name in violation of this Section is guilty of an offence. 1991, c. 7, s. 193.

Agent of extra-provincial company

195 (1) An extra-provincial company shall, with its application for a first licence pursuant to this Act, file with the Superintendent the appointment of an agent and the power of attorney referred to in subsection 213(9).

(2) Where an agent of a licensed extra-provincial company dies or resigns or the agent's appointment is revoked, the company shall file immediately with the Superintendent the appointment of another agent and a new power of attorney referred to in subsection 213(9).

(3) An agent for a licensed extra-provincial company who intends to resign shall

(a) give not less than 60 days notice to the extra-provincial company at its registered office; and

(b) file immediately a copy of the notice with the Superintendent.

(4) An agent shall file immediately with the Superintendent a notice in the form prescribed by the regulations of any change of the agent's address.

(5) The address of an agent shown in the agent's appointment or in a notice pursuant to subsection (4) must be an office that is accessible to the public during usual business hours.

(6) Service of a process, notice or document in a civil, criminal or administrative action or proceeding is deemed to have been sufficiently made upon a licensed extra-provincial company if made upon the agent as shown in the most recent appointment of an agent filed with the Superintendent.

(7) A notice or document may be sent or served upon a licensed extra-provincial company by

(a) personally serving the agent as shown in the most recent appointment of an agent filed with the Superintendent;

(b) delivering the notice or document to the address, according to the Superintendent's records, of its agent; or

(c) sending the notice or document by registered mail to that address.

(8) A notice or document sent by registered mail to the agent's address is deemed to have been received or served at the time it would have been delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the agent did not receive the notice or document at that time or at all. 1991, c. 7, s. 194.

Opening branch by extra-provincial company

196 A licensed extra-provincial company shall not open a branch in the Province unless the company gives notice to the Superintendent of its intention to do so at least 30 days before it opens the branch. 1991, c. 7, s. 195.

Acceptance of deposits by extra-provincial company

197 A licensed extra-provincial company shall not receive or accept, in the Province, money as deposits within the meaning of the *Canada Deposit Insurance Corporation Act* unless it is a member institution within the meaning of that Act or the deposits are insured by some other public agency approved by the Superintendent. 1991, c. 7, s. 196.

Authority of extra-provincial company to act

198 (1) A licensed extra-provincial company shall not carry on business, conduct its affairs or exercise its powers in the Province to any greater extent than the company is authorized or permitted by its jurisdiction of incorporation to do in carrying on its business, conducting its affairs or exercising its powers in its jurisdiction of incorporation.

(2) Notwithstanding subsection (1), a licensed extra-provincial company shall not carry on business, conduct its affairs or exercise its powers in the Province to any greater extent than the company is authorized or permitted by its jurisdiction of incorporation to do in carrying on its business, conducting its affairs or exercising its powers in its jurisdiction of incorporation.

(3) Notwithstanding subsections (1) and (2), a licensed extra-provincial company shall not, with respect to its total assets, participate in or enter into any investment in the Province if the investment or the amount of the investment is prohibited or restricted, as the case may be, by the regulations or by the company's licence issued pursuant to this Act.

(4) A licensed extra-provincial company may, with respect to money received in the Province and held in trust by the company, other than deposits, invest that money in common trust funds in accordance with Section 56 and that Section applies with necessary changes to a licensed extra-provincial trust company as if it were a licensed provincial trust company.

(5) A licensed extra-provincial company or subsidiary of a licensed extra-provincial company shall not promote or operate a mutual fund in the Province, unless the company or subsidiary has received the approval of the Superintendent and complies with any terms or conditions imposed with respect to the approval by the Superintendent.

(6) A licensed extra-provincial company or subsidiary of a licensed extra-provincial company shall not be registered as a broker, salesperson or sub-agent pursuant to the *Securities Act* or the regulations pursuant to that Act, unless the company or subsidiary has received the approval of the Superintendent and complies with any terms or conditions imposed with respect to the approval by the Superintendent. 1991, c. 7, s. 197.

Financial information to be provided by extra-provincial company

199 A licensed extra-provincial company at the times prescribed by the regulations shall provide to the Superintendent such financial or other information as may be prescribed by the regulations. 1991, c. 7, s. 198.

Filing by extra-provincial company

200 A licensed extra-provincial company shall file with the Superintendent

(a) copies of any change made in its instrument of incorporation, licence or registration pursuant to an enactment of the Parliament of Canada or of any province within seven days after the effective date of the change;

(b) copies of every return, report, statement or other information required to be filed in the company's jurisdiction of incorporation and the answer to every inquiry by or any other communication between it and the public official responsible for the administration of the company in its jurisdiction of incorporation, within seven days after filing, submission or receipt, as the case may be;

(c) the address of its principal office in the Province and its registered office and a notice of any change in either of those addresses within seven days after the effective date of the change;

(d) the names and addresses of the members of its board of directors, board of management or other governing body and a notice of any change in the membership within seven days after the effective date of the change; and

(e) such financial or other information as may be required by the Superintendent. 1991, c. 7, s. 199.

Filing of shareholder statement by extra-provincial company

201 A licensed extra-provincial company shall file with the Superintendent a copy of every statement of a financial nature furnished to its shareholders within seven days after the distribution of the statement to the shareholders. 1991, c. 7, s. 200.

Filing of annual return by extra-provincial company

202 A licensed extra-provincial company shall file with the Superintendent a copy of the annual return required to be filed in its jurisdiction of incorporation within seven days after filing it in the jurisdiction of incorporation together with

a statement, on a form provided by the Superintendent, with respect to the information referred to in Section 203 with respect to that same period. 1991, c. 7, s. 201.

Required records of extra-provincial company

203 A licensed extra-provincial company shall maintain in Canada

(a) a record of all depositors in the Province, their names and addresses as far as are known and the sums deposited by the depositors; and

(b) where the company is a trust company, full and adequate records relating to the fiduciary activities of the company in the Province, the names and addresses as far as are known of all persons in the Province for whom the company acts in a fiduciary capacity and the sums received and held in trust by the company on their behalf. 1991, c. 7, s. 202.

Confidential information

204 The copy of any return, report, statement or other information or any other written document filed with the Superintendent pursuant to Sections 193 to 211 and which was, or is to be, filed as confidential with a public official of the Government of Canada or a province or agency must be so marked and is deemed to contain information the confidentiality of which is protected by law and is not subject to disclosure pursuant to this or any other Act of the Legislature. 1991, c. 7, s. 203.

Duty to notify Minister respecting imposition of restriction

205 (1) Where any term, condition or restriction is imposed on the licence or registration of a licensed extra-provincial company in the company's jurisdiction of incorporation or its licence or registration is revoked, the company shall notify the Minister within 24 hours after receiving notice of it.

(2) Upon receipt of the notice referred to in subsection (1), the Minister may

(a) in accordance with Section 241

(i) impose a similar term, condition or restriction on the company's licence issued pursuant to this Act, or

(ii) revoke the company's licence issued pursuant to this Act; or

(b) take any other action in accordance with Sections 235 to 255 the Minister thinks fit. 1991, c. 7, s. 204.

Duty to notify Minister respecting compliance agreement

206 (1) A licensed extra-provincial company that enters into a voluntary compliance program or any other agreement similar to that referred to in Section 240 with the appropriate official of its jurisdiction of incorporation, shall notify the Minister within 24 hours after entering into that program or agreement.

(2) A licensed extra-provincial company referred to in subsection (1) shall, at the request of the Minister, enter into an agreement with the Minister that is supplementary to the voluntary compliance program or agreement entered into in its jurisdiction of incorporation whereby the company is bound to carry on business, conduct its affairs and exercise its powers in the Province in

accordance with the terms of the program or agreement entered into in its jurisdiction of incorporation. 1991, c. 7, s. 205.

Agreement where no conflict provisions

207 A licensed extra-provincial company of whose jurisdiction of incorporation the legislation, in the opinion of the Minister, does not contain conflict of interest provisions similar to those set out in Sections 180 to 192, shall, at the request of the Minister, enter into an agreement with the Minister whereby the company is bound to carry on business, conduct its affairs or exercise its powers in the Province in accordance with the provisions set out in Sections 180 to 192 as if it were a licensed provincial company or in accordance with such of those provisions or such other terms, conditions and restrictions as may be specified in the agreement. 1991, c. 7, s. 206.

Duty to notify Superintendent respecting deposits

208 A licensed extra-provincial company shall immediately notify the Superintendent of the name, address and telephone number of every deposit broker or agent or representative of the company or any other person who has the authority to receive or accept, in the Province and on behalf of the company, money as deposits within the meaning of the *Canada Deposit Insurance Corporation Act* or money intended to be deposits with the company. 1991, c. 7, s. 207.

Amalgamation of extra-provincial company

209 (1) Where a licensed extra-provincial company amalgamates with one or more other licensed extra-provincial companies, it shall file with the Superintendent a statement relating to the amalgamation in the form prescribed by the regulations, the written consent to the amalgamation from the appropriate official of the company's jurisdiction of incorporation and such other documents or information as the Superintendent may require and the Superintendent shall immediately notify the Minister of the amalgamation.

(2) The Superintendent shall issue the appropriate licence for which the amalgamated extra-provincial company would qualify pursuant to subsection 214(1).

(3) An amalgamated provincial company referred to in subsection (2) may carry on business under the existing licence issued with respect to one of the amalgamating licensed companies, as directed by the Superintendent, until a licence has been issued to the amalgamated company by the Superintendent pursuant to subsection (2). 1991, c. 7, s. 208.

First licence of amalgamated extra-provincial company

210 (1) Where one or more licensed extra-provincial companies amalgamate with an extra-provincial company that is not licensed pursuant to this Act, the amalgamated company shall apply immediately for a first licence in accordance with Sections 212 to 218.

(2) An amalgamated extra-provincial company required to apply for a licence pursuant to subsection (1) may continue to carry on business under the existing licence issued with respect to one of the amalgamating licensed companies, as directed by the Superintendent, until a first licence has been issued or refused to the amalgamated company by the Superintendent.

(3) Where the licence referred to in subsection (2) has been refused by the Superintendent, a licensed extra-provincial company may carry on business under its existing licence only in accordance with subsection 241(5). 1991, c. 7, s. 209.

Liquidator's duties respecting extra-provincial company

211 (1) Where liquidation proceedings are commenced in respect of a licensed extra-provincial company, the company or, if a liquidator is appointed, the liquidator shall send to the Superintendent immediately after the commencement of those proceedings

(a) a notice showing that the proceedings have commenced and the address of the liquidator, if one is appointed; and

(b) a return relating to the liquidation.

(2) The Superintendent shall upon receiving

(a) a notice pursuant to clause (1)(a), file it and publish a notice respecting the liquidation in the Royal Gazette; and

(b) a return pursuant to clause (1)(b), file the return and notify the Minister.

(3) The liquidator of a licensed extra-provincial company shall file with the Superintendent a notice of any change in the liquidator's address within one month after the effective date of the change. 1991, c. 7, s. 210.

Requirement to be licensed company

212 (1) No person other than a licensed loan company or licensed trust company shall conduct, undertake or transact the business of a loan company or trust company in the Province.

(2) No body corporate other than a licensed trust company shall offer its services to the public as or accept or execute the office of

(a) executor or administrator;

(b) guardian of a minor's estate or a mentally incompetent person's estate in the Province; or

(c) trustee.

(3) No person other than a licensed trust company shall hold itself out to the public in the Province as a licensed trust company by using in its name the words "Trust Corporation", "Corporation de fiducie", "Trust Corp.", "Trust Company", "Compagnie de fiducie", "Trust Co.", "Trustco", "Trustee Corporation", "Corporation fiduciaire", "Trustee Corp.", "Compagnie fiduciaire", "Trustee Company", or "Société fiduciare" or any similar words in its name in conjunction with its business or undertakings, unless such name was lawfully in use before January 1, 1992.

(4) No company, other than a licensed company, shall hold itself out to the public in the Province as a licensed company by conducting, undertaking or transacting any part or aspect of the business of a loan company or trust company.

(5) No person, other than a licensed loan company or licensed trust company and a person authorized by that company to act on its behalf, shall solicit the business of a loan company or trust company in the Province.

(6) No person shall undertake, transact or solicit in the Province any part or aspect of the business of a loan company or trust company that is not licensed pursuant to this Act. 1991, c. 7, s. 211.

Application for first licence

213 (1) A provincial company or an extra-provincial company licensed or registered in another jurisdiction may apply for a first licence pursuant to this Act as a loan company or trust company.

(2) A licensed loan company may apply to change its licence to that of a trust company and a licensed trust company may apply to change its licence to that of a loan company.

(3) A licensed company may apply to amend the terms, conditions and restrictions of its existing licence.

(4) Where an amendment to the instrument of incorporation of a licensed company effects a change in the name of the company under which it is licensed, the Superintendent shall, on payment of the fee prescribed by the regulations, issue an amended licence reflecting the change.

(5) An application for a first licence shall be accompanied by evidence that from the date of its licence the company is or will be a member institution within the meaning of the *Canada Deposit Insurance Corporation Act* or that its deposits are or will be insured by some other public agency approved by the Superintendent, unless the licence to be issued will prohibit the company from receiving money as deposits within the Province.

(6) An application for a first licence by a provincial company incorporated pursuant to this Act must contain a sworn or solemnly affirmed statement setting forth the several sums of money paid or to be paid by the company in connection with the incorporation and organization of the company.

(7) The particulars of all liabilities of a company referred to in subsection (6) must be disclosed to the Superintendent at the time the application for a first licence is made.

(8) An application for a licence as a trust company must set out the services in relation to which the company proposes to act in a fiduciary capacity.

(9) An application for a first licence by an extra-provincial company must be accompanied by

(a) the appointment of an individual who is a resident of the Province as its agent within the Province and a power of attorney in a form satisfactory to the Superintendent from the company to the individual so appointed, which power of attorney must be under seal of the company, if required in the jurisdiction of incorporation, and be signed by the president or managing director and secretary of the

company and be verified by the oath or solemn affirmation of an attesting witness, and which must expressly authorize the agent to accept process, notice or any document in any civil, criminal or administrative action or proceeding in the Province against the company and must declare that service on the agent constitutes sufficient service; and

(b) an undertaking to the Minister signed by the proper officers of the company that the company and its subsidiaries will provide such information as the Minister or Superintendent may request and will adhere to this Act and the regulations and to the terms, conditions and restrictions, if any, imposed on its licence pursuant to this Act.

(10) An undertaking referred to in clause (9)(b) must be accompanied by a certified copy of the resolution of the directors authorizing the company's officers to apply for a licence pursuant to this Act and authorizing the execution of the undertaking.

(11) An application pursuant to this Section must be filed with the Superintendent.

(12) Where the Superintendent receives an application pursuant to this Section, the Superintendent may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application together with such information, material and evidence as the form may specify. 1991, c. 7, s. 212.

Powers of Superintendent respecting licence

214 (1) On application by a company referred to in subsection 213(1), the Superintendent may, on payment of the fee prescribed by the regulations for that kind of company and subject to subsection (2) but otherwise at the Superintendent's sole discretion,

(a) issue a first licence to the company, as a loan company or trust company;

(b) change the licence of the licensed company in accordance with subsection 213(2); or

(c) amend the terms, conditions and restrictions of the existing licence of the licensed company in accordance with subsection 213(3).

(2) The Superintendent shall not issue, change or amend a licence pursuant to subsection (1)

(a) until the Superintendent has received,

(i) an application together with the fee prescribed by the regulations,

(ii) such other information as the Superintendent may require, including, without limiting the generality of the foregoing,

(A) information relating to the ownership of the shares of the company,

(B) the name of each director and officer of the company and that person's experience as it relates to financial institutions,

(C) copies of any financial statements or *pro forma* financial statements of the company,

(D) a detailed plan of the proposed operations of the first and any subsequent branch to be opened by the company, and

(E) in the case of an extra-provincial company, a copy of its instrument of incorporation and any amendments made to it;

(b) unless the capital base of the company is at least

(i) $3,000,000 where the company is a loan company, or

(ii) $5,000,000 where the company is a trust company;

(c) unless the company has satisfied the Superintendent that it has the capacity and power to engage in the activities of a loan company or a trust company;

(d) if the applicant is not a company described in subsection 213(1);

(e) unless it is shown to the satisfaction of the Superintendent that

(i) there exists a public benefit and advantage for the licensing of a company or for an additional company of the kind for which the licence is sought,

(ii) the management is fit, both as to character and as to competence, to manage a company of the kind for which the licence is sought,

(iii) each person who will be a holder of 10% or more of any class of shares of the applicant immediately after the receipt of the licence can demonstrate the adequacy of that person's financial resources and is fit as to character to own 10% or more of that class of shares,

(iv) each director is fit, both as to character and as to competence, to be a director of the company of the kind for which the licence is being sought,

(v) the detailed plan of the proposed operations of the company is feasible, and

(vi) the applicant intends to offer to the public, initially or within a reasonable time after the receipt of its licence, the services set out in the application for a licence and the applicant has the capability to provide those services;

(f) in the case of a provincial company incorporated pursuant to this Act, unless Sections 34 and 35 have been complied with and the expenses of incorporation and organization to be borne by the company are reasonable;

(g) unless the Superintendent is satisfied as to the adequacy of any information received with or in support of the application for the licence; and

(h) unless all other requirements of this Act antecedent to the issuing of the licence have been complied with. 1991, c. 7, s. 213.

Additional powers of Superintendent

215 (1) Where the Superintendent is not satisfied as to all of the matters referred in clauses 214(2)(a), (b), (c), (e), (f), (g) and (h), the Superintendent may issue a licence to the applicant

(a) as a company of a kind other than that for which the application was made and subject to such terms, conditions and restrictions as the Superintendent may impose; or

(b) as a company of the kind for which the application was made but subject to such terms, conditions and restrictions as the Superintendent may impose.

(2) Before refusing to issue, change or amend a licence pursuant to subsection 214(1) or before issuing a licence subject to terms, conditions and restrictions, the Superintendent shall give the company an opportunity to be heard.

(3) With the consent of the licensed company, the Superintendent may impose terms, conditions and restrictions on the licence of a company or terms, conditions and restrictions in addition to those previously imposed on the licence of the company and subsection (2) does not apply with respect to the imposition of those terms, conditions and restrictions. 1991, c. 7, s. 214.

Form, content and notice of licence

216 (1) A licence must be in such form as the Superintendent may determine and may contain such terms, conditions and restrictions relating to the powers and business of the company as the Superintendent may, consistent with the provisions of this Act, impose.

(2) Notice of the issue of a first licence to a company must be published by the Superintendent in the Royal Gazette.

(3) A licensed company shall publish notice of the issue to it of a first licence once a week for four consecutive weeks in a newspaper published or distributed in the case of

(a) a provincial company, in the place where the company has its registered office; and

(b) an extra-provincial company, in the place where the company has its principal place of business in the Province. 1991, c. 7, s. 215.

Expiry, revocation or renewal of licence

217 **(1)** The licence of a company expires on the anniversary date of the incorporation of the company unless

(a) a date other than the anniversary date is specified in the licence, in which case it expires on that date;

(b) it has been revoked in accordance with this Act, in which case it expires on the date of the revocation; or

(c) the term of the licence has been reduced in accordance with this Act, in which case it expires at the end of the reduced term as specified in that licence.

(2) Subject to subsection (5) and subsections 241(1) and 244(1), the Superintendent may, on or before the date the licence expires and upon payment of the fee prescribed by the regulations, issue a second or subsequent licence, as the case may be, for a period ending on the anniversary date of the incorporation of the company in the following year, or where the term of the licence is to be reduced, for such shorter period as may be specified in the licence.

(3) Notwithstanding subsection (2), where a licence has expired because of inadvertence, the failure to pay the fee prescribed by the regulations or any other reasons acceptable to the Superintendent, the Superintendent may, within six months after the licence has expired and if, in the opinion of the Superintendent, to do so would not be prejudicial to the public interest, issue a second or subsequent licence, as the case may be, and that licence is deemed to be effective from the date the expired licence expired.

(4) The Superintendent, on being satisfied that a licensed company is not carrying on any aspect of the business of a loan company or trust company may, subject to subsection (5), revoke the company's licence.

(5) Before refusing to issue a second or subsequent licence or issuing a second or subsequent licence with terms, conditions or restrictions different from those imposed on the previous licence, or before revoking a licence pursuant to subsection (4), the Superintendent shall give the company an opportunity to be heard.

(6) At the request of a licensed company, the Superintendent may revoke the company's licence subject to such terms, conditions and restrictions as the Superintendent may impose. 1991, c. 7, s. 216.

Superintendent to maintain register

218 The Superintendent shall maintain a register in which the Superintendent shall cause to be entered the name of every company to which a licence is issued pursuant to this Act and

(a) the nature of the licence and any terms, conditions and restrictions imposed on the licence;

(b) the fact that the licence of the company has been changed or amended in accordance with this Act and the nature of the change or amendment; and

(c) the fact that the licence of the company has been revoked or that a second or subsequent licence has not been issued. 1991, c. 7, s. 217.

Hearing of appeal by Minister

219 (1) When an appeal is provided for pursuant to this Act, the Minister shall hear the appeal or appoint one or more persons to act as an appeal board to do so.

(2) The Minister may, for the purpose of an appeal referred to in subsection (1), appoint a person to act as secretary to the Minister or an appeal board, as the case may be.

(3) The members of an appeal board must be paid such remuneration and expenses as the Governor in Council determines.

(4) Section 250 applies to members of an appeal board. 1991, c. 7, s. 218.

Prohibition respecting civil servants

220 (1) An employee pursuant to the *Civil Service Act* performing duties or exercising powers pursuant to this Act shall not accept, directly or indirectly, any grant or gratuity from a licensed company or any affiliate of that company or from any director, officer, employee or agent of that company and no licensed company, director, officer, employee or agent of that company or any affiliate of that company shall make or give, directly or indirectly, any such grant or gratuity.

(2) An employee pursuant to the *Civil Service Act* performing duties or exercising powers pursuant to this Act shall not hold any shares of a licensed company. 1991, c. 7, s. 219.

Power of Minister and Superintendent to act outside the Province

221 The Minister and the Superintendent may, for the purpose of the administration and enforcement of this Act and the regulations, act outside the Province as if they were acting inside the Province. 1991, c. 7, s. 220.

Record keeping

222 (1) All documents filed with the Superintendent and records required by this Act to be prepared and maintained by the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) Where documents filed with the Superintendent or records prepared and maintained by the Superintendent are maintained other than in written form

(a) the Superintendent shall furnish any copies required to be furnished in intelligible written form; and

(b) a report reproduced from such documents or records, if it is certified as correct by the Superintendent, is, without proof of the office or signature of the Superintendent, admissible in evidence to

the same extent as the original written documents or records would have been.

(3) The Superintendent is not required to produce a document or record where a copy of the document is furnished in compliance with clause (2)(a).

(4) The Superintendent is not required to produce a document or record, other than an instrument of incorporation filed with the Superintendent, after six years after the date the Superintendent receives it. 1991, c. 7, s. 221.

Affidavits and examination of witnesses

223 (1) In carrying out the duties of the Minister or Superintendent pursuant to this Act, the Minister or Superintendent may require to be made or may take and receive affidavits, statutory declarations or depositions and may examine witnesses upon oath or solemn affirmation.

(2) The evidence and proceedings in any matter before the Minister or Superintendent or an appeal board may be reported by a stenographer sworn or solemnly affirmed before the Minister or Superintendent faithfully to report the evidence. 1991, c. 7, s. 222.

Condition of licence

224 (1) It is a condition of the licence of a licensed company that the company facilitate examinations, audits and inspections pursuant to this Act.

(2) For the purpose of an examination, audit or inspection pursuant to this Act, a licensed company and its subsidiaries shall prepare and submit to the person conducting the examination, audit or inspection such statements or returns with respect to its business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Minister or Superintendent may require and the officers, agents and servants of the company and its subsidiaries shall cause their books to be open for inspection and shall otherwise facilitate that examination so far as it is in their power.

(3) In order to facilitate an examination, audit or inspection of the books and records of a licensed company, the company and its subsidiaries may be required by the Minister or the Superintendent to produce the books and records

(a) in the case of a provincial company, at its registered office; or

(b) in the case of an extra-provincial company, at its principal place of business in the Province,

or at such other convenient place as the Minister or Superintendent may direct.

(4) For the purpose of an examination, audit or inspection pursuant to this Act, the licensed company and its subsidiaries or the auditor shall make available to the person conducting the examination the working papers of the auditor used in preparing an audit or other report pursuant to this Act.

(5) On the direction of the Minister or Superintendent, where an examination, audit or inspection of a licensed company or a subsidiary of the company is made at an office situated outside the Province, the company shall pay such

costs and expenses in connection with that examination, audit or inspection as directed. 1991, c. 7, s. 223.

Examination of condition and affairs of company

225 (1) Once each year or during such other period as the Superintendent considers appropriate for a particular company, the Superintendent may examine or cause a person acting under the Superintendent's direction to examine the statements of the condition and affairs of each licensed provincial company and the Superintendent or other person acting under the Superintendent's direction shall make such inquiries as are necessary to ascertain the company's condition and ability to meet its obligations as and when they become due, whether the company is following sound business and financial practices, the procedures and standards of its management and whether or not the company has complied with this Act and the regulations and any requirement, order, term, condition or restriction of a licence or inquiry made pursuant to this Act or the regulations.

(2) In conducting an examination pursuant to subsection (1), the Superintendent or other person acting under the Superintendent's direction may attend at the registered office of the company or its principal place of business in the Province and, if necessary, the Superintendent or other person acting under the Superintendent's direction may visit any branch of the company.

(3) The Superintendent may, in whole or in part, rely on an examination of a licensed extra-provincial company conducted by the Government of Canada or of the company's jurisdiction of incorporation or a recognized agency of that government, unless the Superintendent is made aware and believes the examination conducted in relation to that company is not satisfactory in any respect, in which case the Superintendent may examine or cause a person acting under the Superintendent's direction to examine the statements of the condition and affairs of the extra-provincial company as if it were a provincial company pursuant to subsection (1). 1991, c. 7, s. 224.

Examination by Superintendent of books and documents

226 The Superintendent or other person acting under the Superintendent's direction may, at any time during normal business hours, examine any books of or in the possession of a licensed company or any of its subsidiaries relating to its business, wherever situated, and vouchers, securities and documents of a licensed company. 1991, c. 7, s. 225.

Special examiner

227 (1) The Superintendent may at any time, on the Superintendent's own motion or upon an application by an interested party being made in writing, and shall when so required by the Minister, appoint a person as a special examiner to make a special examination and audit of a licensed company's books, accounts and securities and to inquire generally into the conduct of the business and affairs of the company.

(2) The Superintendent may require an applicant pursuant to subsection (1) to give security for the payment of the costs of the inquiry to be given before appointing a person as a special examiner.

(3) A person appointed as a special examiner may summon witnesses and take evidence under oath or on solemn affirmation for the purpose of an examination, audit and inquiry and has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(4) Upon the conclusion of the examination, audit and inquiry, the person appointed as a special examiner shall make a report in writing to the Superintendent who shall provide a copy of the report and the Superintendent's recommendations, if any, to the Minister.

(5) The Superintendent may, on the conclusion of an examination pursuant to this Section, order the licensed company or the party requesting the examination pursuant to subsection (1) to pay the costs and expenses of that examination or include the costs and expenses in those referred to in Section 234. 1991, c. 7, s. 226.

Inquiries

228 (1) The Superintendent may, and shall when so ordered by the Minister, address any inquiries pursuant to this Act to a licensed company or to the president, secretary or any other officer of the company or to the agent of an extra-provincial company to ascertain the company's condition and ability to meet its obligations or as to the conduct of its business and affairs or as to complaints made by depositors, borrowers or by persons for whom the licensed company acts in a fiduciary capacity, and it is the duty of a licensed company or officer or agent so addressed to reply immediately in writing to that inquiry.

(2) The Superintendent may require a licensed company to forward a copy of any letter addressed to the company by the Superintendent and any answer to that letter to each director of the company and, upon that requirement being made, the secretary of the company shall include a copy of that letter and the answer to that letter in the minutes of the meeting of the directors next following the requirement being made by the Superintendent. 1991, c. 7, s. 227.

Extension of time

229 Where, by or pursuant to this Act, a licensed company is required to provide to or file with the Superintendent a return or document or other information, the Superintendent, in the Superintendent's absolute discretion and upon payment by the company of the fee prescribed by the regulations, may, before or after the last day for providing or filing the return or document or other information and except where otherwise provided, extend the time, for any period not exceeding 60 days, as the Superintendent considers appropriate. 1991, c. 7, s. 228.

Documents admissible in evidence

230 (1) A notice published in the Royal Gazette over the name of the Minister or Superintendent is admissible in evidence in any civil, criminal or administrative action or proceeding or for any other purpose and, when introduced as evidence, is proof, in the absence of evidence to the contrary, of the facts set forth in the notice without proof of the signature or official character of the person appearing to have signed the notice.

(2) A certificate of the Minister or Superintendent that on a stated day a body corporate mentioned in the certificate was or was not licensed or was licensed subject to terms, conditions or restrictions or that the licence of a company

was revoked on a stated day is admissible in evidence in any civil, criminal or administrative action or proceeding or for any other purpose and when introduced as evidence is proof, in the absence of evidence of the contrary, of the facts stated in the certificate.

(3) Copies of, or extracts from, any book, record, instrument or document in the office of the Superintendent or of or from any instrument or document issued pursuant to this Act, if certified as correct by the Superintendent, are, without proof of the office or signature of the Superintendent, admissible in evidence to the same extent as the original would have been. 1991, c. 7, s. 229.

Agreements between Minister and other governments

231 The Minister may, with the approval of the Governor in Council, enter into agreements with the Government of Canada or a province or the appropriate official of that government, related to the administration and enforcement of this Act or of similar legislation of those jurisdictions and, without limiting the generality of the foregoing, those agreements may provide for the provision and exchange of confidential information, the confidentiality of which shall be protected by law and which is not subject to disclosure pursuant to this or any other Act of the Legislature. 1991, c. 7, s. 230.

Agreements, undertakings and indemnities

232 The Minister and the Superintendent may do all things necessary or incidental to the administration and enforcement of this Act and the regulations and, in particular, but without limiting the generality of the foregoing, the Superintendent may

(a) in accordance with this Act, receive undertakings from and enter into agreements with companies; and

(b) enter into agreements with third parties related to the administration of this Act and the regulations and give indemnities to third parties related to such activities as are authorized pursuant to those agreements. 1991, c. 7, s. 231.

Disclosure of information

233 (1) Subject to this Section, where as a result of administering this Act, the Superintendent obtains information or documents regarding the business or affairs of a provincial company or persons dealing with a provincial company, the Superintendent shall not disclose that information or provide those documents or disclose any information contained in, or allow access to, those documents to any person other than the provincial company.

(2) The Superintendent may, in any manner, communicate or provide information and copies of documents referred to in subsection (1) whose disclosure the Superintendent considers to be required for

(a) the proper administration of this Act, to persons acting under the Superintendent's direction or authority in the administration of this Act;

(b) the purpose of enabling the auditor of a provincial company to fulfill the auditor's functions as such, to that auditor;

(c) regular law enforcement purposes, to a law enforcement authority.

(3) The Superintendent may, in any manner, communicate information and provide copies of documents referred to in subsection (1), or allow inspection of or access to any such documents,

(a) to the government of any other province or of Canada, or an agency of such a government;

(b) for the purpose of the administration or enforcement of

(i) the *Securities Act*, to the Registrar of Securities,

(ii) the *Insurance Act*, to the Superintendent of Insurance, or

(iii) the *Credit Union Act*, to the Registrar of Credit Unions; or

(c) for any prescribed purpose, to any other prescribed person.

(4) Subject to subsection (5), a person to whom information or a document is communicated or provided pursuant to subsection (2) or clause (3)(b) or (c) shall comply with subsection (1) in respect of the information or document.

(5) Subsection (4) does not apply to a disclosure made by the recipient referred to in that subsection

(a) for the relevant purpose referred to in clause (2)(b) or (c) or (3)(b) or (c); or

(b) to another person acting under the recipient's direction or authority or otherwise associated with the recipient in securing that purpose.

(6) Where, for the purpose of the administration of this Act, the Superintendent receives information communicated to the Superintendent by, or is allowed inspection of or access to any document provided by, the government of or a public body of Canada or any other province, the Superintendent shall not disclose the information or the contents of the document other than with the consent of that government or public body.

(7) Subject to subsections (4) and (5), duties pursuant to this Section apply, as well as to the person referred to in this Section, also to any other person acting under that person's direction or authority or to whose notice information or a document comes as a result of any relationship with that person. 1991, c. 7, s. 232.

Assessments

234 (1) The expenses and costs incurred by the Minister or Superintendent or any other persons acting pursuant to this Act in the carrying out of examinations and inspections pursuant to this Act shall be borne by and recovered from licensed companies by means of assessments.

(2) The Minister shall assess the amounts ascertained pursuant to subsection (1) against each licensed company in the manner and to the extent prescribed by the regulations.

(3) An assessment made pursuant to this Act and the regulations constitutes a debt due by the company against which it is made to the Crown in right of the Province, is immediately payable and may be recovered as a debt in any court of competent jurisdiction. 1991, c. 7, s. 233.

Powers of Superintendent where non-compliance

235 (1) Where, in the opinion of the Superintendent, a licensed company or other person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act or the regulations;

(b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with a voluntary compliance program pursuant to Section 240, or in the case of a licensed extra-provincial company, does not comply with an order of the Minister or Superintendent or any terms, conditions or restrictions imposed on its licence pursuant to subsection 240(5);

(d) does not comply with an undertaking given or agreement made with the Minister or Superintendent pursuant to this Act; or

(e) constitutes a practice that might prejudice or adversely affect the interests of depositors or of persons for whom the company acts in a fiduciary capacity,

the Superintendent may give notice to the licensed company or any other person of an intention to order the company or other person

(f) to cease doing any act or to cease pursuing any course of conduct identified by the Superintendent; or

(g) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) The licensed company or other person may, by written notice served on the Superintendent within 15 days after the service of the notice on the company or other person pursuant to subsection (1), request a hearing before the Superintendent.

(3) Where no hearing is requested within the time set out in subsection (2) or (4), or where a hearing is held and the Superintendent is of the opinion that an order described in clause (1)(f) or (g) should be made, the Superintendent may make an order under either or both of those clauses, which shall take effect immediately on its making or at such later date as may be set out in the order.

(4) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the depositors or persons for whom the company acts in a fiduciary capacity or the public may be prejudiced or adversely affected by any delay in the issuance of an order, the Superintendent may make an interim order

as described in clause (1)(f) or (g) which becomes final on the 15th day after its making unless within that time a hearing before the Superintendent is requested.

(5) A request for a hearing pursuant to subsection (4) must be in writing and served on the Superintendent.

(6) Where a hearing is requested pursuant to subsection (4), the Superintendent may extend the interim order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

(7) Where an order is made with respect to a licensed company pursuant to this Section, a copy of the order must be sent to each director of the company.

(8) The Superintendent may, after giving the company or other person named in the order an opportunity to be heard, modify or revoke an order made pursuant to this Section. 1991, c. 7, s. 234.

Appeal to Minister

236 (1) A party to a hearing before the Superintendent may, within 15 days after the receipt of the Superintendent's decision, appeal the decision to the Minister by serving a notice in writing of the appeal on the Superintendent who shall advise the Minister immediately of the appeal and the Minister may hear the appeal or appoint an appeal board to do so in accordance with subsection 219(1).

(2) An appeal must be based on such evidence as may be presented to the Minister or the appeal board and the Minister or the appeal board upon hearing an appeal may confirm, vary or revoke the decision, order, approval or consent that is the subject of the appeal. 1991, c. 7, s. 235.

Decision, order, approval or consent of Minister

237 (1) Where this Act provides for a decision, order, approval or consent of the Minister, the decision, order, approval or consent is subject to such terms and conditions as the Minister may impose.

(2) A decision, order, approval or consent of the Minister pursuant to this Act must be in writing and is not subject to appeal.

(3) Before rendering a decision, making an order, refusing an approval or consent or granting an approval or consent subject to terms and conditions, the Minister shall give the licensed company notice of the Minister's intention and the licensed company may require a hearing before the Minister.

(4) The Minister may at any time, having given the licensed company an opportunity to be heard, confirm, revoke or vary any decision, order, approval, consent or refusal. 1991, c. 7, s. 236.

Entitlement of Superintendent to appear

238 The Superintendent is entitled to appear and be heard in person or by counsel at a hearing before the Minister or an appeal board. 1991, c. 7, s. 237.

Private or public hearing

239 A hearing before the Superintendent or the Minister or an appeal board, at the discretion of the Superintendent or the Minister or the appeal board, as the case may be, may be heard in private or in public. 1991, c. 7, s. 238.

Program of voluntary compliance

240 (1) Where, in the opinion of the Superintendent, a licensed provincial company or other person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act or the regulations;

(b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with an undertaking given or an agreement made with the Minister or Superintendent pursuant to this Act; or

(d) constitutes a practice that might prejudice or adversely affect the interests of depositors or persons for whom the company acts in a fiduciary capacity,

the licensed provincial company or other person may enter into a program of voluntary compliance related to any act or course of conduct described in clause (a), (b), (c) or (d).

(2) A voluntary compliance program pursuant to this Section must be in writing and binds the licensed provincial company or other person from the time it is approved by the Minister.

(3) Where a voluntary compliance program has been entered into, the Superintendent is not prevented from making orders against the licensed provincial company or other person

(a) on matters not covered by the program;

(b) where the program is not complied with, on matters covered in the voluntary compliance program;

(c) if there has been a deterioration in the condition of the company; or

(d) on matters covered in the program where all the facts related to the matter covered by the program were not known by the Minister at the time the program was entered into.

(4) The Minister may, on the request of a licensed provincial company or other person, approve the alteration of a voluntary compliance program entered into pursuant to this Section.

(5) Where a licensed extra-provincial company has entered into a voluntary compliance program or any other agreement similar to that program with the appropriate official of the company's jurisdiction of incorporation, the Minister may enter into an agreement with the company in accordance with subsection 206(2) or make any order or impose any terms, conditions or restrictions on the licence of

that company the Minister thinks necessary to compel any branch or operation of the company in the Province to comply with the program or the agreement, as the case may be. 1991, c. 7, s. 239.

Revocation or restriction of licence

241 (1) Where

(a) a licensed company or other person has not complied with an order of the Superintendent or of the Minister or an appeal board;

(b) a licensed company or other person has breached an order of the Court made pursuant to Section 252;

(c) grounds exist for the possession and control of the assets of a licensed company by the Minister; or

(d) the licence or registration of the company has been revoked or suspended, or terms, conditions or restrictions have been imposed on the licence or registration of the company by the Government of Canada or of any other province,

the Superintendent may, subject to subsections (2), (3) and (4), revoke the licence of the company, impose terms, conditions or restrictions on the licence of the company or refuse to grant a second or subsequent licence to the company.

(2) Where the Superintendent proposes to act pursuant to subsection (1), the Superintendent shall serve a notice of the intention to act on the company.

(3) The company may, by written notice served on the Superintendent within 10 days after the service of the notice on the company pursuant to subsection (1), request a hearing before the Minister.

(4) Where no hearing is requested within the time set out in subsection (3) or where a hearing is held and the Minister is of the opinion that the Minister should proceed pursuant to subsection (1), the Minister may do so immediately.

(5) After the revocation of a licence pursuant to this Section, the company shall, unless again licensed pursuant to this Act, cease to transact or undertake business in the Province, except so far as it is necessary for the liquidation of its business in the Province, but any liability incurred by it either before or after the revocation may be enforced against it as if the revocation had not taken place. 1991, c. 7, s. 240.

Notice of revocation or restriction of licence

242 (1) On the revocation of the licence of any company, or the modification of any of the terms, conditions or restrictions imposed on its licence, the Superintendent shall cause notice in writing of the revocation or modification to be sent to the company.

(2) Notice of the revocation of a licence issued pursuant to this Act must be published by the Superintendent in the Royal Gazette. 1991, c. 7, s. 241.

Interpretation of Sections 244 to 254

243 In Sections 244 to 254,

"licensed company" or "licensed extra-provincial company" includes an extra-provincial company that has, or had in the previous two years, a licence issued pursuant to this Act;

"licensed company" or "licensed provincial company" includes a provincial company, whether or not it has or had a licensed issued pursuant to this Act. 1991, c. 7, s. 242.

Power of Governor in Council

244 (1) Notwithstanding any other provision of this Act, the Governor in Council may, without holding a hearing or issuing a notice, order

(a) that the licence of a licensed company is subject to such terms, conditions and restrictions as are set out in the order; or

(b) subject to subsection (6), that the Minister take possession and control of the assets of a licensed company,

where, in the opinion of the Governor in Council,

(c) there has been a transfer or issue of shares of a provincial company to which subsection 91(1) or (2) applies and the consent of the Superintendent has not been obtained pursuant to Section 91 or there has been such a transfer of the shares of a licensed extra-provincial company where a consent to that transfer is required in the company's jurisdiction of incorporation and that consent was not obtained;

(d) the licensed company has defaulted on payment of any of its liabilities or will not be able to pay its liabilities as they become due and payable;

(e) the licensed company is not complying with this Act or the regulations or an undertaking given or agreement made with the Minister pursuant to this Act;

(f) the provincial company's assets or investments are not satisfactorily accounted for;

(g) the provincial company's assets are not sufficient, having regard to all the circumstances, to give adequate protection to the company's depositors or those persons for whom the company acts in a fiduciary capacity;

(h) in the case of a licensed extra-provincial company, it has become or is about to become, subject to an order for possession and control of its assets in its jurisdiction of incorporation; or

(i) there exists any practice or state of affairs within the licensed company that is or may be prejudicial to the public interest or to the interests of the company's depositors or those persons for whom the company acts in a fiduciary capacity or creditors, and in the case of a licensed provincial company, to its shareholders.

(2) Where the Governor in Council makes an order pursuant to subsection (1), the Superintendent shall send a copy of the order to an officer of the

licensed provincial company, or, in the case of an extra-provincial company, to its agent in accordance with subsection 195(7).

(3) An order of the Governor in Council pursuant to subsection (1) shall take effect immediately and is final and binding and that order or an order made pursuant to subsection (5) confirming or varying that order shall not be stayed, varied or set aside by any court.

(4) For the purpose of this Section, the Governor in Council may appoint such persons as the Governor in Council considers necessary to value and appraise the assets and liabilities of the licensed company and report upon its condition and its ability, or otherwise, to meet its liabilities.

(5) Upon the petition of any party or person interested, filed with the Clerk of the Executive Council within 60 days after the date of any order made pursuant to subsection (1), the Governor in Council may confirm, vary or rescind the whole or any part of such order and an order confirming or varying an order made pursuant to subsection (1) is final and binding.

(6) Where the Governor in Council makes an order pursuant to clause (1)(b) with respect to a licensed extra-provincial company, the order is limited to the possession and control of the assets of the company in the Province.

(7) Nothing in this Section affects the right of the Governor in Council to vary or rescind, at any time, an order made pursuant to subsection (1). 1991, c. 7, s. 243.

Possession and control of assets by Minister

245 (1) Where so ordered by the Governor in Council pursuant to clause 244(1)(b), the Minister shall take possession and control of the assets of a licensed company and shall conduct its business and take such steps as, in the Minister's opinion, should be taken towards its rehabilitation and for such purpose the Minister has all the powers of the board of directors of the company and may, without limiting the generality of the foregoing,

(a) exclude the directors, officers, servants and agents of the licensed provincial company from the premises, property and business of the company, and in the case of an extra-provincial company, from the premises, property and business of the company situated in the Province;

(b) carry on, manage and conduct the operations of the licensed company and in the name of the company preserve, maintain, realize, dispose of and add to the property of the company, receive the incomes and revenues of the company and exercise all the powers of the company, and in the case of an extra-provincial company, to exercise those powers in the Province;

(c) in the case of an extra-provincial company, make any agreement with the appropriate official of the company's jurisdiction of incorporation to carry out the order of the Governor in Council.

(2) While the Minister has possession and control of the assets of a licensed company pursuant to this Section, the Minister may apply to the Court for an order for the liquidation of the licensed provincial company pursuant to subsec-

tion 167(1), as if it were an application for the supervision of a voluntary liquidation pursuant to that subsection, or in the case of a licensed extra-provincial company, for an order for the liquidation of the assets of the branch or branches of the company located in the Province.

(3) Where the Minister is in possession and control of the assets of a licensed company and is conducting its business, the Minister may appoint one or more persons to manage and operate the business of the company and

(a) each person so appointed is a representative of the Minister; and

(b) the remuneration of any such person, other than an employee pursuant to the *Civil Service Act*, is fixed by the Minister.

(4) Wherever the Governor in Council believes that a licensed company whose assets are in the possession and control of the Minister meets the requirements of this Act and the regulations and that it is otherwise proper for the company to resume possession and control of its assets and the conduct of its business, the Governor in Council may, in writing, direct the Minister to relinquish to the company the possession and control of its assets, and on and after the date specified in that direction, the powers of the Minister pursuant to this Section cease.

(5) Where the Governor in Council considers that further efforts to rehabilitate a licensed company whose assets are in the possession and control of the Minister would be futile, the Governor in Council may, in writing, direct the Minister to relinquish to the company the possession and control of its assets, and on and after the date specified in that direction, the powers of the Minister pursuant to this Section cease.

(6) The costs and expenses of the Minister incurred in proceedings pursuant to Section 244 and this Section

(a) must be paid by the licensed company; or

(b) where the company cannot pay the costs and expenses, the Minister may include the costs and expenses in those referred to in Section 234. 1991, c. 7, s. 244.

Application by Minister to Court

246 (1) Notwithstanding any other provision of this Act, where the Minister has taken possession and control of a licensed company pursuant to Section 244, the Minister may apply to the Court for an order

(a) authorizing some other person to conduct the business of the company on such terms and conditions as the Court thinks fit;

(b) authorizing and directing the sale of the assets of the licensed company, in whole or in part, notwithstanding any provision of the *Personal Property Security Act*;

(c) appointing interim or permanent substitute trustees in respect of all or any part of the fiduciary obligations and duties, other than those in respect of deposits of a licensed trust company;

(d) staying any civil proceedings against the licensed company while the Minister is in possession and control of the company.

(2) Where the Court has made an order pursuant to clause (1)(c), the fiduciary obligation and duties vest in, bind and may be enforced against the substituted fiduciary as fully and effectually as if the substituted fiduciary was originally named as fiduciary. 1991, c. 7, s. 245.

Decision, order, approval or consent binding on successor or assignee

247 Where a decision, or an order, approval or consent is made or given pursuant to this Act or a term, condition or restriction is imposed on the licence of a licensed company, it is binding on every successor or assignee of the licensed company or other person to whom it is directed. 1991, c. 7, s. 246.

Appraisal of assets

248 (1) Subject to subsection (2), where, in the opinion of the Superintendent with respect to a licensed company or its subsidiaries, it appears that

(a) the value placed upon the real estate owned by the company or any of its subsidiaries or any parcel of real estate is too great;

(b) the amount secured by mortgage upon any parcel of real estate, together with interest due and accrued on the amount secured is greater than the lending value of the parcel, or that the parcel is not sufficient security for the loan and interest; or

(c) the market value of any other asset is less than the amount shown in the books of the company or any of its subsidiaries,

the Superintendent may require the company to secure the appraisal of those assets by one or more competent valuators or the Superintendent may procure the appraisal at the expense of the company.

(2) Subsection (1) applies in the case of a licensed extra-provincial company or its subsidiaries only to real estate or any other assets situated in the Province.

(3) Where, following an appraisal pursuant to subsection (1), it appears to the Superintendent that a condition referred to in clause (1)(a), (b) or (c) exists, the Superintendent may, in the case of a licensed provincial company, order that the appraised value be reflected in calculations made for the purpose of this Act and the regulations and, in the case of a licensed extra-provincial company, shall send immediately a copy of the appraisal to the appropriate official of the company's jurisdiction of incorporation.

(4) An order of the Superintendent pursuant to subsection (3) must be noted in the annual financial statement of a licensed provincial company. 1991, c. 7, s. 247.

Investigation

249 (1) Where, upon a statement made under oath or by solemn affirmation, it appears probable to the Minister that a licensed company or other person has violated any of the provisions of this Act or the regulations or an undertaking given or agreement made with the Minister pursuant to this Act, the Minister may, by order, appoint a person to make such investigation as the Minister considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) For the purpose of any investigation ordered pursuant to this Section, the person appointed to make the investigation may, without limiting the generality of the foregoing, investigate, inquire into and examine

(a) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, or on behalf of or in relation to or connected with the company or other person and any property, assets or things owned, acquired or alienated, in whole or in any part, by the company or other person or by any person or body corporate acting on behalf of or as agent for the person or company; and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the company or other person and the relationship that may at any time exist or may have existed between the company or other person and any other person by reason of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(3) The person making an investigation pursuant to this Section has the same power to summon and enforce the attendance of witnesses and to compel them to give evidence on oath or solemn affirmation or otherwise, and to produce documents, records and things, as is vested in the Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable for contempt by a judge of the Court as if in breach of an order or judgment of the Court and no provision of the *Evidence Act* exempts any bank or loan company or trust company or an officer or employees of a bank or loan company or trust company from the operation of this Section.

(4) A person giving evidence at an investigation pursuant to this Section may be represented by counsel.

(5) Where an investigation is ordered pursuant to this Section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the licensed company or other person whose affairs are being investigated.

(6) Where any documents, records, securities or other property are seized pursuant to subsection (5), the documents, records, securities or other property must be made available for inspection and copying by the licensed company or other person from whom they were seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.

(7) Where an investigation is ordered pursuant to this Section, the Minister may appoint an accountant or other expert to examine documents, records, properties and matters of the person or licensed company whose affairs are being investigated.

(8) Every person appointed pursuant to subsection (1) or (7) shall provide the Minister with a full and complete report of the investigation, including any transcript of evidence and material in the person's possession relating to the investigation.

(9) The costs and expenses incurred in an investigation ordered pursuant to this Section

(a) must be paid by the licensed company or other person to which the investigation relates; or

(b) where the company or other person cannot pay the costs and expenses, the Minister may include the costs and expenses in those referred to in Section 234. 1991, c. 7, s. 248.

Restriction on action or proceeding against official

250 No action or other proceeding for damages may be instituted against the Minister, Superintendent or anyone acting under the direction of the Minister or Superintendent or anyone appointed pursuant to subsection 249(1) or (7) for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty. 1991, c. 7, s. 249.

Freezing of funds, securities or assets by Minister

251 (1) The Minister may,

(a) where the Minister is about to order an investigation in respect of a licensed company or other person pursuant to Section 249 or during or after an investigation in respect of a person or licensed company pursuant to that Section;

(b) where the Minister is about to make or has made a decision confirming the revocation of the licence of a licensed company; or

(c) where proceedings in respect of a violation of this Act or the regulations or of any other matters referred to in subsection 249(1) are about to be or have been instituted against any licensed company or other person that, in the opinion of the Minister, are connected with or arise out of any business and affairs conducted by the company or other person,

by any method that provides a written or printed copy, order any licensed company or other person having on deposit or under control or for safekeeping any funds, securities or assets of the company or other person referred to in clause (a), (b) or (c) to hold those funds or securities or assets or direct the company or other person referred to in clause (a), (b) or (c) to refrain from withdrawing or dealing with those funds, securities or assets from any other person having any of them on deposit, under control or for safekeeping or to hold all funds, securities or assets in their possession or control in trust for the Minister or until the Minister, in writing, revokes the order or consents to release any particular fund or property from the order.

(2) In the case of an extra-provincial company, subsection (1) applies only to funds, securities or assets in the Province.

(3) An order issued pursuant to subsection (1) does not apply to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the order expressly so states, and in the case of a bank or a loan company or trust company, the order applies only to the offices, branches or agencies of the bank or loan company or trust company named in the order.

(4) A person or licensed company named in an order issued pursuant to subsection (1), if in doubt as to the application of the direction to particular funds, securities or assets, may apply to the Minister for an order of clarification.

(5) On the application of a licensed company or other person directly affected by an order issued pursuant to subsection (1), the Minister may order, on such terms and conditions as the Minister may impose, the revocation of the previous order or may consent to the release of any fund or security.

(6) In any of the circumstances mentioned in clause (1)(a), (b) or (c), the Minister may, by any method that provides a written or printed copy, notify the appropriate registrar of deeds that proceedings are being or are about to be taken that may affect land belonging to the company or other person referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned in the notice in the appropriate registry office or in accordance with the *Registry of Deeds Act,* as the case may be, and has the same effect as the registration or recording of a certificate of pending litigation, and the Minister may, in writing, revoke or modify the notice. 1991, c. 7, s. 250.

Failure to comply

252 (1) Where it appears to the Minister that a licensed company or other person has failed to comply with or is not complying with

(a) a decision or order made or an approval given pursuant to this Act or the regulations;

(b) a voluntary compliance program entered into;

(c) an undertaking given or an agreement made with the Minister or the Superintendent pursuant to this Act; or

(d) a term, condition or restriction imposed on its licence issued pursuant to this Act,

the Minister may, in addition to any other rights pursuant to this Act, apply to the Court for an order directing

(e) the person or company to comply with the decision, order, approval, program, undertaking or agreement or a term, condition or restriction imposed on its licence or restraining the person or company from violating that decision, order, approval, program, undertaking or agreement or a term, condition or restriction imposed on its licence; and

(f) its directors and officers of the person or company to cause the person or company to comply with the decision, order, approval, program, undertaking or agreement or to cease violating that decision, order, approval, program, undertaking or agreement or a term, condition or restriction imposed on its licence,

and the Court may make any order it thinks fit.

(2) An appeal lies to the Nova Scotia Court of Appeal from an order made pursuant to subsection (1). 1991, c. 7, s. 251.

Application to Court for order

253 (1) A depositor, a person for whom the company acts in a fiduciary capacity, a shareholder or creditor of a licensed company, the Minister, the Superintendent or any other person who, in the discretion of the Court, is a proper person to make an application pursuant to this Section may apply to the Court for an order pursuant to this Section.

(2) Where, on an application pursuant to subsection (1), the Court is satisfied that in respect of a licensed company or any of its affiliates

(a) any act or omission of the company or any of its affiliates effects or threatens to effect a result;

(b) the business or affairs of the company or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or

(c) the powers of the directors of the company or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a shareholder, depositor, creditor or person for whom the company acts in a fiduciary capacity, the Court may make an order to rectify the matters complained of.

(3) A person referred to in subsection (1), other than the Minister or the Superintendent, who makes an application pursuant to subsection (1), shall give notice to the Minister and the Minister or the Superintendent may appear and be heard in person or by counsel.

(4) In connection with an application pursuant to this Section, the Court may make any interim or final order it thinks fit, including, without limiting the generality of the foregoing, an order

(a) restraining the conduct complained of;

(b) to regulate a provincial company's affairs by amending the bylaws;

(c) appointing directors in place of or in addition to all or any of the directors of a provincial company then in office;

(d) varying or setting aside a transaction or contract to which a licensed company is party and compensating the licensed company or any other party to the transaction or contract;

(e) requiring a licensed company, within a time specified by the Court, to produce to the Court or an interested person financial statements or an accounting in such other form as the Court may determine;

(f) compensating an aggrieved person;

(g) directing rectification of the records of a company; or

(h) requiring the trial of any issue. 1991, c. 7, s. 252.

Restrictions on stay or dismissal

254 (1) An application made or an action brought or intervened in pursuant to Section 253 may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or may be approved by the shareholders of such body corporate, but evidence of the approval by the shareholders may be taken into account by the Court in making an order pursuant to Section 253.

(2) An application made or an action brought or intervened in pursuant to Section 253 may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interests of any person described in subsection 253(1) may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the person.

(3) A person described in subsection (1) is not required to give security for costs in an application made or action brought or intervened in pursuant to Section 253.

(4) In an application made or an action brought or intervened in pursuant to Section 253, the Court may, at any time, order the licensed company or any of its affiliates to pay to the applicant interim costs, including reasonable legal fees and disbursements, for which interim costs the applicant may be held accountable to the company or its affiliate upon final disposition of the application or action. 1991, c. 7, s. 253.

Order for rectification of records

255 (1) Where the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder of the company or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

(2) An applicant pursuant to this Section shall give the Minister notice of the application and the Minister or the Superintendent may appear and be heard in person or by counsel.

(3) In connection with an application pursuant to this Section, the Court may make any order it thinks fit, including, without limiting the generality of the foregoing,

(a) an order requiring the registers or records of the company to be rectified;

(b) an order determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between two or more shareholders or alleged shareholders, or between the company and any shareholders or alleged shareholders; and

(c) an order compensating a party who has incurred a loss. 1991, c. 7, s. 254.

Offences and penalties

256 **(1)** A person who

(a) traffics in a shareholders list contrary to Section 99;

(b) violates any provision of Sections 180 to 192 or any provision of an agreement referred to in Section 207;

(c) violates any provision of Section 212;

(d) accepts or gives a grant or gratuity or holds shares contrary to Section 220;

(e) allows the person's name to be used on behalf of a person having a beneficial interest in a provincial company for the purpose of disguising that interest;

(f) wilfully fails to comply with an undertaking given pursuant to this Act;

(g) wilfully fails to comply with an order made pursuant to this Act;

(h) in the case of a licensed company, violates any term, condition or restriction imposed on its licence;

(i) wilfully breaches the terms of a voluntary compliance program or an agreement referred to in subsection 206(2);

(j) wilfully fails to report to the Minister or the Superintendent as required pursuant to this Act or the regulations; or

(k) wilfully makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Minister or Superintendent that

(i) contains an untrue statement of material fact, or

(ii) omits to state a material fact required in that report, return, notice or other document or necessary to make a statement contained in that report, return, notice of other document not misleading in light of the circumstances in which it was made,

is guilty of an offence.

(2) A person who commits an offence referred to in subsection (1) is liable on summary conviction

(a) for a first offence,

(i) in the case of an individual, to a fine of not less than $1,000 and not more than $100,000 or to imprisonment for a term of not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than $5,000 and not more than $100,000;

(b) for each subsequent offence,

(i) in the case of an individual, to a fine of not less than $2,000 and not more than $200,000 or to imprisonment for a term of not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than $10,000 and not more than $200,000.

(3) A person who caused, authorized, permitted, acquiesced in or participated in an offence referred to in subsection (1) is guilty of an offence and is liable on summary conviction

(a) for a first offence,

(i) in the case of an individual, to a fine of not less than $1,000 and not more than $100,000 or to imprisonment for a term or not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than $5,000 and not more than $100,000;

(b) for each subsequent offence,

(i) in the case of an individual, to a fine of not less than $2,000 and not more than $200,000 or to imprisonment for a term of not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than $10,000 and not more than $200,000.

(4) Notwithstanding subsection (1), a person for whom a voluntary compliance program has been approved by the Minister who complies fully with that program may not be prosecuted for or convicted of an offence in respect of the breach of this Act that the program was intended to remedy.

(5) A person is not guilty of an offence pursuant to clause (1)(b) if the person was not a party to the offence and reported the failure to comply with Sections 180 to 192 as set out in Section 190 or 191. 1991, c. 7, s. 255.

Order to comply

257 Where a person commits an offence pursuant to this Act or the regulations, any court in which proceedings in respect of the offence are taken may, in addition to any other punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the violation of which the person has been convicted. 1991, c. 7, s. 256.

Order to make compensation or restitution

258 Where a person is convicted of an offence pursuant to this Act or the regulations, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation to the offence. 1991, c. 7, s. 257.

Violation not otherwise stated to be offence

259 A person who violates a provision of this Act or the regulations that is not otherwise stated to be an offence is guilty of an offence pursuant to this Act or the regulations. 1991, c. 7, s. 258.

Penalty where not otherwise provided for

260 A person convicted of an offence pursuant to this Act or the regulations for which no punishment is provided elsewhere in this Act or the regulations is liable on summary conviction to a fine of not more than $1,000. 1991, c. 7, s. 259.

Default

261 (1) An individual in default of payment of a fine imposed pursuant to this Act or the regulations is liable to imprisonment in accordance with the *Summary Proceedings Act*.

(2) A body corporate in default of payment of a fine imposed pursuant to this Act or the regulations is liable to levy by distress and sale in accordance with Section 55 of the *Summary Proceedings Act*. 1991, c. 7, s. 260.

Continuing offence

262 Where an offence pursuant to this Act or the regulations is committed on more than one day or is continued for more than one day, it is deemed to be a separate offence for each day on which the offence is committed or continued. 1991, c. 7, s. 261.

Time prosecution to be instituted

263 A prosecution for an offence pursuant to this Act or the regulations may be instituted at any time within three years after the time when the subject-matter of the complaint arose. 1991, c. 7, s. 262.

No civil remedy suspended or affected

264 No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence pursuant to this Act or the regulations. 1991, c. 7, s. 263.

Receipt and payment of money

265 A licensed company, without the authority, aid, assistance or intervention of any other person or official being required, may receive deposits from any person regardless of the person's age, status or condition in life, and whether the person is qualified by law to enter into ordinary contracts or not, and may pay any or all of the principal of those deposits and any or all of the interest of those deposits to or in order of the person, unless before payment, the money on deposit is claimed by some other person in a court proceeding to which the company is a party and in respect of which service of a notice of action or other process originating such proceeding has been made on the company, or in any other proceeding pursuant to which an injunction or order made by the court requiring the company not to make payment of that money or to make payment of that money to some person other than the depositor has been served on the company, and in the case of any such claim so made, the money so deposited may be paid to the depositor with the consent of the claimant or the claimant with the consent of the depositor. 1991, c. 7, s. 264.

Nomination to receive deposits

266 (1) A person who has deposits with a licensed company not exceeding $5,000 in the aggregate may, by a writing signed by the person and

deposited with the company, nominate any person to receive the amount of those deposits at the person's death.

(2) Upon receiving a statutory declaration as to the death of a person who has made a nomination pursuant to subsection (1), the licensed company may substitute on its books the name of the nominee in place of the name of the person or may immediately pay to the nominee the amount due.

(3) Where a depositor as described in subsection (1) dies without making a nomination in accordance with that subsection, the deposit may, without letters probate or letters of administration being taken out, be paid or transferred to the person who appears to the company to be

(a) entitled under the will of that depositor or, in the case of intestacy, under the law relating to devolution of property to receive it; or

(b) equitably entitled to the deposit by reason of having incurred expense for the maintenance, medical attendance or burial of the depositor,

upon receipt by the licensed company of the statutory declaration of the person so claiming stating the time and place of the death of the depositor and the facts supporting the claim. 1991, c. 7, s. 265.

Payment to entitled person after depositor's death

267 Where a licensed company, after the death of a depositor, has paid or transferred a deposit to the person who at the time appeared to be entitled, the payment or transfer is valid with respect to any demand from any other person as the legatee, next of kin or the personal representative of the deceased against the licensed company, but the legatee, next of kin or personal representative is entitled to recover the amount of the deposit from the recipient or transferee. 1991, c. 7, s. 266.

Unclaimed deposit

268 (1) Within 30 days after a deposit made in the Province to a licensed provincial company becomes an unclaimed deposit, the company shall pay to the Minister the amount owing to the depositor.

(2) The Minister may pay an amount received pursuant to subsection (1) to a person claiming to be entitled to it upon being furnished with satisfactory proof of the person's entitlement.

(3) For the purpose of subsection (1), a deposit becomes an unclaimed deposit on the day 10 years after the day on which the fixed term ended, in the case of a deposit for a fixed term, and, in any other case, on the day 10 years after the day on which the last transaction took place on the depositor's account or a statement of account was last requested or acknowledged by the depositor, whichever is latest. 1991, c. 7, s. 267.

Powers of company to which business transferred

269 The transfer by a licensed provincial trust company to another licensed trust company of the business in relation to which the company acted as a fiduciary, other than deposits, does not operate further or otherwise as a discharge to

any former or continuing trustee, including the provincial company, than an appointment of new trustees for that purpose contained in an instrument would have operated, and the company to which the business was transferred has the same powers, authority and discretion and may act in all respects as if the trust company had been originally appointed a trustee by the instrument, if any, creating the trust. 1991, c. 7, s. 268.

Manner of notification

270 (1) A notice or document required by this Act, the regulations, the instrument of incorporation or the bylaws to be sent to a shareholder or director of a provincial company may be sent by prepaid mail addressed to, or may be delivered personally to

(a) the shareholder at the latest address as shown in the records of the company or its transfer agent; or

(b) the director at the latest address as shown in the records of the company or in the latest records of the Superintendent.

(2) A director named in a notice sent by a provincial company to the Superintendent and filed by the Superintendent is deemed for the purpose of the service of the notice or document referred to in subsection (1) to be a director of the company referred to in the notice.

(3) A notice or document sent in accordance with subsection (1) to a shareholder or director of a provincial company is deemed to have been received by the shareholder or director at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholders or director did not receive the notice or document at that time or at all.

(4) Where a provincial company sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the company is not required to send any further notices or documents to the shareholder until the shareholder informs the company in writing of the shareholder's new address. 1991, c. 7, s. 269.

Service of notice or document

271 (1) A notice or document required to be sent to or served upon a company may be sent by registered mail to the registered office of the company and, if so sent, is deemed to have been received or served at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the company did not receive the notice or document at that time or at all.

(2) Where there are reasonable grounds for believing that a company will not receive a notice or document, a notice or document required to be sent to or served upon a company may be sent by registered mail to or served upon any director of the company as shown in the last notice filed with the Superintendent and, if so sent, is deemed to have been received or served on the company at the time it would have been delivered in the ordinary course of mail to such director, unless there are reasonable grounds for believing that the director did not receive the notice or document at the time or at all.

(3) In the case of an extra-provincial company, a notice or document within the meaning of subsection (1) may be sent or served upon it in accordance with Section 195.

(4) Where a notice or document is required by this Act or the regulations to be sent, the notice may be waived or the time for the notice may be waived or abridged at any time, either before or after the event, with the consent in writing of the person entitled to the notice or document. 1991, c. 7, s. 270.

Certificate signed by Minister or Superintendent

272 (1) Where this Act requires or authorizes the Minister or Superintendent to issue a certificate or to certify any fact, the certificate must be signed by the Minister or Superintendent, as the case may be.

(2) A certificate referred to in subsection (1) or a certified copy of such certificate is admissible in evidence and when introduced as evidence in any civil, criminal or administrative action or proceeding, or for any other purpose, is proof, in the absence of evidence to the contrary, of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate. 1991, c. 7, s. 271.

Photostatic or photographic copy and verification

273 (1) Where a notice or document is required to be sent or filed with the Superintendent pursuant to this Act, the Superintendent may accept a photostatic or photographic copy of the notice or document.

(2) The Superintendent may require that a document or a fact stated in a document required by this Act or the regulations to be sent to the Superintendent be verified in accordance with subsection (3).

(3) A document or fact required by this Act or by the Superintendent to be verified may be verified by affidavit made under oath or by statutory declaration pursuant to the *Evidence Act* before any commissioner for taking affidavits or a notary public or in any such other manner as may be prescribed or permitted by the *Evidence Act.* 1991, c. 7, s. 272.

Authorization to alter document

274 The Superintendent may alter a notice or document, other than an affidavit or statutory declaration, if so authorized by the person who sent the document or by the person's representative. 1991, c. 7, s. 273.

Certificate of company

275 (1) A certificate issued on behalf of a company stating any fact that is set out in the instrument of incorporation, the bylaws, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the company is a party may be signed by a director or an officer of the company.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding

(a) a certificate referred to in subsection (1);

(b) a certified extract from any register of a company; or

(c) a certified copy of the minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

is proof, in the absence of evidence to the contrary, of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate. 1991, c. 7, s. 274.

Report of cash transactions

276 A provincial company shall report cash transactions over an amount prescribed by the regulations to the Superintendent in the manner prescribed by the regulations and shall keep such records of the transaction as are prescribed by the regulations. 1991, c. 7, s. 275.

Regulations

277 The Governor in Council may make regulations

(a) prescribing forms that are required to be prescribed pursuant to this Act and providing for their use;

(b) respecting forms to be used pursuant to this Act;

(c) requiring the payment of fees for letters patent, supplementary letters patent, letters patent of continuance, letters patent of amalgamation and licences and renewals issued pursuant to this Act and in respect of any function performed by the Minister or Superintendent pursuant to this Act or the regulations and prescribing the amounts of those fees;

(d) requiring the payment of fees in respect of the filing, examination or copying of documents and prescribing the amounts of those fees;

(e) respecting words, expressions or symbols that are prohibited in the name of a licensed provincial company and prescribing other conditions respecting the use of names by licensed provincial companies;

(f) prescribing the method of calculating the capital base of a company, including what may or may not be included in the calculation and the manner in which the value of anything included in the calculation must be calculated or determined for that purpose;

(g) prescribing the method of calculating the total assets of a company, including the manner in which the value of any of those assets must be calculated or determined for that purpose;

(h) prescribing limits in dollar amounts or in a percentage of total assets of investments in any assets or any class of assets and, where a limit has been imposed by this Act with respect to any asset or class of assets, prescribing limits that are more restrictive than those set out in this Act;

(i) respecting required leverage ratios and risk weighted average ratios, and the manner of calculating them, for the purpose of Section 40;

(j) respecting the issue of subordinated notes;

(k) prescribing the method of calculating liquidity of a provincial company, and the form and amount of liquidity to be maintained by a provincial company;

(l) prohibiting securities for the purpose of clause 45(1)(c).

(m) designating Acts for the purpose of clause 45(2)(a);

(n) prescribing amounts that may be invested in personal loans pursuant to clause 45(2)(b);

(o) prescribing amounts for the purpose of subclause 45(2)(d)(ii);

(p) prescribing investments that are prohibited for the purpose of subsection 49(1);

(q) prescribing investments for the purpose of subsection 50(1);

(r) prescribing the per cent of total assets for the purpose of subsection 50(1);

(s) prescribing companies for the purpose of subsection 52(2);

(t) prescribing terms and conditions for the establishment or acquisition of subsidiaries of a provincial company;

(u) respecting common trust funds, including the establishment and operation of common trust funds and the investment of trust money in those funds;

(v) requiring the disclosure of loans, mortgages and interest rates in lending transactions;

(w) respecting the custody and safekeeping of securities, property or trust assets registered in the name of or held by a provincial company;

(x) prescribing recognized stock exchanges for the purpose of this Act;

(y) respecting the records, papers and documents to be retained by provincial companies and the length of time they shall be so retained;

(z) prescribing financial or other information to be provided by provincial companies to the Superintendent and the time at which such information must be provided;

(aa) prescribing information to be publicly disclosed by a provincial company or to be placed before the annual meeting of a provincial company;

(ab) prescribing the information that must be maintained by licensed companies and the public file of each company;

(ac) exempting persons holding such percentage, as may be set out in the regulations, of shares of a provincial company from the requirements of Section 91;

(ad) exempting classes of shares of provincial companies from the requirements of Section 91;

(ae) requiring the bonding and insurance coverage of and for directors, officers, agents and employees of a company and of property of the company or held by it;

(af) respecting networking arrangements between licensed provincial companies and other persons providing products or services, prohibiting or restricting any such arrangements and governing the conduct of licensed provincial companies that have networking arrangements;

(ag) prescribing information to be provided to security holders of a company and to persons on whose behalf a licensed company holds securities of a body corporate as fiduciary or agent;

(ah) prohibiting the transfer or issue of voting shares of a provincial company;

(ai) prescribing individuals disqualified from being a director of a provincial company for the purpose of clause 101(1)(j);

(aj) prescribing individuals who are not eligible to be outside directors for the purpose of clause 103(7)(d);

(ak) respecting the qualifications for appointment as an officer of a provincial company;

(al) respecting reports of transactions required to be reviewed by the audit committee;

(am) prescribing duties for audit and investment committees;

(an) prescribing procedures to be established by a provincial company for the purpose of clause 122(1)(d);

(ao) respecting the activities of a company in dealing with persons who act as agents for the licensed company and governing the relationships between the company and its agents and reporting of those agents;

(ap) respecting the format and contents of financial statements, notices and other documents required pursuant to this Act;

(aq) respecting reports by auditors;

(ar) prescribing classes of loans, investments or transactions for the purpose of Sections 180 to 192;

(as) permitting licensed provincial companies to make loans to employees as described in subsection 183(2) and prescribing the maximum amount of any such loan;

(at) respecting investments, and prohibiting or restricting as to amount, investments by licensed extra-provincial companies in the Province for the purpose of Section 198;

(au) prescribing financial or other information to be provided to the Superintendent and the time at which such information must be provided for the purpose of Section 199;

(av) respecting the activities of deposit brokers and any other persons referred to in Section 208 and the relationship between the company, deposit brokers and any other persons referred to in Section 208 and their clients;

(aw) respecting hearings and appeals and the procedures for hearings and appeals;

(ax) respecting assessments with respect to licensed companies for recovering the costs and expenses referred to in subsection 234(1), including the amount of the assessment with respect to each company, the manner, time and frequency of assessments and payments and the use of different methods of assessment with respect to different companies;

(ay) prescribing procedures related to the payment of unclaimed deposits to the Minister pursuant to Section 268, requiring provincial companies to give notices to depositors in relation to the deposits and to keep such records of the deposits as are prescribed;

(az) prescribing rules with respect to exemptions permitted by this Act;

(ba) prohibiting or restricting the engaging by a licensed provincial company in tied selling practices;

(bb) setting out the circumstances in which investments of a subsidiary of a licensed provincial company are deemed to be investments of the company;

(bc) respecting the protection of customers and the public in their dealings with licensed provincial companies, including the making of representations by licensed provincial companies to them;

(bd) respecting the confidentiality of information possessed by licensed provincial companies or their subsidiaries or affiliates concerning their customers or clients, and prohibiting or restricting solicitations based on, or the giving of access to, any such information;

(be) requiring and respecting the provision of information to security holders of a licensed provincial company and to persons on whose behalf a licensed provincial company holds securities of a body corporate as fiduciary or agent;

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

(bg) prescribing any matter required or authorized by this Act to be prescribed;

(bh) for any purpose necessary or advisable to carry out the intent and purpose of this Act. 1991, c. 7, s. 276.

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CHAPTER T-18

An Act Respecting Trustees

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

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Trust Companies

Short title

1 This Act may be cited as the *Trustee Act*. R.S., c. 479, s. 1.

Interpretation

2 In this Act,

"contingent right", as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

"convey" and "conveyance", applied to any person, include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of land where the person is seised or possessed, or where the person is entitled to a contingent right, either for the person's whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance;

"Court" means the Supreme Court of Nova Scotia;

"devisee" includes the heir of a devisee and the devisee of an heir, and any person who claims right by devolution of title of a similar description;

"instrument" includes a statute;

"judge" means a judge of the Court;

"land" includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land;

"mortgage" and "mortgagee" include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

"pay" and "payment", as applied in relation to stocks and securities and, in connection with the expression "into court", include the deposit or transfer of the same in or into court;

"person of unsound mind" means any person, not an infant, who is incapable from infirmity of mind of managing the person's own affairs;

"possessed" applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land;

"property" includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

"rights" includes estates and interests;

"securities" includes stocks, debentures, bonds, funds and shares, and so far as relates to payments into court, means securities standing or deposited into court or placed to the credit of a cause, matter or account in the Court;

"stock" includes fully paid-up shares, and, so far as it relates to vesting orders made by the Court under this Act, includes any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

"transfer", in relation to stock, includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;

"trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception "trust" and "trustee" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person. R.S., c. 479, s. 2; 2007, c. 17, s. 22; 2017, c. 4, s. 98.

PART I

INVESTMENTS

Permitted investment

3 **(1)** A trustee may invest trust property in any form of property or security in which a prudent investor might invest, including a security issued by a mutual fund as defined in the *Securities Act*.

(2) Subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the trust.

(3) A trustee may have regard to the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income and preservation or appreciation of capital;

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries. 2002, c. 10, s. 45.

Prudent investor

4 In investing trust property, a trustee shall exercise the care, skill, diligence and judgement that a prudent investor would exercise in making investments. 2002, c. 10, s. 45.

Diversification

5 A trustee shall diversify the investment of trust property to an extent that is appropriate having regard to

(a) the requirements of the trust; and

(b) general economic and investment market conditions. 2002, c. 10, s. 45.

Liability of trustee

6 A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances. 2002, c. 10, s. 45.

Assessment of damages

7 A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust property may take into account the overall performance of the investments. 2002, c. 10, s. 45.

Advice

8 (1) A trustee may obtain advice in relation to the investment of trust property.

(2) It is not a breach of trust for a trustee to rely upon advice obtained under subsection (1) if a prudent investor would rely upon the advice under comparable circumstances. 2002, c. 10, s. 45.

Delegation

9 (1) In this Section, "agent" includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by a trustee.

(2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust property that a prudent investor might delegate in accordance with ordinary business practice.

(3) A trustee who delegates authority under subsection (2) shall exercise prudence in

(a) selecting the agent;

(b) establishing the terms of the authority delegated; and

(c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

(4) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(5) A trustee who complies with the requirements of subsection (3) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(6) This Section does not authorize a trustee to delegate authority under circumstances in which the trust requires the trustee to act personally.

(7) Investment in a security issued by a mutual fund as defined in the *Securities Act* or in a similar investment is not a delegation of authority with respect to the investment of trust property. 2002, c. 10, s. 45.

Regulations

10 The Governor in Council may make regulations prescribing or prohibiting the investment of money by a trustee in particular investments and prescribing investments or classes of investments in which money may be invested by a trustee for the sound and efficient management of a trust. 1994-95, c. 19, s. 1.

Prohibited investments

11 Nothing in Section 3 or 10 permits a trustee to invest in investments that are expressly forbidden by the instrument, if any, creating the trust. 1994-95, c. 19, s. 1.

Investments authorized by Court

12 In addition to the investments authorized by Section 3 or by the trust instrument, except where that instrument expressly prohibits such investment, a trustee may invest funds in such other securities as the Court or a judge upon application in any particular case selects as fit and proper, but nothing herein relieves the trustee of the duty to take reasonable and proper care with respect to the investments so authorized. R.S., c. 479, s. 7.

Deposit of trust money pending investment

13 A trustee may, pending the investment of any trust money, deposit the same during such time as is reasonable in the circumstances in a trust account in the name of the trustee in any chartered bank of Canada, or in any approved trust company, loan corporation or any other like depository that has by order of the Governor in Council been approved as such depository. R.S., c. 479, s. 8.

Condition upon deposit pending investment

14 Where a trustee deposits trust money as authorized in Section 13, the trustee shall maintain a ledger account in the trustee's books for the particular trust estate for which such trust money is held or shall require the account in the bank or other depository ledger to be opened and kept in the name of the trustee for the particular trust estate for which such money is held. R.S., c. 479, s. 9.

Effect of Act on authority of trustee

15 **(1)** The powers conferred by this Act relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.

(2) Nothing in this Act relating to trustee investments authorizes a trustee to

(a) do anything that the trustee is in express terms forbidden to do; or

(b) omit to do anything that the trustee is in express terms directed to do,

by the instrument creating the trust. R.S., c. 479, s. 10.

Variation of investments and liability

16 **(1)** A trustee, in the trustee's discretion, may

(a) call in any trust funds invested in any other securities than those authorized by this Act and invest the same in any securities authorized by this Act; and

(b) vary any investments authorized by this Act.

(2) A trustee is not liable for any breach of trust by reason only of the trustee continuing to hold an investment that has ceased to be one authorized by the instrument of trust or by the general law. R.S., c. 479, s. 11.

Concurrence in scheme to reconstruct or sell company

17 **(1)** Where a trustee holds securities in which the trustee has property invested under the provisions of this Act, the trustee may concur in any scheme or arrangement for

(a) the reconstruction of the company, or for the winding up or sale or distribution of the assets of the company;

(b) the sale of all or any part of the property and undertaking of the company to another company;

(c) the amalgamation of the company with another company;

(d) the release, modification or variation of any rights, privileges or liabilities attached to the securities, or any of them, in like manner as if the trustee were entitled beneficially to such securities, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first mentioned securities.

(2) The trustee is not responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which the trustee could have properly retained the original securities. R.S., c. 479, s. 12.

Liability for improper advance on mortgage security

18 Where a trustee improperly advances trust money on a mortgage security, which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security is deemed an authorized investment for the smaller sum, and the trustee is only liable to make good the sum advanced in excess thereof, with interest. R.S., c. 479, s. 13.

Notice to beneficiary respecting proposed investment

19 **(1)** Where a beneficiary entitled in possession to receive the income of the trust fund for the beneficiary's life, or for a term of years determinable with the beneficiary's life, or for any greater estate, has given to the trustee a notice in writing that the beneficiary desires to be consulted with regard to any proposed investments or changes of investment, notice in writing of any proposed investment or change of investment must be first given by the trustee to such beneficiary.

(2) Such notice must contain a request that if the beneficiary objects to such proposal, the beneficiary shall notify at least one of the trustees in writing of such objection within 10 days after the receipt of the notice.

(3) Where the trustee receives a notice of any such objection the trustee may apply to the Court or a judge in a summary manner for leave to make such proposed investment, or change of investment, notwithstanding such objection.

(4) Service of notice of the proposal or of the objection may be made either personally or by mailing the same, postage prepaid and registered, to the address of the person to be notified and may be proved by an affidavit stating the fact and the mode of service.

(5) The Court or judge may authorize or refuse to authorize the proposed investment or change of investment, and has discretion as to the disposal of the costs of the application.

(6) No such notice of a proposed investment or change of investment may be required to be given in the case of a release of a mortgage upon payment of the principal by the mortgage debtor, or of the temporary deposit on interest of the whole or any part of a fund in any solvent chartered bank of Canada. R.S., c. 479, s. 14.

PART II

VARIOUS POWERS AND DUTIES OF TRUSTEES

APPOINTMENT OF NEW TRUSTEES

New trustee

20 **(1)** When a trustee, either original or substituted and whether appointed by the Court or a judge or otherwise,

(a) is dead;

(b) remains out of the Province for more than 12 months;

(c) desires to be discharged from all or any of the trusts or powers reposed in or conferred on the trustee; or

(d) refuses, or is unfit to act therein, or is incapable of acting,

the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then, if the beneficiaries consent thereto in writing, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, in writing, appoint another person or other persons to be a trustee or trustees in the place of that trustee.

(2) On the appointment of a new trustee for the whole or any part of trust property,

(a) the number of trustees may be increased;

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first mentioned part;

(c) it is not obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, a trustee may not be discharged under this Section from the trustee's trust unless there will be at least two trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, must be executed or done.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in the trustee, has the same powers, authorities and discretions, and may in all respects act as if the trustee had been originally appointed a trustee by the instrument, if any, creating the trust.

(4) The provisions of this Section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relating to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this Section.

(5) This Section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of the instrument and to any provisions therein contained. R.S., c. 479, s. 16.

Retirement of trustee who desires to be discharged

21 (1) Where there are more than two trustees, if one of them by deed declares that that trustee is desirous of being discharged from the trust, and if that trustee's co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged is deemed to have retired from the trust, and is, by the deed, discharged therefrom under this Act without any new trustee being appointed in the trustee's place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone must be executed or done.

(3) This Section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to any provisions therein contained. R.S., c. 479, s. 17.

Vesting of trust property where new trustee

22 (1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, vests in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purpose of the trust, that estate, interest or right.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this Section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This Section does not extend to land conveyed by way of mortgage for securing money subject to the trust or to any such share, stock, annuity or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under an Act of Parliament or of the Legislature of this Province.

(4) For the purpose of registration of the deed in any registry, the person or persons making the declaration are deemed the conveying party or parties, and the conveyance is deemed to be made by the person or persons under a power conferred by this Act. R.S., c. 479, s. 18.

PURCHASE AND SALE

Sale or exchange by trustee

23 (1) Where a trust for sale or a power of sale of property is vested in a trustee, the trustee may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to

vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to resell without being answerable for any loss.

(2) Where the power expressly authorizes an exchange, the trustee may make an exchange of any land or any part thereof for any other land in the Province, including an exchange in consideration of money paid for equality of exchange.

(3) No purchaser under any such sale is bound to inquire whether the trustees or other persons making the same have or have not in contemplation any particular reinvestment of the purchase money.

(4) For the purpose of completing any such sale or exchange, the trustees or other persons empowered to sell or exchange have full power to convey or otherwise dispose of the property in question, either by way of revocation and appointment of the use or otherwise, as is necessary.

(5) The money so received upon any such sale or for equality of exchange, subject to

(a) payment of claims properly payable thereout; and

(b) payment of consideration money for equality of exchange, if any,

must be invested by the trustees according to this Act.

(6) The property or securities so acquired by the trustee must be held to the uses, upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisions and declarations to which the property sold or given in exchange was or would have been subject, or as near thereto as circumstances permit, but not so as to increase or multiply charges.

(7) The trustee or other person exercising any such power may, if the trustee or other person thinks fit, apply any money received upon any such sale, or for equality of exchange or any part thereof, in or towards paying off or discharging any mortgage or other charge or encumbrance that affects the property or any part thereof which is then subject to the same uses or trusts as those to which the property or part sold or given in exchange was subject.

(8) Until the money received upon any such sale or for equality of exchange is disposed of in the manner provided for in this Section, the same must be invested at interest for the benefit of the same persons who would be entitled to the property or securities to be purchased or acquired therewith and the rents, profits, dividends or interest thereof in case such purchase, acquisition and settlement were then actually made.

(9) No such sale or exchange, and no purchase or acquisition of property or securities out of money received on any such sale or exchange, may be made without the consent of the person appointed to consent by the will, deed or other instrument, or if no such person is appointed, then of the person entitled in possession to the receipt of the rents and profits of such property, if there is such a person under no disability, but this subsection does not require the consent of any person where it appears from the will, deed or other instrument to have been

intended that such sale, exchange or purchase should be made by the trustee or other person making the same without the consent of any other person. R.S., c. 479, s. 19.

Impeachment of sale

24 (1) No sale made by a trustee may be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee may after the execution of the conveyance be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time the contract for such sale was made.

(3) No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid. R.S., c. 479, s. 20.

Power to mortgage or lease is included in power to sell

25 Where a power to sell real property is given to any executor or trustee, such power includes a power to mortgage or lease, unless the instrument expressly excludes it. R.S., c. 479, s. 21.

Conveyance by married woman who is bare trustee

26 Where a freehold hereditament is vested in a married woman as a bare trustee she may convey it as if she was a *feme sole*. R.S., c. 479, s. 22.

MISCELLANEOUS POWERS AND LIABILITIES

Appointment of agent

27 (1) A trustee may appoint a solicitor to be the trustee's agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed containing in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the trustee.

(2) Such deed is sufficient authority to the person liable to pay or give the same for paying or giving the same to the solicitor without the solicitor producing any separate or other direction or authority in that behalf from the trustee.

(3) A trustee may appoint a bank or solicitor to be the trustee's agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the bank or solicitor to have the custody of, and to produce, the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of the trustee having made or concurred in making any such appointment.

(4) Nothing in this Section exempts a trustee from any liability that the trustee would have incurred if this Act had not been passed, in case the trustee permits any such money, valuable consideration or property to remain in the

hands or under the control of the bank or solicitor for a period longer than is reasonably necessary to enable the bank or solicitor, as the case may be, to pay or transfer the same to the trustee.

(5) Nothing in this Section authorizes a trustee to do anything that the trustee is in express terms forbidden to do, or to omit anything that the trustee is in express terms directed to do, by the instrument creating the trust. R.S., c. 479, s. 23.

Power to insure property

28 **(1)** A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three equal fourth parts of the full value of such building or property, and to pay the premiums for such insurance out of the income thereof, or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who is entitled wholly or partly to such income.

(2) This Section does not apply to any building or property that a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3) Nothing in this Section authorizes any trustee to do anything that the trustee is in express terms forbidden to do, or to omit to do anything that the trustee is in express terms directed to do, by the instrument creating the trust. R.S., c. 479, s. 24.

Receipt given by trustee is sufficient discharge

29 The receipt in writing of any trustee for any money, securities or other property or effects payable, transferable or deliverable to the trustee under any trust or power, is a sufficient discharge for the same and effectually exonerates the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof. R.S., c. 479, s. 25.

Power of executor or trustee to pay or allow claim

30 **(1)** An executor or administrator may pay or allow any debt or claim on any evidence that the executor or administrator thinks sufficient.

(2) An executor or administrator, or two or more trustees acting together, or a sole acting trustee whereby the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts, and powers thereof, may, if and as the executor, administrator, trustee or trustees, as the case may be, think fit,

(a) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed;

(b) allow any time for payment for any debt; and

(c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate, or to the trust,

and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to the executor, administrator, trustee or trustees, as the case may be, seem expedient without

being responsible for any loss occasioned by any act or thing so done by that person or persons in good faith.

(3) This Section applies only if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to the provisions therein contained. R.S., c. 479, s. 26.

Exercise of power or trust by surviving trustee

31 Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being. R.S., c. 479, s. 27.

Liability of trustee acting under power of attorney

32 A trustee acting or paying money in good faith under or in pursuance of any power of attorney is not liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead, or had done some act to avoid the power, if this fact was not known to the trustee at the time of the trustee so acting or paying, provided that nothing in this Section affects the right of any person entitled to the money against the person to whom the payment is made, and that person so entitled has the same remedy against the person to whom the payment is made as that person would have had against the trustee. R.S., c. 479, s. 28.

Accountability of trustee and expenses

33 (1) A trustee is, without prejudice to the provisions of the instrument, if any, creating the trust, chargeable only for money and securities actually received by the trustee, notwithstanding the trustee signing any receipt for the sake of conformity.

(2) A trustee is only answerable and accountable for the trustee's own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any bank, bankers, broker or other person with whom any trust money or securities are deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through the trustee's own wilful default.

(3) A trustee may take reimbursement or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trustee's trusts or powers. R.S., c. 479, s. 29.

Discretion to apply income of property held for infant

34 (1) Where any property is held by a trustee in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on the infant attaining the age of 19 years, or any other age, or on the occurrence of any event before the infant attaining such age, the trustee may at the trustee's sole discretion pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2) The trustee shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which the trustee is by the instrument, if any, creating the trust, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise, provided that the trustee may at any time, if the trustee thinks fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3) This Section applies only if and so far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and has effect subject to the terms of that instrument and to the provisions therein contained. R.S., c. 479, s. 30.

PART III

POWERS OF THE COURT

APPOINTMENT OF NEW TRUSTEES AND VESTING ORDERS

Appointment of new trustee by Court

35 **(1)** The Court or a judge may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to do so without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees or although there is no existing trustee, or although no trustee was appointed in a will containing provisions rendering a trustee necessary to carry them into effect.

(2) In particular and without prejudice to the generality of subsection (1), the Court or judge may make an order for the appointment of a new trustee in substitution for a trustee who

(a) has been convicted of an offence punishable by imprisonment in the penitentiary; or

(b) is insolvent.

(3) In making such appointment such terms as to security for the due execution of the trust as are considered necessary may be imposed.

(4) An order under this Section, and any consequential vesting order or conveyance, does not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated. R.S., c. 479, s. 31.

Vesting order as to land

36 In any of the following cases, where

(a) the Court or a judge appoints or has appointed a new trustee;

(b) a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person

(i) is a person of unsound mind or has been found under the *Adult Capacity and Decision-making Act* to not have capacity respecting financial matters,

(ii) is an infant,

(iii) is out of the jurisdiction of the Court, or

(iv) cannot be found;

(c) it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land;

(d) as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether that trustee is living or dead;

(e) there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead or where the heirs or personal representatives of such last mentioned trustee are out of the jurisdiction of the Court;

(f) a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for 28 days after the date of the requirement,

the Court or a judge may make an order, in this Act called a "vesting order", vesting the land in any such person in any such manner and for any such estate as the Court or a judge may direct, or releasing or disposing of the contingent right to such person as the Court or a judge may direct, provided that where

(g) the order is consequential on the appointment of a new trustee, the land must be vested for such estate as the Court or a judge may direct in the persons who, on the appointment, are the trustees; and

(h) the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the Court or cannot be found, the land or right must be vested in such other person, either alone or with some other person. R.S., c. 479, s. 32; 2007, c. 17, s. 23; 2017, c. 4, s. 99.

Order as to contingent right of unborn person

37 Where any land is subject to a contingent right in an unborn person or class of unborn persons who on coming into existence would in respect thereof become entitled to or possessed of such land on any trust, the Court or a judge may make an order releasing such land from such contingent right, or may make an order vesting in any person the estate to or of which such unborn person or class of unborn persons would upon coming into existence be entitled or possessed in such land. R.S., c. 479, s. 33.

Order disposing of interest of infant in land

38 Where any person entitled to or possessed of land or entitled to a contingent right in land by way of security for money is an infant, the Court or a judge may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. R.S., c. 479, s. 34.

Vesting order respecting mortgage

39 Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect to the mortgage has been paid to a person entitled to receive the same, or that last mentioned person consents to any order for the reconveyance of the land, then the Court or a judge may make an order vesting the land in such person or persons in such manner and for such estate as the Court or judge directs, in any of the following cases where

(a) an heir, personal representative or devisee of the mortgagee is out of the jurisdiction of the Court, or cannot be found;

(b) an heir, personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that the heir, personal representative or devisee will not convey the same, or does not convey the same for the space of 28 days next after a proper deed for conveying the land has been tendered to the heir, personal representative or devisee by or on behalf of the person so entitled;

(c) it is uncertain which of several devisees of the mortgagee was the survivor;

(d) it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether the heir or personal representative of the mortgagee is living or dead; and

(e) there is no heir or personal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is the mortgagee's heir, personal representative or devisee. R.S., c. 479, s. 35.

Deemed trustee or vesting where order for sale or mortgage

40 Where any court or judge gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein as heir, or under the will of a deceased person for payment of whose debts the judgment was given or order made, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, is deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act, and the court or judge may, if it is deemed expedient, make an order vesting the land or any part thereof for such estate, as that court or judge thinks fit, in the purchaser or mortgagee or in any other person. R.S., c. 479, s. 36.

Vesting where judgment given for conveyance of land

41 Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, sale in lieu of partition or exchange of any

land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the Court or judge may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during the deceased's lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who on coming into existence would be trustees within the meaning of this Act, and thereupon the Court or judge may make a vesting order relating to the rights of those persons, born and unborn, as if they were trustees. R.S., c. 479, s. 37.

Effect of vesting order

42 A vesting order under any of the foregoing provisions has, in the case of a vesting order consequential on the appointment of a new trustee, the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate as the Court or judge directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the Court or judge directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance to the effect intended by the order. R.S., c. 479, s. 38.

In lieu of vesting order

43 In all cases where a vesting order can be made under any of the foregoing provisions, the Court or judge may, if it is more convenient, appoint a person to convey the land, or release the contingent right, and a conveyance or release by that person in conformity with the order has the same effect as an order under the appropriate provision. R.S., c. 479, s. 39.

Vesting of rights as to stock or chose in action

44 **(1)** In any of the following cases, where

(a) the Court or judge appoints or has appointed a new trustee;

(b) a trustee entitled alone or jointly with another person to stock or to a chose in action

(i) is a person of unsound mind or has been found under the *Adult Capacity and Decision-making Act* to not have capacity respecting financial matters,

(ii) is an infant,

(iii) is out of the jurisdiction of the Court,

(iv) cannot be found,

(v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person abso-

lutely entitled thereto, for 28 days next after a request in writing has been made to the trustee by the person so entitled, or

(vi) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for 28 days next after an order of the Court or judge for that purpose has been served on the trustee; or

(c) it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the Court or judge may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court appoints, provided that where

(d) the order is consequential on the appointment by the Court or judge of a new trustee, the right is vested in the persons who, on the appointment, are the trustees; and

(e) the person whose right is dealt with by the order was entitled jointly with another person, the right is vested in that last mentioned person, either alone or jointly with any other person whom the Court or judge appoints.

(2) In all cases where a vesting order can be made under this Section, the Court or judge may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court or judge under this Act, may transfer the stock to that person or any other person, according to the order, and all banks and other companies shall obey every order under this Section according to its tenor.

(4) After notice in writing of an order under this Section it is not lawful for any bank or other company to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

(5) The Court or judge may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under this Act is to be exercised.

(6) The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. R.S., c. 479, s. 40; 2007, c. 17, s. 24; 2017, c. 4, s. 100.

Person beneficially interested may apply for order

45 (1) An order under this Act for the appointment of a new trustee or concerning any land, stock or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any land, stock or chose in action subject to a mortgage may be made on the application of any person benefi-

cially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage. R.S., c. 479, s. 41.

Powers of trustee appointed by court

46 Every trustee appointed by a court of competent jurisdiction has, as well before as after the trust property becomes by law or by assurance or otherwise vested in the trustee, the same powers, authorities and discretions, and may in all respects act, as if the trustee had been originally appointed a trustee by the instrument, if any, creating the trust. R.S., c. 479, s. 42.

Order for payment of costs from trust estate

47 The Court or judge may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal property in respect whereof the same is made or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court or judge seems just. R.S., c. 479, s. 43.

Vesting orders respecting charity or society

48 The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock or chose in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power, under the provisions of a statute or by the Court or a judge under its general or statutory jurisdiction. R.S., c. 479, s. 44.

Vesting order made on certain allegation is evidence

49 (1) Where a vesting order is made as to any land under this Act founded on an allegation

(a) of the personal incapacity of a trustee or mortgagee;

(b) that a trustee or the heir, personal representative or devisee of a mortgagee is

(i) out of the jurisdiction of the Court or cannot be found,

(ii) uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir, personal representative or last surviving devisee of a mortgagee is living or dead; or

(c) that any trustee or mortgagee

(i) has died intestate without an heir, or

(ii) has died and it is not known who is the trustee's or mortgagee's heir, personal representative or devisee,

the fact that the order has been so made is conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order.

(2) An order made under subsection (1) does not prevent the Court or a judge from directing a reconveyance on the payment of costs occasioned by any such order if improperly obtained. R.S., c. 479, s. 45.

PAYMENT INTO COURT BY TRUSTEES AND OTHERS

Payment into court by trustees

50 (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the Court, and the same must, subject to rules of Court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer is a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where any money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the Court or judge may order the payment into court to be made by the majority without the concurrence of the other or others, and where any such money or securities are deposited with any bank, broker or other depository, the Court or judge may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court, and every transfer, payment and delivery made in pursuance of any such order is valid and takes effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered. R.S., c. 479, s. 46.

Person under disability

51 (1) Where any infant or person of unsound mind is entitled to any money payable in discharge of any land, stock or other security, or chose in action conveyed, assigned or transferred under this Act, the person by whom such money is payable may pay the same into the Court or to such person as the Court or a judge orders, in trust in any cause then depending concerning such money, or if there is no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the Court or a judge.

(2) The Court or a judge may, in a summary way, order any money so paid to be invested in such stock or securities as such Court or judge selects or approves, and may order payment or distribution thereof, or payment of the dividends thereof, as to such Court or judge seems reasonable.

(3) The Court or other person who receives any such money shall give to the person paying the same a receipt for such money, and any such receipt is an effective discharge for the money therein expressed to have been received. R.S., c. 479, s. 47.

MISCELLANEOUS

Judgment against trustee who cannot be found

52 Where, in any action, the Court or judge is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve that person with a process of the Court, and that the

person cannot be found, the Court or judge may hear and determine the action and give judgment therein against that person in the person's character of a trustee, as if the person had been duly served or had entered an appearance in the action, and had also appeared by the person's counsel and solicitor at the hearing, but without prejudice to any interest the person may have in the matters in question in the action in any other character. R.S., c. 479, s. 48.

Indemnity to trustee who breaches trust with consent

53 Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court or judge may, if the Court or judge thinks fit, make such order as to the Court or judge seems just for impounding all or any part of the interest of the beneficiary in the trust estate, by way of indemnity to the trustee or person claiming through the trustee. R.S., c. 479, s. 49.

Order for mortgage for repairs

54 (1) Trustees, guardians and others standing in a fiduciary relation may, under an order obtained from the Court or judge, upon grounds laid to the satisfaction of the Court or judge, mortgage real property or portions thereof for the purpose of putting, keeping and maintaining the same in proper repair, and mortgages so made shall operate as securities to the holders in the same way and to the same extent as if made by the persons whose interests are represented by the mortgagors.

(2) The Court or judge may apportion the charge for repairs, including interest on the sum borrowed, to and among the persons interested in the property as is just and equitable. R.S., c. 479, s. 50.

Order to confer powers not provided in instrument

55 (1) Where in the management or administration of any property vested in trustees any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is, in the opinion of the Court or a judge expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court or a judge may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the Court or a judge may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court or a judge may rescind or vary any order made under this Section or may make any new or further order.

(3) An application to the Court or a judge under this Section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust. R.S., c. 479, s. 51.

Funds raised upon appeal to public for contribution

56 (1) In this Section, "fund" includes money and property other than real property and tangible personal property.

(2) Where any funds are held by, or are under the control of, one or more persons and the funds have been paid, transferred or contributed by members of the public or by any public officer, body or authority, with or apparently with the intention that the funds will be used or applied for the benefit of a class of persons in respect of whom an appeal for funds has been made, the person or persons who receive and hold the funds are trustees thereof and there is a trust to which this Act applies.

(3) A trustee mentioned in subsection (2) alone or jointly with other trustees may without notice to any person apply to a judge for approval of a scheme for the distribution of the funds held in trust and the judge may by order approve the scheme with any variation or additions as the judge thinks proper.

(4) A judge may, by order, on the application of any person or without application, rescind or vary any order made pursuant to subsection (3) or approve a new scheme for the distribution of the funds then held in trust.

(5) The *Civil Procedure Rules* apply with necessary changes to an application made under this Section, except that it is not necessary to give notice to any person unless notice is directed to be given by the judge.

(6) No action may be brought against a trustee who distributes funds or does any other act in accordance with a scheme or order approved or made under this Section. R.S., c. 479, s. 52.

PART IV

MISCELLANEOUS AND SUPPLEMENTARY

Act and orders are indemnity for acts done

57 This Act and every order purporting to be made under this Act is a complete indemnity to all companies and to all persons for any acts done pursuant thereto, and it is not necessary for any company or person to inquire concerning the propriety of the order, or whether the Court or judge making the same had jurisdiction to make it. R.S., c. 479, s. 53.

Personalty may be assigned

58 Any person may assign personal property by law assignable, including chattels real, directly to that person and another person or persons or corporation, by the like means as that person may assign the same to another person. R.S., c. 479, s. 54.

Effect of payment of purchase or mortgage money

59 The bona fide payment to and the receipt by any person to whom any purchase or mortgage money is payable, upon any express or implied trust, effectually discharges the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security. R.S., c. 479, s. 55.

Distribution of estate assets after notice to creditors

60 **(1)** Where an executor or administrator has given such or the like notices as, in the opinion of the court in which such executor or administrator is sought to be charged, would be sufficient in the Court in an administration action, or in a court of probate, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator is, at the expiration of the time named in the said notices, or the last of the said notices for sending in such claims, at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which such executor or administrator has then notice.

(2) The executor or administrator is not liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator did not have notice at the time of distribution of the said assets or a part thereof, as the case may be.

(3) Nothing in this Section prejudices the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who have received the same respectively. R.S., c. 479, s. 56.

Effect of encumbrance on receipt of rent and income

61 For the purpose of this Act, a person is deemed to be entitled to the possession or to the receipt of the rents and income of land or personal property, although the person's estate may be charged or encumbered, either by that person or by any former owner, or otherwise howsoever, to any extent, but the estates or interests of the persons entitled to any such charge or encumbrance are not affected by the acts of the person entitled to the possession or to the receipt of the rents or income as aforesaid unless they concur therein. R.S., c. 479, s. 57.

Conversion by railway law

62 Where land subject to a trust has been converted into money by the operation of any law relating to railways, such money is considered as land for the purpose of this Act, and must be dealt with as nearly as may be in conformity with the provisions thereof. R.S., c. 479, s. 58.

Effect of act on courts of probate

63 Nothing in this Act is to be construed to interfere with or impair the powers at present vested in the several courts of probate, further than is herein expressly mentioned. R.S., c. 479, s. 59.

Registration of order or instrument affecting land

64 As to persons not having actual notice of any order, deed or other instrument affecting the title to land, made under this Act, such order, deed or other instrument is binding only from the time the same is registered in the registry of deeds for the registration district in which the land lies under the *Registry of Deeds Act*. R.S., c. 479, s. 60.

Rules

65 The Court may make rules not inconsistent with this Act, nor with the laws for the time being in force in the Province, for the better and more effective

carrying out of the purpose of this Act, and for defining and declaring the procedure in cases arising under it. R.S., c. 479, s. 61.

Remuneration of trustee or guardian

66 **(1)** Trustees or guardians are entitled to such fair and reasonable remuneration for their care, pains and trouble, and their time expended in and about the estate, and in such proportions where there is more than one trustee, as is determined by the Court or judge, or by any local judge of the Court or referee to whom the matter is referred.

(2) A judge may, on application, settle the amount and apportionment of such remuneration, although the estate is not before the Court in any action or proceeding.

(3) Nothing in this Section applies to any case in which the rate of remuneration is fixed by the instrument creating the trust. R.S., c. 479, s. 62.

Executor or trustee who renders services as solicitor

67 Where there are more executors, administrators, trustees or guardians than one, any one of such executors, administrators, trustees or guardians who is also a solicitor may with the consent of the co-executors, co-administrators, co-trustees or co-guardians, charge for professional services rendered in relation to the estate in the same manner as if that person were not such executor, administrator, trustee or guardian provided, however, that no such charge may be made for any service that an executor, administrator, trustee or guardian ought to render without the intervention of a solicitor. R.S., c. 479, s. 63.

Court may relieve trustee from liability

68 Where it appears to the Court that a trustee is or may be personally liable for any breach of trust but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which the trustee committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same. R.S., c. 479, s. 64.

Where trustee absent and trust money held by another

69 Any person with whom trust money has been deposited or to whose hands trust money has come, may in case the trustee has been absent from the Province for a period of one year and is not likely to return at an early date, or in the event of the trustee's death, or if any trustee is unable to give any acquittance of money, pay the same into the Court in the same manner as payments into court are made by trustees and others under the provisions of this Act. R.S., c. 479, s. 65.

Perpetual trust as to cemetery lot

70 **(1)** A perpetual trust whether created before, on or after May 2, 1933, for the purpose of caring for, preserving, improving, embellishing or maintaining any private lot, tomb, monument or enclosure in any cemetery in the Province is lawful and the rule or law against perpetuities does not apply.

(2) Every regional municipality, town and county or district municipality has, and is deemed to have had before May 2, 1933, the power to take

and hold by gift, agreement, assignment, devise, bequest or otherwise, any money or securities, and to accept and execute any trust for the care, preservation, improvement, embellishment or maintenance in perpetuity or otherwise of any private lot, tomb, monument or enclosure in any cemetery owned, managed or controlled by such regional municipality, town or county or district municipality. R.S., c. 479, s. 66.

Fund for pensions or employee benefits

71 The rules of law and statutory enactments relating to perpetuities and to accumulations do not apply and are deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities or sickness, death or other benefits to employees or to their surviving spouses, dependants or other beneficiaries. R.S., c. 479, s. 67.

PART V

TRUST COMPANIES

Conditions for appointment of trust company by Court

72 (1) Where any company incorporated under any special Act of the Legislature of the Province or of the Parliament of Canada or under letters patent issued pursuant to any Act of the Legislature or Parliament is authorized to execute the office of executor, administrator, trustee, receiver, assignee, guardian of an infant or representative for an adult, in case the Governor in Council approves of such company being accepted by the Court as a trust company for the purpose of such Court, the said Court or any judge thereof, and every other court or judge having authority to appoint a person to execute any such office, may, with the consent of the company, appoint such company to execute any of the said offices with respect to any estate or person under the authority of such court or judge, or may grant to such company probate of any will in which such company is named an executor, but no company that has issued or has authority to issue debentures may be approved as aforesaid.

(2) Such company may be appointed to execute any of the said offices by any person or persons having authority by deed, will or other instrument to appoint a person or persons to execute any such office. R.S., c. 479, s. 68; 2007, c. 17, s. 25; 2017, c. 4, s. 101.

Grant of administration by probate court

73 Notwithstanding anything contained in the *Probate Act*, it is lawful for any judge or court of probate to grant administration of an intestate estate to any such company, instead of granting it to the person or persons specified in the *Probate Act* provided, however, that administration must not be granted to such company under this Part unless the person or persons in priority entitled to administration under the *Probate Act* consent in writing to the granting of such administration to such company. R.S., c. 479, s. 69.

Appointment as sole or joint trustee

74 Such company may be appointed to be a sole trustee, notwithstanding that but for this Part it would be necessary to appoint more than one trustee, and may also be appointed trustee jointly with any person. R.S., c. 479, s. 70.

Appointment may be under Act or document of trust

75 Such appointment may be made whether the trustee is required under the provisions of any deed, will or document creating a trust, or whether the appointment is made under this Act. R.S., c. 479, s. 71.

Security by company

76 Notwithstanding any rule of practice, or any provision of any Act requiring security, it is not necessary for the said company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, assignee or guardian, unless otherwise ordered. R.S., c. 479, s. 72.

Revocation of approval of company

77 The Governor in Council may revoke the approval given under this Part, and no court or judge after notice of such revocation may appoint any such company to be administrator, trustee, receiver, assignee or guardian, unless such company gives the like security for the due performance of its duty as would be required from a private person. R.S., c. 479, s. 73.

Liability of company

78 The liability of any such company to persons interested in an estate held by the said company as executor, administrator, trustee, receiver, assignee or guardian as aforesaid, is the same as if the estate had been held by any private person in such capacities respectively, and its powers are the same. R.S., c. 479, s. 74.

Deposit with company of money paid into court

79 Every court into which money is paid by parties, or is brought by order or judgment, may by order direct the same to be deposited with any such company that agrees to accept the same, and the company may pay any lawful rate of interest on such money as is agreed upon, and where no special arrangement is made, interest must be allowed by the company at the rate of not less than three per cent annually. R.S., c. 479, s. 75.

Eligible investments by company

80 (1) Every such company may invest any trust money in its hands in any security in which private trustees may by law invest trust money, but such company shall not in any case invest the money of any trust in securities prohibited by the trust, and shall not invest money entrusted to it by any court in a class of securities disapproved of by the court.

(2) Where such company is trustee jointly with another person, the company and the other person have the same authority to invest trust money in their hands as joint trustees that the company has under subsection (1) as sole trustee. R.S., c. 479, s. 76; 1994-95, c. 19, s. 3.

Company not to act as insurance agent

81 No company approved under this Part shall, nor shall any officer, agent or employee of such company, nor any company, firm or corporation controlled wholly or in part by such company whether by ownership of shares or otherwise, under penalty of revocation by the Governor in Council of the approval given under this Part, act in the Province as agent for any insurance company or for any

person in the placing of insurance, for the benefit or profit of the company so approved, nor shall any company so approved or any officer, agent or employee thereof exercise pressure in the Province upon any borrower from such company in any particular insurance agency or company, provided that nothing herein contained is to be construed in any way to restrict the right of such company to refuse to approve as acceptable security the insurance policy of any company. R.S., c. 479, s. 77.

Acquisition by trust company

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

(a) "fiduciary" includes trustee, bailee, executor, administrator, assignee, guardian, committee, receiver, liquidator or agent;

(b) "instrument" includes every will, codicil or other testamentary document, settlement, instrument of creation, deed, mortgage, assignment, statute, and a judgment, decree, order, direction and appointment of any court, judge or other constituted authority.

(2) Where a trust company that is approved by the Governor in Council pursuant to Section 72 acquires the business, property and assets of another trust company

(a) on and after the date upon which such acquisition takes place, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the selling company is vested in and binds and may be enforced against the purchasing company as fully and effectually as if it had been originally named as the fiduciary in the instrument;

(b) where in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the selling company as the fiduciary, the name of the purchasing company is deemed to be substituted for the name of the selling company, and such instrument vests the subject-matter therein described in the purchasing company according to the tenor or, and at the time indicated or intended by, the instrument, and the purchasing company is deemed to stand in the place and stead of the selling company;

(c) where the name of the selling company appears as executor, trustee, guardian or curator in a will or codicil, such will or codicil is to be read, construed and enforced as if the purchasing company was so named therein, and it has, in respect of the will or codicil, the same status and rights as the selling company;

(d) in all probates, administrations, guardianships, committeeships or appointments of administrator or guardian *ad litem* issued or made by any court to the selling company from which at the said date upon which the acquisition or sale becomes effective it had not been finally discharged, the purchasing company must *ipso facto* be substituted therefor;

(e) on and after the said date upon which the acquisition or sale becomes effective, the assets so acquired or sold shall, in accord-

ance with and subject to the terms of any agreement made with respect thereto and without any further conveyance, become vested in the purchasing company, and the selling company shall, subject to the terms of any such agreement, execute such formal and separate conveyances, assignments and assurances for registration purposes or otherwise as may reasonably be required to confirm or evidence the vesting in the purchasing company of the full title and ownership of the said assets.

(3) For the purpose of this Act, the amalgamation of two or more trust companies is deemed to constitute an acquisition by the amalgamated trust company of the business, property and assets of each of the amalgamating trust companies and "purchasing company" includes the amalgamated trust company and "selling company" includes each of the amalgamating trust companies. R.S., c. 479, s. 78.

Filing of instrument of acquisition

83 Where a trust company acquires the business, property and assets of another trust company, a duplicate original of the instrument by which such acquisition is accomplished must be filed in the office of the Attorney General who, upon being satisfied that the acquisition has been accomplished and that the purchasing trust company has been approved pursuant to Section 72, may issue a certificate under the Attorney General's hand and seal certifying that a duplicate original of the instrument of acquisition has been filed in the Attorney General's office and declaring that the purchasing trust company has acquired the business, property and assets of the selling trust company and declaring the effective date of the acquisition. R.S., c. 479, s. 79.

Certificate as prima facie proof

84 (1) A certificate of the Attorney General given under Section 83 is for all purposes and in all courts admissible in evidence and is prima facie proof of all matters therein certified or declared without proof of the signature or the seal of the person signing and sealing the certificate.

(2) A copy of an instrument filed in the office of the Attorney General under Section 83, if certified as a true copy under the seal of the Attorney General and under the Attorney General's hand or the hand of the Deputy Attorney General, is admissible in evidence in all courts. R.S., c. 479, s. 80.

Registration of certificate

85 A certificate of the Attorney General given under Section 83 or a copy thereof certified under seal by a notary public to be a true copy may be registered in any registry of deeds without proof of the signature or the seal of the person signing and sealing the same or purporting to have signed and sealed the same. R.S., c. 479, s. 81.

The Central Trust Company of Canada

86 Sections 72 to 85 apply to The Central Trust Company of Canada, a body corporate, duly incorporated under the laws of the Province of New Brunswick

to the same extent as if the said The Central Trust Company of Canada was incorporated under a special Act of the Legislature of the Province. R.S., c. 479, s. 82.