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**VOLUME W**  
**Revised Statutes of Nova Scotia**  
**2023**

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## CHAPTER W-1

# An Act Respecting Warehouse Operators Liens

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### Short title

**1** This Act may be cited as the *Warehouse Operators Lien Act*. R.S., c. 499, s. 1.

### Interpretation

**2** In this Act,  
“charges” has the meaning assigned to it in Section 3;  
“goods” includes all chattels personal other than things in action and money;  
“warehouse operator” means a person who receives goods for storage for reward. R.S., c. 499, s. 2.

### Lien of warehouse operator

**3 (1)** Subject to Section 4, every warehouse operator has a lien on goods deposited with the operator for storage, whether deposited by the owner of the goods or by the owner’s authority or by any person entrusted with the possession of the goods by the owner or by the owner’s authority.

**(2)** The lien is for the amount of the warehouse operator’s charges, which consist of

- (a) all lawful charges for storage and preservation of the goods;
- (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooperage and other expenses in relation to the goods; and

(c) all reasonable charges for any notice required to be given under this Act and the *Warehouse Receipts Act* and for notice and advertisement of sale and for sale of the goods where default is made in satisfying the warehouse operator's lien. R.S., c. 499, s. 3.

**Notice of lien to owner of goods deposited by another**

**4** (1) Where the goods on which a lien exists were deposited, not by the owner or by the owner's authority, but by a person entrusted by the owner or by the owner's authority with the possession of the goods, the warehouse operator shall, within two months after the date of the deposit, give notice of the lien to

- (a) the owner of the goods; and
- (b) any person who has an interest in the goods that secures payment or performance of an obligation and who has registered, before the date of the deposit, a financing statement relating to that interest in the Personal Property Registry pursuant to the *Personal Property Security Act*.

(2) The notice must be in writing and contain

- (a) a brief description of the goods;
- (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouse operator and the name of the person by whom they were deposited; and
- (c) a statement that a lien is claimed by the warehouse operator in respect to the goods under this Act.

(3) Where the warehouse operator fails to give the notice required by this Section, the warehouse operator's lien, as against the person to whom the warehouse operator has failed to give notice, is void as from the expiration of the period of two months from the date of the deposit of the goods. R.S., c. 499, s. 4; 1995-96, c. 13, s. 88.

**Power of sale**

**5** (1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of a warehouse operator's charges, a warehouse operator may sell by public auction, in the manner provided in this Section, any goods upon which the warehouse operator has a lien for charges that have become due.

(2) The warehouse operator shall give written notice of the warehouse operator's intention to sell to

- (a) the person liable as debtor for the charges for which the lien exists;
- (b) the owner of the goods and to any person who has an interest in the goods that secures payment or performance of an obligation and who has, before the date of the deposit, registered a financing statement relating to that interest pursuant to the *Personal Property Security Act*; and

(c) any other person known by the warehouse operator to have or claim an interest in the goods.

(3) The notice must contain

(a) a brief description of the goods;

(b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouse operator and the name of the person by whom they were deposited;

(c) an itemized statement of the warehouse operator's charges showing the sum due at the time of the notice; and

(d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue must be paid on or before a day mentioned not less than 21 days from the delivery of the notice.

(4) Where the charges are not paid on or before the day mentioned in the notice, an advertisement of the sale, describing the goods to be sold and stating the name of the person liable as debtor for the charges for which the lien exists and the time and place of the sale, must be published at least once a week for two consecutive weeks in a newspaper published in the Province and circulating in the locality where the sale is to be held.

(5) The sale must be held not less than 14 days from the date of the first publication of the advertisement referred to in subsection (4). R.S., c. 499, s. 5; 1995-96, c. 13, s. 88.

#### **Irregularity of notice**

6 Where a notice of lien under Section 4 or a notice of intention to sell under Section 5 has been given, but such provisions have not been strictly complied with, if the court or a judge before whom any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with or that it would be inequitable that the lien or sale is void by reason of such non-compliance, no objection to the sufficiency of the notice may in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale. R.S., c. 499, s. 6.

#### **Proceeds of sale and statement of account**

7 (1) From the proceeds of the sale the warehouse operator shall satisfy the warehouse operator's lien and shall pay over the surplus, if any, to the person entitled thereto and the warehouse operator shall when paying over the surplus deliver to the person to whom the warehouse operator pays it a statement of account showing how the amount has been computed.

(2) Where the surplus is not demanded by the person entitled thereto within 10 days after the sale or where there are different claimants or the rights thereto are uncertain, the warehouse operator shall pay the surplus into the Supreme Court of Nova Scotia upon the order of a judge, and the order may be made *ex parte* upon such terms and conditions as to cost and otherwise as the judge may direct and may provide to what fund or name the amount must be credited.

(3) The warehouse operator, at the time of paying the amount into court, shall file in court a copy of the statement of account showing how the amount has been computed. R.S., c. 499, s. 7.

**Satisfaction of lien by interested person**

8 (1) At any time before the goods are sold any person claiming an interest or right of possession in the goods may pay the warehouse operator the amount necessary to satisfy the warehouse operator's lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of the payment.

(2) The warehouse operator shall deliver the goods to the person making the payment if that person is the person entitled to the possession of the goods on payment of the warehouse operator's charges thereon and otherwise the warehouse operator shall retain possession of the goods according to the terms of the contract of deposit. R.S., c. 499, s. 8.

**Method of service of notice**

9 Where by this Act any notice in writing is required to be given, the notice must be given by delivering it to the person to whom it is to be given. R.S., c. 499, s. 9.

**Contract unaffected by Act**

10 Nothing in this Act affects the terms of the contract between the owner or bailor and the warehouse operator. R.S., c. 499, s. 10.

**Waiting period before exercise of power of sale**

11 Subject to the *Warehouse Receipts Act*, no sale of goods may be made by a warehouse operator under this Act until three months have expired from the date of the deposit of the goods with the warehouse operator. R.S., c. 499, s. 11.

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## CHAPTER W-2

# An Act Respecting Warehouse Receipts

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### Short title

- 1** This Act may be cited as the *Warehouse Receipts Act*. R.S., c. 498, s. 1.

### Interpretation

- 2** In this Act,
- “action” includes counterclaim and set-off;
- “fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;
- “goods” includes all chattels personal other than things in action and money;
- “holder”, as applied to a negotiable receipt, means a person who has possession of the receipt and a right of property therein, and, as applied to a



non-negotiable receipt, means a person named therein as the person to whom the goods are to be delivered or the person's transferee;

"negotiable receipt" means a receipt in which it is stated that the goods therein specified will be delivered to bearer or to the order of a named person;

"non-negotiable receipt" means a receipt in which it is stated that the goods therein specified will be delivered to the holder thereof;

"purchase" includes to take as mortgagee or as pledgee;

"purchaser" includes mortgagee and pledgee;

"receipt" means a warehouse receipt;

"warehouse operator" means a person who received goods for storage for reward;

"warehouse receipt" means an acknowledgement in writing by a warehouse operator of the receipt for a storage of goods not the operator's own. R.S., c. 498, s. 2.

### **Content of warehouse receipt**

#### **3 (1) A receipt must contain**

(a) the location of the warehouse or other place where the goods are stored;

(b) the name of the person by whom or on whose behalf the goods are deposited;

(c) the date of issue of the receipt;

(d) a statement that either

(i) the goods will be delivered to the holder thereof, or

(ii) the goods will be delivered to bearer or to the order of a named person;

(e) the rate of storage charges;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouse operator or the operator's authorized agent; and

(h) a statement of the amount of any advance made and of any liability incurred for which the warehouse operator claims a lien.

**(2)** Where a warehouse operator omits from a negotiable receipt any of the particulars set forth in subsection (1) the operator is liable for damage caused by the omission.

**(3)** A receipt is not deemed not to be a warehouse receipt by reason of the omission of any of the particulars set forth in subsection (1).

(4) A warehouse operator may insert in a receipt issued by the operator any other term or condition that

(a) is not contrary to this Act; and

(b) does not impair the operator's obligation to exercise such care and diligence in regard to the goods as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

(5) Subject to this Act, a warehouse receipt issued by a warehouse operator, when delivered to the owner or bailor of the goods or mailed to the owner or bailor at the owner's or bailor's address last known to the warehouse operator, constitutes the contract between the owner or bailor and the warehouse operator, provided that the owner or bailor may, within 20 days after such delivery or mailing, notify the warehouse operator in writing that the owner or bailor does not accept such contract and thereupon the owner or bailor shall remove the goods deposited, subject to the warehouse operator's lien for charges, and if such notice is not given, then the said warehouse receipt so delivered or mailed constitutes the contract. R.S., c. 498, s. 3.

#### **Words in receipt that limit negotiability are void**

4 Words in a negotiable receipt limiting its negotiability are void. R.S., c. 498, s. 4.

#### **Only one receipt unless loss or destruction of receipt**

5 (1) No more than one receipt may be issued in respect of the same goods except in the case of a lost or destroyed receipt, in which case the new receipt, if one is given, must bear the same date as the original and must be plainly marked on its face "duplicate".

(2) A warehouse operator is liable for all damage caused by the operator's failure to observe the provisions of subsection (1) to any person who purchases the subsequent receipt for valuable consideration, believing it to be an original, even though the purchase is after the delivery of the goods by the operator to the holder of the original receipt.

(3) A receipt upon the face of which the word "duplicate" is plainly marked is a representation and warranty by the warehouse operator that it is an accurate copy of a receipt properly issued and uncanceled at the date of the issue of the duplicate. R.S., c. 498, s. 5.

#### **Duty to plainly mark non-negotiable receipt**

6 (1) A warehouse operator who issues a non-negotiable receipt shall cause to be plainly marked upon its face the words "non-negotiable" or "not negotiable".

(2) Where a warehouse operator fails to comply with subsection (1), a holder of the receipt who purchases it for valuable consideration believing it to be negotiable may, at that person's option, treat the receipt as vesting in the person all rights attaching to a negotiable receipt and imposing upon the warehouse operator the same liabilities the warehouse operator would have incurred had the receipt been negotiable, and the warehouse operator is liable accordingly. R.S., c. 498, s. 6.

**Duty of warehouse operator to deliver goods**

7 (1) A warehouse operator, in the absence of lawful excuse, shall deliver the goods referred to therein

(a) in the case of a negotiable receipt, to the bearer thereof upon demand made by the bearer and upon the bearer

(i) satisfying the warehouse operator's lien,

(ii) surrendering the receipt with such endorsements as are necessary for the negotiation of the receipt, and

(iii) acknowledging in writing the delivery of the goods; and

(b) in the case of a non-negotiable receipt, to the holder thereof upon the holder

(i) satisfying the warehouse operator's lien, and

(ii) acknowledging in writing the delivery of the goods.

(2) Where a warehouse operator refuses or fails to deliver the goods in compliance with subsection (1), the burden is upon the warehouse operator to establish the existence of a lawful excuse for the warehouse operator's refusal or failure. R.S., c. 498, s. 7.

**Delivery to person possessing negotiable receipt**

8 Where a person is in possession of a negotiable receipt that has been duly endorsed to the person or endorsed in blank, or by the terms of which the goods are deliverable to the person or the person's order or to bearer, if delivery is made in good faith and without notice of any defect in the title of that person the warehouse operator is justified in delivering the goods to that person. R.S., c. 498, s. 8.

**Failure to cancel receipt once goods delivered**

9 (1) Except as provided in Section 19, where a warehouse operator delivers goods for which the warehouse operator has issued a negotiable receipt and fails to take up and cancel the receipt, the warehouse operator is liable, for failure to deliver the goods, to anyone who purchases the receipt in good faith and for valuable consideration, whether the person acquired title to the receipt before or after delivery of the goods by the warehouse operator.

(2) Except as provided in Section 19, where a warehouse operator delivers part of the goods for which the operator has issued a negotiable receipt and fails either to take up and cancel the receipt or to place plainly upon it a statement of what goods or packages have been delivered, the operator is liable, for failure to deliver all the goods specified in the receipt, to anyone who purchases the receipt in good faith and for valuable consideration, whether the purchaser acquired title to the receipt before or after the delivery of any portion of the goods. R.S., c. 498, s. 9.

**Order to deliver where receipt lost or destroyed**

10 Where a negotiable receipt has been lost or destroyed, a judge of the Supreme Court of Nova Scotia, upon application after notice to the warehouse operator by the person lawfully entitled to possession of the goods, may, upon satisfac-

tory proof of such loss or destruction, order the delivery of the goods upon the giving of a bond with sufficient sureties to be approved in accordance with the practice of the court to indemnify the warehouse operator against any liability, cost or expense the operator may be put under or be put to by reason of the original receipt remaining outstanding, and the operator is entitled to the operator's costs of the application. R.S., c. 498, s. 10.

#### **Right to refuse to deliver where adverse claim**

**11** Where a warehouse operator has information that a person other than the holder of a receipt claims to be the owner of or entitled to the goods, the operator may refuse to deliver the goods until the operator has had a reasonable time, not exceeding 10 days, to ascertain the validity of the adverse claim or to commence interpleader proceedings. R.S., c. 498, s. 11.

#### **Receipt is evidence**

**12** A negotiable receipt is, in the hands of a holder who has purchased it for valuable consideration, conclusive evidence of the receipt by the warehouse operator of the goods therein described as against the warehouse operator and any person signing the same on the operator's behalf, notwithstanding that the goods or some part thereof may not have been so received unless the holder of the negotiable receipt has actual notice at the time of receiving same that the goods have not in fact been received. R.S., c. 498, s. 12.

#### **Description of goods in receipt deemed representation**

**13** Where goods are described in a receipt merely by a statement

- (a) of certain marks or labels on the goods or on the packages containing them;
- (b) that the goods are said by the depositor to be goods of a certain kind; or
- (c) that the packages containing the goods are said by the depositor to contain goods of a certain kind,

or by a statement of import similar to that of clause (a), (b) or (c), the statement shall not impose any liability on the warehouse operator in respect of the nature, kind or quality of the goods, but is deemed to be a representation by the warehouse operator either that the marks or labels were in fact on the goods or packages or that the goods were in fact described by the depositor as stated, or that the packages containing the goods were in fact described by the depositor as containing goods of a certain kind, as the case may be. R.S., c. 498, s. 13.

#### **Standard of care of warehouse operator**

**14** A warehouse operator is liable for loss of or injury to goods caused by the operator's failure to exercise such care and diligence in regard to them as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances. R.S., c. 498, s. 14.

#### **Mingling of fungible goods with other goods**

**15** Where authorized by agreement or by custom, a warehouse operator may mingle fungible goods with other goods of the same kind and grade, and in that case the holders of the receipts for the mingled goods shall own the entire mass in

common and each holder is entitled to such proportion thereof as the quantity shown by the holder's receipt to have been deposited bears to the whole. R.S., c. 498, s. 15.

**Condition for levy on stored goods delivered by owner**

**16** Where goods are delivered to a warehouse operator by the owner or person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouse operator, be levied under an execution unless the receipt is first surrendered to the warehouse operator. R.S., c. 498, s. 16.

**Charges for which lien arises**

**17** Where a negotiable receipt is issued for goods, the warehouse operator has no lien on the goods, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. R.S., c. 498, s. 17.

**Removal of perishable goods or sale**

**18 (1)** Where goods are of a perishable nature, or by keeping will deteriorate greatly in value, or injure other property, the warehouse operator may give such notice as is reasonable and possible under the circumstances to the holder of the receipt for the goods if the name and address of the holder is known to the warehouse operator or if not known to the operator then to the depositor, requiring the depositor to satisfy the lien upon the goods and to remove them from the warehouse, and on the failure of such person to satisfy the lien and remove the goods within the time specified in the notice, the warehouse operator may sell the goods at public or private sale without advertising.

**(2)** The notice referred to in subsection (1) may be given by sending it by registered mail addressed to the person to whom it is to be given at the person's last known place of address and the notice is deemed to be given on the day following the mailing.

**(3)** Where the warehouse operator, after a reasonable effort, is unable to sell the goods, the operator may dispose of them in any manner the operator may think fit and incurs no liability by reason thereof.

**(4)** The warehouse operator shall, from the proceeds of any sale made pursuant to this Section, satisfy the operator's lien and shall hold the balance in trust for the holder of the receipt. R.S., c. 498, s. 18.

**No liability for non-delivery after lawful sale**

**19** Where goods have been lawfully sold to satisfy a warehouse operator's lien, or have been lawfully sold or disposed of pursuant to Section 18, the operator is not liable for failure to deliver the goods to the holder of the receipt. R.S., c. 498, s. 19.

**Negotiation of receipt**

**20 (1)** A negotiable receipt may be negotiated by delivery in either of the following cases:

- (a) where, by the terms of the receipt, the warehouse operator undertakes to deliver the goods to the bearer; or
- (b) where, by the terms of the receipt, the warehouse operator undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it in blank or to bearer.

**(2)** Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been endorsed in blank or to bearer, the receipt may be negotiated by the bearer endorsing the same to a named person, and in that case the receipt shall thereafter be negotiated by the endorsement of the endorsee, or a subsequent endorsee, or by delivery if it is again endorsed in blank or to bearer.

**(3)** Where, by the terms of a negotiable receipt, the goods are deliverable to the order of a named person, the receipt may be negotiated by the endorsement of that person.

**(4)** An endorsement pursuant to subsection (3) may be in blank, to bearer or to a named person, and if the endorsement is to a named person, the receipt may be again negotiated by endorsement in blank, to bearer or to another named person and subsequent negotiation may be made in like manner. R.S., c. 498, s. 20.

**Transfer of goods covered by non-negotiable receipt**

**21** The goods covered by a non-negotiable receipt may be transferred by the holder by delivery to a purchaser or donee of the goods of a transfer in writing executed by the holder, but the transfer does not affect or bind the warehouse operator until the operator is notified in writing thereof. R.S., c. 498, s. 21.

**Title and right of transferee**

**22 (1)** A person to whom the goods covered by a non-negotiable receipt are transferred acquires, as against the transferor,

- (a) the title to the goods; and
- (b) the right to deposit with the warehouse operator the transfer or duplicate thereof or to give notice in writing to the warehouse operator of the transfer.

**(2)** The transferee acquires the benefit of the obligation of the warehouse operator to hold possession of the goods for the operator according to the terms of the receipt upon

- (a) deposit of the transfer of the goods; or
- (b) giving notice in writing of the transfer and upon the warehouse operator having a reasonable opportunity of verifying the transfer. R.S., c. 498, s. 22.

**Title and benefit to person to whom receipt negotiated**

**23** A person to whom a negotiable receipt is duly negotiated acquires

(a) such title to the goods as the person negotiating the receipt to the person had or had ability to transfer to a purchaser in good faith for valuable consideration and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to transfer to a purchaser in good faith for valuable consideration; and

(b) the benefit of the obligation of the warehouse operator to hold possession of the goods for the person according to the terms of the receipt as fully as if the operator had contracted directly with the person. R.S., c. 498, s. 23.

**Right to compel endorsement by transferor**

**24** Where a negotiable receipt is transferred for valuable consideration by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel the transferor to endorse the receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when the endorsement is made. R.S., c. 498, s. 24.

**Warranty of negotiator or transferor of receipt**

**25** A person who, for valuable consideration, negotiates or transfers a receipt by endorsement or delivery, including one who assigns for valuable consideration a claim secured by a receipt, unless a contrary intention appears, warrants that

(a) the receipt is genuine;

(b) the person has a legal right to negotiate or transfer it;

(c) the person has no knowledge of any fact that would impair the validity of the receipt; and

(d) the person has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. R.S., c. 498, s. 25.

**Liability of endorser**

**26** The endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouse operator or previous endorsers of the receipt to fulfill their respective obligations. R.S., c. 498, s. 26.

**Holder in good faith and for value**

**27** The validity of the negotiation of a receipt is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistakes or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor without notice of the breach of duty or fraud, mistake or duress. R.S., c. 498, s. 27.

**Negotiation of receipt after goods parted with**

**28** Where a person having sold, mortgaged or pledged goods that are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged a negotiable receipt representing goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser of the goods or receipt had expressly authorized the subsequent negotiation. R.S., c. 498, s. 28.

**Effect of negotiated receipt on lien of seller**

**29** Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit, defeats the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation be prior or subsequent to the notification to the warehouse operator who issued the receipt of the seller's claim to a lien or right of stoppage in transit and the warehouse operator shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation. R.S., c. 498, s. 29.

**Exemption from Act**

**30** Nothing herein contained includes or applies to the manager or operator of a grain elevator as "manager" and "operator" are defined by the *Canada Grain Act* or any railway or express company within the jurisdiction of the Parliament of Canada. R.S., c. 498, s. 30.

**Act does not apply**

**31** This Act does not apply to the storage of furs, garments and home furnishings, other than furniture that is ordinarily used by the person placing them in storage or a member of that person's family or household, until a day to be named by the Governor in Council by proclamation. R.S., c. 498, s. 31.



## CHAPTER W-3

# An Act to Protect the Water Resources of Nova Scotia

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WHEREAS Nova Scotia's water resources are essential to life and well-being in the Province and to related environmental and economic objectives and therefore must be conserved and allocated to ensure long-term self-sufficiency and utilization to the greatest benefit of the population;

AND WHEREAS the future domestic need for water is unknown, the availability of potable water is undetermined and the impact of climate change on precipitation, and hence water supplies, is uncertain and management of the resource must be based on sustainability and reflect the precautionary principle relative to future supply requirements;

AND WHEREAS large-scale removals of water, individually or cumulatively, may compromise both the ecological integrity of a system and sustainability of the resource:

#### Short title

**1** This Act may be cited as the *Water Resources Protection Act*. 2000, c. 10, s. 1.

#### Interpretation

**2** In this Act,

“Atlantic Drainage Basin” means the geographic area that drains into the Atlantic Ocean and, for greater certainty, includes all of the Province;

“Minister” means the Minister of Environment and Climate Change;

“water” means all surface water or groundwater and, for greater certainty, includes such water in the form of ice. 2000, c. 10, s. 2.

**Supervision and management of Act**

**3** The Minister has the general supervision and management of this Act. 2000, c. 10, s. 3.

**Prohibitions respecting Atlantic Drainage Basin**

**4** Notwithstanding anything contained in any other enactment, including the *Environment Act* and the regulations made pursuant to the *Environment Act*, no person shall be granted an approval to and no person shall

- (a) drill for, divert, extract, take or store water for removal;
- (b) sell or otherwise dispose of water to a person for removal;
- (c) convey or transport water for removal; or
- (d) remove water,

from the portion of the Atlantic Drainage Basin that is located within the Province. 2000, c. 10, s. 4.

**Exceptions**

**5 (1)** Notwithstanding Section 4, water may be removed from the portion of the Atlantic Drainage Basin that is located within the Province if

- (a) it is, or is to be, packaged in the Province in a container of not more than 25 litres or such other maximum capacity as is prescribed by the regulations;
- (b) it is transported in a motor vehicle, vessel or aircraft and is necessary for the operation of the motor vehicle, vessel or aircraft or is intended for the use of animals or persons in or on the motor vehicle, vessel or aircraft;
- (c) it is used or intended to be used to transport fish or any other product;
- (d) with the approval of the Minister, it is used for a non-commercial purpose, including meeting short-term safety, security, fire-fighting or humanitarian needs;
- (e) it is included in manufactured, produced or packaged foods or other products; or
- (f) it is removed under such other circumstances as are prescribed by the regulations,

and the requirements of any other enactment, including the *Environment Act* and regulations made pursuant to the *Environment Act*, are met.

**(2)** For the purpose of clause (1)(e), potable or other water is not a manufactured or produced product. 2000, c. 10, s. 5.

**Conflict with other enactments**

**6** Where there is a conflict between this Act or the regulations and any other enactment, this Act and the regulations prevail. 2000, c. 10, s. 6.

**Offences and penalties**

**7 (1)** A person who contravenes a provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$1,000,000 or to imprisonment for a period of not more than two years, or to both a fine and imprisonment.

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

**(3)** Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed. 2000, c. 10, s. 7.

**Regulations**

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

(a) prescribing circumstances under which water may be removed from the portion of the Atlantic Drainage Basin located within the Province;

(b) prescribing the maximum capacity of a container for the purpose of clause 5(1)(a);

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

(d) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out the purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2000, c. 10, s. 8.

## CHAPTER W-4

# An Act Respecting the Control of Wharves and Public Landings

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

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#### Short title

**1** This Act may be cited as the *Wharves and Public Landings Act*. R.S., c. 503, s. 1.

#### Control of public wharves and landings

**2** The council of every municipality has control of all public wharves and public landings within the municipality and under the jurisdiction and legislative control of the Legislature. R.S., c. 503, s. 2.

#### Personnel

**3** The council may appoint persons to superintend and have the charge of any such wharf or landing and fix the compensation of such person, and every person so appointed shall take an oath or affirmation before a justice for the faithful performance of the person's duty. R.S., c. 503, s. 3.

#### Fixing of charges

**4** The council may fix the charge upon vessels lying at, and upon goods landed on, any such wharf or landing. R.S., c. 503, s. 4.

#### Regulations

**5** The council may make regulations for the preservation and proper keeping of all such wharves and landings, and impose penalties for any breach thereof, not exceeding in any case \$12. R.S., c. 503, s. 5.

#### Right of entry on land to procure building materials

**6** Where any commissioner appointed by the Governor in Council to erect, build or repair any public wharf, pier or landing, finds it necessary to procure materials for such purpose, and such materials can be obtained on lands owned by

any person, but for any cause no agreement can be made with the person for the purchase of the materials, the commissioner may enter upon such lands with workers, carts, horses and teams, and thereupon, for the purposes of such work, dig up and carry away soil, stones and gravel, and cut down and carry away bushes, poles and brushwood. R.S., c. 503, s. 6.

**Compensation**

7 The damage done thereby must be appraised by three disinterested freeholders, nominated by the nearest justice of the peace not interested in the premises, and the sum appraised must be paid by the commissioner to the owner of the lands if demanded within three months, or otherwise into the treasury of the municipality in which the lands lie, for the use of the person entitled thereto. R.S., c. 503, s. 7.

**Restriction on right of entry**

8 Nothing in this Act contained permits any such commissioner to enter on any garden or yard attached to a homestead, or on any land under crop, or meadow or other cultivated land, save for the purpose of passage in case of necessity, or permits the commissioner to cut down or take away any fruit tree or ornamental tree. R.S., c. 503, s. 8.

**Restriction on effect of Act**

9 Nothing in this Act affects any rights conferred by statute in any bridge, wharf or landing, or authorize the construction of a draw in any bridge constructed under any charter or Act of incorporation. R.S., c. 503, s. 9.

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## CHAPTER W-5

# An Act to Protect Wilderness Areas in Nova Scotia

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

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### Short title

**1** This Act may be cited as the *Wilderness Areas Protection Act*. 1998,  
c. 27, s. 1.

### Purpose of Act

2 The purpose of this Act is to provide for the establishment, management, protection and use of wilderness areas, in perpetuity, for present and future generations, in order to achieve the following primary objectives:

- (a) maintain and restore the integrity of natural processes and biodiversity;
- (b) protect representative examples of natural landscapes and ecosystems;
- (c) protect outstanding, unique, rare and vulnerable natural features and phenomena,

and the following secondary objectives:

- (d) provide reference points for determining the effects of human activity on the natural environment;
- (e) protect and provide opportunities for scientific research, environmental education and wilderness recreation; and
- (f) promote public consultation and community stewardship in the establishment and management of wilderness areas,

while providing opportunities for public access for sport fishing and traditional patterns of hunting and trapping. 1998, c. 27, s. 2.

### Interpretation

3 In this Act,

“campsite lease” means a campsite lease issued pursuant to the *Crown Lands Act*;

“Department” means the Department of Environment and Climate Change;

“Director of Surveys” means the Director of Surveys appointed pursuant to the *Crown Lands Act*;

“enforcement officer” means a conservation officer within the meaning of the *Wildlife Act*, a regional, municipal or town police officer, a member of the Royal Canadian Mounted Police or a person designated pursuant to this Act;

“land” includes, where waters cover the land, all the waters thereon;

“licence” means a written approval or permit issued to a person pursuant to this Act or the regulations with respect to an activity, including terms and conditions of the licence and the renewal of a licence;

“mineral right” means a right issued pursuant to the *Mineral Resources Act*;

“Minister” means the Minister of Environment and Climate Change;

“Provincial Crown Lands Record Centre” means the Provincial Crown Lands Record Centre provided for pursuant to the *Crown Lands Act*;

“Registrar of Crown Lands” means the Registrar of Crown Lands appointed pursuant to the *Crown Lands Act*;

“structures or facilities” includes buildings, installations, boats and other equipment;

“vehicle” means a motor vehicle, whether or not it is registered pursuant to the *Motor Vehicle Act*, and includes an all-terrain vehicle, a snowmobile, a motor boat, a motor vessel and an aircraft, except where the context otherwise requires;

“wilderness area” means an area of land designated as a wilderness area pursuant to this Act;

“wilderness recreation” means non-motorized, outdoor recreational activities that have minimal environmental impact, including nature-based tourism. 1998, c. 27, s. 3; 2019, c. 39, s. 1.

#### **Application of Act to Crown**

**4** (1) This Act and the regulations bind the Crown in right of the Province and the Crown’s corporations, boards, commissions, agents, administrators, servants and employees.

(2) This Act binds the Crown in right of Canada and the Crown’s corporations, boards, commissions, agents, administrators, servants and employees.

(3) For greater certainty, the persons referred to in subsections (1) and (2) are subject to a prosecution, an order and other remedies pursuant to this Act and the regulations. 1998, c. 27, s. 4.

#### **Conflict with other enactment**

**5** Where there is a conflict or inconsistency between this Act or the regulations and any other enactment, this Act and the regulations prevail. 1998, c. 27, s. 5.

#### **Supervision and management**

**6** (1) The Minister is responsible for the general supervision and management of this Act and the regulations.

(2) Land designated as a wilderness area pursuant to this Act is under the administration and control of the Minister.

(3) The Minister may, in writing, delegate to any person a power or duty conferred or imposed on the Minister pursuant to this Act or the regulations. 1998, c. 27, s. 6.

#### **Employees**

**7** The employees necessary for the administration of this Act and the regulations must be appointed in accordance with the *Civil Service Act*. 1998, c. 27, s. 7.

#### **Enforcement officers**

**8** (1) Enforcement officers are responsible for the enforcement of this Act and the regulations.



(2) The Minister may designate any person or class of persons having, in the opinion of the Minister, the qualifications and experience to act as enforcement officers for the purpose of this Act and the regulations.

(3) An enforcement officer, in carrying out duties pursuant to this Act and the regulations, has the powers and authorities of a conservation officer pursuant to the *Wildlife Act* and the *Crown Lands Act* and, for greater certainty, Sections 115 to 127 of the *Wildlife Act* and Section 39 of the *Crown Lands Act* apply, with necessary changes.

(4) The protections afforded to

- (a) a conservation officer by the *Wildlife Act* and the *Crown Lands Act*;
- (b) an inspector appointed pursuant to the *Environment Act*; or
- (c) a peace officer by any other enactment,

extend to an enforcement officer and to any other person while, and to the extent that, the person is in the course of assisting an enforcement officer. 1998, c. 27, s. 8; 2019, c. 39, s. 2.

#### Agreements

9 (1) The Minister may enter into an agreement with any federal, provincial or municipal government or any agency thereof, or with any person, including the owner of land adjacent to a wilderness area or a lessee or licensee within a wilderness area, for any purpose coming within this Act or the regulations.

(2) For the purpose of this Act, the Minister may acquire by exchange, purchase, gift or lease any land or interest in land from any person and may accept the transfer of administration and control of land from the Government of Canada or an agency thereof. 1998, c. 27, s. 9.

#### Duties and powers of Minister

10 (1) For the purpose of the administration and enforcement of this Act and the regulations and after engaging in such public consultation as the Minister considers appropriate, the Minister shall establish and administer such policies, programs, standards, guidelines, objectives, plans, codes of practice, directives and approval processes as are necessary for the establishment, protection, management and use of wilderness areas.

(2) The Minister may

- (a) establish advisory and ad hoc committees and retain experts to report to the Minister with respect to
  - (i) the content and administration of this Act and the regulations,
  - (ii) any policies, programs, standards, guidelines, objectives, plans, codes of practice, directives, approval processes or other matters under the administration of the Minister;

(b) specify the functions that the committees and experts are to perform, including the seeking of input from the public and the manner and time period within which those functions are to be performed;

(c) provide for the remuneration of, and payment of expenses to, experts and members of committees.

(3) The Minister may establish fees and prescribe forms for the provision, registration or filing of any information, documents, returns or reports, any application for, processing or issuance of a licence, any inspection or investigation and any services or materials provided in the course of the administration of this Act or the regulations.

(4) The Minister shall file, in the environmental registry established pursuant to the *Environment Act*, a copy of

(a) licences issued, and orders and decisions made, pursuant to this Act or the regulations;

(b) notices of designation served pursuant to this Act or the regulations;

(c) descriptions of wilderness areas designated pursuant to this Act;

(d) descriptions of wilderness areas changed by any actions taken pursuant to subsection 11(3) or (4);

(e) a management plan prepared for a wilderness area and a revised management plan;

(f) the Memorandum of Understanding dated June 24, 1998, referred to in subsection 11(2);

(g) policies, programs, standards, codes of practice, guidelines, objectives, plans, directives and approval processes established pursuant to this Act or the regulations;

(h) convictions, penalties and other enforcement actions brought pursuant to this Act or the regulations;

(i) information or documents required by the regulations to be included in the environmental registry; and

(j) any other information or document considered appropriate by the Minister. 1998, c. 27, s. 10.

#### Wilderness areas

**11 (1)** The areas of land described in Schedule A to this Act, except any privately owned land included therein, are designated as wilderness areas.

**(2)** The area of land described in Schedule B to this Act, except any privately owned land included therein, is designated as a wilderness area and the Memorandum of Understanding dated June 24, 1998, applies to the area described in Schedule B and, for greater certainty, nothing may be done pursuant to the Memorandum of Understanding that is illegal or otherwise contrary to this Act or the regulations.

(3) Subject to subsections (6), (7), (8) and (9), and only in order to achieve the purpose of this Act, the Minister, with the approval of the Governor in Council, may

- (a) designate, as a wilderness area, an area of Crown land in addition to those designated pursuant to this Act;
- (b) add an additional area of Crown land to a wilderness area;
- (c) with the written consent of the owner and subject to the term of consent, if any, and any other conditions included in the consent, designate privately owned land as, or add privately owned land to, a wilderness area;
- (d) alter the boundaries of a wilderness area in a manner that is consistent with an applicable management plan and that provides for more effective management and increased protection for the wilderness area;
- (e) determine the name by which a designated wilderness area is to be known,

and, where the authority pursuant to any clause of this subsection is exercised, the Minister shall cause to be deposited, in the Provincial Crown Lands Record Centre, a plan signed by the Director of Surveys showing the boundaries of the wilderness area for which it was made.

(4) Subject to subsections (6), (7) and (8), where

- (a) an owner of privately owned land adjacent to a wilderness area; or
- (b) one or more residents of a community in close proximity to a wilderness area,

applies to the Minister with a request to alter a boundary of that wilderness area, the Minister, with the approval of the Governor in Council, may alter the boundary if

- (c) the alteration is not inconsistent with any applicable management plan; and
- (d) the Minister is satisfied that the location of the boundary would have, before the boundary alteration, resulted in an undue hardship on the owner or the residents, as the case may be.

(5) Notwithstanding any enactment, the designation of a wilderness area may not be revoked except by an Act of the Legislature.

(6) Before taking any action pursuant to clause (3)(a), (b), (d) or (e) or subsection (4), the Minister shall provide the public with

- (a) at least 60 days notice of the intended action; and
- (b) an opportunity for consultation on the intended action.

(7) The Minister shall cause the notice required pursuant to subsection (6) to be published in

- (a) a newspaper circulating in the Province; and

(b) a local newspaper circulating in the area in which the land is located,

advising of the intended action and the timing of, and manner in which, the public consultation will occur.

(8) Where action is intended to be taken pursuant to subsection (3) or (4) to alter the boundaries of a wilderness area that includes privately owned land, the Minister shall serve notice of the intended action on the owner of the land as shown on the latest revised assessment roll and, where action is taken, the Minister shall cause notice of the alteration to be

(a) deposited in the registry of deeds for the registration district in which the land is situated; and

(b) served on the owner of the land as shown on the latest revised assessment roll.

(9) A socio-economic analysis of the impact of the designation of a wilderness area must be prepared, completed and made available to the public for every area proposed to be designated as a wilderness area on Crown land after this Act comes into force, and, for greater certainty, this subsection does not apply to an additional area of Crown land added to a wilderness area if that additional area has been given to the Crown by a private landowner. 1998, c. 27, s. 11; 2019, c. 39, s. 3.

#### **Alteration of boundaries**

12 Where

(a) an additional area of Crown land is added pursuant to clause 11(3)(b);

(b) privately owned land is added pursuant to clause 11(3)(c);

(c) a wilderness area boundary is surveyed in order to more accurately identify the location of the boundary;

(d) there is an omission from the description or an erroneous description in a wilderness area plan that is deposited in the Provincial Crown Lands Record Centre pursuant to this Act; or

(e) a wilderness area boundary is altered pursuant to subsection 11(4),

the Registrar of Crown Lands shall deposit in the Provincial Crown Lands Record Centre a plan signed by the Director of Surveys in substitution for a previous plan deposited pursuant to this Act, and the substituted plan becomes, for the purpose of this Act and the regulations, the plan showing the boundaries of the wilderness area for which it was made. 1998, c. 27, s. 12.

#### **Prohibition of certain activity by Crown**

13 (1) Except as provided in this Act or the regulations, the Crown in right of the Province shall not grant, deed or lease, or issue an approval, licence, permit, easement or authorization, or permit any of the same, with respect to Crown land within a wilderness area, or any part thereof, pursuant to any enactment or other authority, whether under the administration of the Minister or not.

(2) For greater certainty, subsection (1) does not prevent an activity, or the licensing of an activity, authorized or permitted pursuant to this Act or the regulations.

(3) For greater certainty,

(a) notwithstanding the *Provincial Parks Act*, the Crown in right of the Province shall not designate a wilderness area as a provincial park; and

(b) the Crown in right of the Province shall not transfer the administration or control of, or otherwise convey, a wilderness area to the Government of Canada, or an agency thereof, for park purposes. 1998, c. 27, s. 13.

#### **New wilderness areas**

**14** (1) The Minister shall promote the voluntary establishment of privately owned lands as new wilderness areas or as parts of designated wilderness areas.

(2) Where the owner of privately owned land gives written consent to the designation of that land as a wilderness area, a copy of the consent must be filed in the office of the registry of deeds for the registration district in which the land is located, and the consent is binding for the term, to the extent and subject to the conditions specified in the consent upon the owner and all subsequent owners of the land, or any estate or interest therein, and the occupier of the land and the successors of the occupier.

(3) For greater certainty and subject to any terms and conditions that are included in a written consent given to designate privately owned land as a wilderness area, this Act and the regulations apply to such privately owned land for the period of the consent. 1998, c. 27, s. 14.

#### **Management plans**

**15** (1) The Minister shall complete management plans to guide the protection, management or use of a specific wilderness area, a part of a specific wilderness area or any action or activity undertaken to manage a specific wilderness area.

(2) A management plan may be revised from time to time.

(3) Where a management plan is completed pursuant to subsection (1) or revised pursuant to subsection (2), the Minister shall engage in such public consultation on the management plan as the Minister considers appropriate. 1998, c. 27, s. 15; 2019, c. 39, s. 4.

#### **Encouragement of voluntary activities**

**16** The Minister shall encourage the voluntary planning and management of land adjoining or affecting wilderness areas in a manner consistent with the purpose of this Act and the regulations. 1998, c. 27, s. 16.

**Prohibitions**

- 17** (1) Within a wilderness area, no person shall
- (a) acquire a mineral right or petroleum right;
  - (b) construct or develop an energy-resource development, including a hydro-electric or water-resource development or associated impoundment;
  - (c) construct or develop a transmission or distribution line, pipeline or tunnel; or
  - (d) carry out forestry or aquaculture activities.
- (2) Except as provided in this Act or the regulations, within a wilderness area no person shall
- (a) carry out mineral or petroleum development, quarrying or mining;
  - (b) construct, maintain or operate a structure or facility, utility line or bridge;
  - (c) carry out agricultural activities;
  - (d) create, construct, maintain or operate a trail, road, railway, aircraft landing strip or helicopter pad;
  - (e) use or operate a vehicle or bicycle;
  - (f) camp, tent or occupy the land;
  - (g) alter the surface of the land;
  - (h) remove, destroy, or damage any natural object, flora or fauna, whether living or dead;
  - (i) remove, destroy or damage any object of scientific, historical, archaeological, cultural or palaeontological interest;
  - (j) introduce a substance or thing that may destroy or damage existing flora, fauna or ecosystems;
  - (k) dump or deposit any litter, garbage or refuse other than in containers provided or designated by the Minister for that purpose;
  - (l) light or maintain a fire;
  - (m) create a nuisance or act in a manner or do anything that may be, or may cause, a nuisance; or
  - (n) carry on an activity that is restricted or prohibited by the regulations. 1998, c. 27, s. 17.

**Exemption**

- 18** Section 17 does not apply to an enforcement officer, an employee of the Department or any other person to whom a delegation has been made pursuant to subsection 6(3), while performing that person's duties, if the activity in which the person is engaged is necessary for the performance of that person's duties. 1998, c. 27, s. 18.

**Permitted activities**

**19** The Minister may carry out, or authorize the carrying out of, activities within a wilderness area, including activities that would otherwise be prohibited pursuant to Section 17, for the responsible management, preservation or restoration of indigenous biodiversity of a wilderness area, including the protection of property, the health or safety of humans and the suppression of forest fires. 1998, c. 27, s. 19.

**Permitted activities**

**20** The Minister may undertake or provide for environmental, educational and natural history interpretation in a wilderness area and, where these are undertaken or provided for, shall do so in a manner consistent with this Act, the regulations and any applicable management plan and they must not contribute to degradation of the wilderness area. 1998, c. 27, s. 20.

**Licence for scientific research**

**21** The Minister may issue a licence authorizing scientific research within a wilderness area, including the carrying out of activities necessary to such scientific research that would otherwise be prohibited pursuant to Section 17 without contributing to the degradation of the wilderness area. 1998, c. 27, s. 21.

**Wilderness recreation**

**22 (1)** In wilderness areas, the public may engage in wilderness recreation that is undertaken in a manner consistent with this Act, the regulations and any applicable management plan.

**(2)** Notwithstanding subsection (1), the Minister may make an order temporarily restricting or prohibiting activities in a wilderness area to protect property, the environment or the health or safety of humans. 1998, c. 27, s. 22.

**Certain recreational activities**

**23 (1)** Tenting, camping, lighting a fire or maintaining a fire are permitted within a wilderness area only at sites designated by the Minister or, where no sites are designated, pursuant to such terms and conditions as may be prescribed by a licence or order issued by the Minister.

**(2)** The Minister may, in a wilderness area,

(a) designate, develop and manage a trail or route for wilderness recreation, including walking, hiking, canoeing, kayaking and cross-country skiing;

(b) construct, manage and maintain such structures or facilities as are, in the opinion of the Minister, required for wilderness recreation or for the management or use of a wilderness area;

(c) designate, construct, manage and maintain such parking areas as are, in the opinion of the Minister, required for wilderness recreation or for the management or use of a wilderness area, and upon which vehicle and bicycle use and operation is permitted.

(3) Within a wilderness area included in a Schedule to this Act, the Minister may designate a trail or route upon which the use and operation of snowmobiles is permitted if

- (a) the trail was designated at any time before January 1, 2006, whether or not presently designated;
- (b) the Minister has entered into a management agreement with a group or organization setting out the terms and conditions for the use of the trail;
- (c) the Minister intends the relocation of the trail or route to another location outside the wilderness area, or near the wilderness area boundary where adverse environmental effects will be minimal; and
- (d) in the opinion of the Minister, the continued use or operation of snowmobiles within the wilderness area will have a minimal environmental impact on the wilderness area.

(4) Within a wilderness area not included in a Schedule to this Act and within lands added to wilderness areas listed in a Schedule to this Act, the Minister may designate a trail or route upon which the use and operation of vehicles is permitted if

- (a) the Minister has entered into a management agreement with a group or organization setting out the terms and conditions for the use of the trail;
- (b) the trail or route existed before the area was designated as a wilderness area;
- (c) the trail is an essential link with a more extensive trail network;
- (d) the Minister intends the relocation of the trail or route to another location outside the wilderness area, or near the wilderness area boundary where adverse environmental effects will be minimal; and
- (e) in the opinion of the Minister, the continued use or operation of vehicles within the wilderness area will have a minimal environmental impact on the wilderness area.

(5) The Minister may issue a licence permitting the use of a motor boat, a motor vessel or an aircraft to enable access for wilderness recreation, sport fishing or traditional patterns of hunting or trapping if, in the opinion of the Minister,

- (a) the continued use will have a minimal environmental impact on the wilderness area; and
- (b) no reasonable alternative exists to enable the access.

(6) Until January 1, 2012, the Minister may issue a licence permitting the holder of the licence to use a vehicle on an approved trail or route within the Polletts Cove-Aspy Fault Wilderness Area to enable access for moose hunting.



(7) Where the conditions in clauses (4)(a), (d) and (e) are met, the Minister may designate one or more of the following trails or routes upon which the use and operation of vehicles is permitted:

- (a) River Philip Road, Economy River Wilderness Area;
- (b) Queensport Road, Bonnet Lake Barrens Wilderness Area;
- (c) The Bypass Trail located on the Snowmobilers Association of Nova Scotia trail #104, Jim Campbells Barren Wilderness Area;
- (d) Grant Lake–Ross Lake Connector Trail, Ogden Round Lake Wilderness Area;
- (e) Dominique Meadow Brook–Fountain Lake Connector Trail, Portapique River Wilderness Area.

(8) The Minister may require a trail or route in a wilderness area to be realigned or re-routed as necessary to minimize the environmental impact on the wilderness area.

(9) A licence issued pursuant to this Section must designate specific routes for use within the wilderness area and may contain such other terms and conditions as are considered necessary, in the opinion of the Minister, for the protection of the wilderness area. 1998, c. 27, s. 23; 2005, c. 56, s. 18; 2009, c. 30, s. 1; 2019, c. 39, s. 5.

#### Permitted activities

24 (1) In wilderness areas, the public may engage in

- (a) sport fishing; and
- (b) traditional patterns of hunting and trapping,

that are undertaken in a manner consistent with this Act, the regulations and any applicable management plan and in accordance with any applicable laws.

(2) Notwithstanding subsection (1), the Minister may make an order temporarily restricting or prohibiting the sport fishing, hunting or trapping referred to in subsection (1) or related activities, structures or facilities in a wilderness area to protect property, the environment or the health or safety of humans.

(3) The Minister may issue a licence permitting the holder of the licence to carry out a seal hunt authorized by the Department of Fisheries and Oceans (Canada) on Hay Island in Scatarie Island Wilderness Area.

(4) A licence issued pursuant to subsection (3) may permit only such activities as are required to conduct the hunt, and may contain such terms and conditions as the Minister considers necessary to minimize adverse environmental impacts and protect the wilderness area. 1998, c. 27, s. 24; 2009, c. 30, s. 2.

#### Existing interests

25 (1) Where a person other than the Crown, before

- (a) February 9, 1993, with respect to land in a wilderness area included in a Schedule to this Act; or

(b) the date of wilderness area designation with respect to any other land,

held any of the following interests:

(c) a mineral right issued pursuant to the *Mineral Resources Act*;

(d) a campsite lease issued pursuant to the *Crown Lands Act*; or

(e) a permit, licence, lease, right, estate or other interest,

the interests may continue until their expiry, lawful termination or cancellation and may be renewed in a form and manner consistent with this Act or the legislation under which the interest was issued.

(2) A person acting pursuant to any interest referred to in subsection (1) shall do so in a manner that, in the opinion of the Minister, will have a minimal environmental impact on the wilderness area.

(3) For greater certainty, mineral development undertaken pursuant to subsection (1) is subject to the *Mineral Resources Act*, the *Environment Act*, including any required environmental assessments, the *Crown Lands Act* and any other applicable enactment.

(4) The Minister may issue a licence to the holder of any interest referred to in subsection (1) to carry out activities that would otherwise be prohibited pursuant to Section 17, if the activities are, in the opinion of the Minister, necessary for the proper exercise or utilization of the interest and do not contribute to the degradation of the wilderness area.

(5) In subsection (6), “vehicle” does not include a motor boat, a motor vessel or an aircraft.

(6) A licence issued pursuant to subsection (4) to a campsite lease or licence holder authorizing vehicle use may be issued only for the limited purpose of

(a) maintaining or repairing structures associated with the campsite lease or licensed site; or

(b) removing structures or materials associated with the campsite lease or licensed site. 1998, c. 27, s. 25; 2009, c. 30, s. 3; 2019, c. 39, s. 6.

#### Access to land surrounded by wilderness area

##### 26 Where

(a) privately owned land is surrounded by a

(i) wilderness area, or

(ii) wilderness area and a watercourse or the ocean; and

(b) there is no alternative lawful access by land to such privately owned land,

the Minister shall issue a licence to the owner of the land allowing for such limited access, with or without conditions, as the Minister considers appropriate and the

access must be carried out consistent with any applicable management plan. 1998, c. 27, s. 26.

#### **Access to land partially surrounded by or adjacent to wilderness area**

##### **27 Where**

- (a) privately owned land is partially surrounded by or is adjacent to a wilderness area;
- (b) there is no reasonable alternative for lawful access by land to such privately owned land; and
- (c) in the opinion of the Minister, use of the access would have a minimal environmental effect on the wilderness area,

the Minister may issue a licence to the owner of the land allowing for such limited access, with or without conditions, as the Minister considers appropriate and the access must be carried out consistent with any applicable management plan. 2019, c. 39, s. 7.

#### **Sign and other markers**

**28 (1)** The Minister may place notices, plaques, markers, signs or other devices in a wilderness area indicating that the land is a wilderness area or indicating activities that are permitted, restricted or prohibited pursuant to this Act, the regulations or any applicable management plan.

##### **(2) No person shall**

- (a) deface or remove a notice, plaque, marker, sign or other device posted in a wilderness area pursuant to this Act, the regulations or any applicable management plan; or
- (b) post a notice, plaque, marker, sign or other device in a wilderness area other than pursuant to this Act, the regulations or any applicable management plan.

**(3)** Evidence that a notice, plaque, marker, sign or other device has been posted pursuant to this Act, the regulations or any applicable management plan is *prima facie* proof that a notice, plaque, marker, sign or other device was posted. 1998, c. 27, s. 27.

#### **Consequences of non-compliance with order**

**29 (1)** A person who fails to comply with the terms and conditions of an order or licence issued pursuant to this Act or the regulations is guilty of an offence.

**(2)** An order made by the Minister pursuant to the authority of this Act or the regulations is a regulation within the meaning of the *Regulations Act* but, for greater certainty, subsection 40(4) does not apply to such an order.

**(3)** The Minister shall endeavour to give notice of any order made pursuant to this Act or the regulations to those affected by the order by whatever method the Minister considers appropriate. 1998, c. 27, s. 28.

**Service of notice**

**30 (1)** Service of any notice required to be made pursuant to this Act or the regulations is deemed to be sufficiently given or served

(a) upon a copy being personally given to, or served on, the person to whom it is directed; or

(b) five days after a copy is sent by mail to the person to whom it is directed at the last known address for that person.

**(2)** Where

(a) a person, upon whom service is required by this Act or the regulations to be made, cannot be identified; or

(b) the person's address is unknown,

service is sufficient if notice is affixed in a conspicuous place on the land affected by this Act or the regulations and a copy is delivered to any occupant of the land. 1998, c. 27, s. 29.

**Offence**

**31 (1)** Every person who contravenes this Act or the regulations is guilty of an offence and is liable, on summary conviction

(a) in the case of a corporation, to a fine not exceeding \$1,000,000; or

(b) in the case of an individual, to a fine not exceeding \$500,000 or to imprisonment for a term of not more than six months, or to both.

**(2)** Where a person is convicted of an offence pursuant to this Act or the regulations a second or subsequent time, the person is, notwithstanding subsection (1), liable to a fine not exceeding double the amount set out in that subsection.

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

**(4)** Where a person is convicted of an offence pursuant to this Act or the regulations and the court is satisfied that monetary benefits accrued to the person as a result of the commission of the offence

(a) the court may order the person to pay an additional fine in an amount equal to the court's estimation of the amount of the monetary benefits; and

(b) the additional fine is not limited by the maximum amount of any fine that may otherwise be imposed pursuant to this Act or the regulations. 1998, c. 27, s. 30.

**Burden of proof in prosecution**

**32 (1)** In a prosecution for an offence pursuant to this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an

employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

(2) Where a corporation commits an offence pursuant to this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted.

(3) Unless otherwise provided in this Act or the regulations, no person shall be convicted of an offence pursuant to this Act or the regulations if the person establishes that the person exercised all due diligence to prevent the commission of the offence. 1998, c. 27, s. 31.

#### **Additional powers of court**

33 (1) Where a person is convicted of an offence, the court may, in addition to any punishment imposed, order that anything seized by means of, or in relation to which, the offence was committed, or any proceeds of its disposition, be forfeited to the Crown in right of the Province.

(2) Where the court does not order a forfeiture pursuant to subsection (1), the thing seized, or the proceeds of its disposition, must be returned to

- (a) its lawful owner; or
- (b) the person lawfully entitled to it,

if the possession of the thing seized would be lawful. 1998, c. 27, s. 32.

#### **Retention of goods until fine paid**

34 Where a fine is imposed on a person convicted of an offence, anything seized, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine. 1998, c. 27, s. 33.

#### **Additional powers of court**

35 Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy any damage done to, or to prevent any adverse effects on, a wilderness area, that results from or may result from the commission of the offence;
- (c) directing the person to pay to the Minister compensation, in whole or in part, for the cost of any remedial or preventive action taken by, or on behalf of, the Minister as a result of the commission of the offence;

(d) directing the person to post a bond or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement made pursuant to this Section. 1998, c. 27, s. 34.

### **Order to appear**

**36 (1)** Where a court has made an order, the court may, on application by the offender or the Crown in right of the Province, require the offender to appear before it and, after hearing the offender and the Crown, may make an order

- (a) changing the original order or the conditions specified in it;
- (b) relieving the offender absolutely or partially from compliance with any or all of the order;
- (c) reducing the period for which the original order is to remain in effect;
- (d) extending the period for which the original order is to remain in effect for an additional period not to exceed one year.

**(2)** Before making an order pursuant to subsection (1), the court may direct that notice be given to any persons the court considers to be interested and the court may hear any such persons.

**(3)** Where an application made pursuant to this Section in respect of an offender has been heard by a court, no other application pursuant to this Section may be made with respect to the offender except with leave of the court. 1998, c. 27, s. 35.

### **Limitation period**

**37 (1)** Proceedings by way of summary conviction in respect of an offence pursuant to this Act or the regulations may not be commenced more than two years after the later of

- (a) the date on which the offence was committed; or
- (b) the date on which evidence of the offence first came to the attention of an enforcement officer or the Minister, whichever occurs first.

**(2)** A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of evidence of the offence, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified. 1998, c. 27, s. 36.

### **Compensation**

**38 (1)** Subject to subsection (2), a person may be awarded compensation by the Minister, with the approval of the Governor in Council, for fees, rentals and expenditures fairly and reasonably incurred by reason of any act or thing done pursuant to this Act or the regulations that has a detrimental effect on the person.

- for
- (2) No compensation may be awarded pursuant to subsection (1)
    - (a) loss of income or profit;
    - (b) loss of anticipated income, profit, products or opportunities; or
    - (c) the value of anything in, on or under the surface of any land.
  - (3) For greater certainty, notwithstanding the *Expropriation Act*, and in particular Section 5 thereof, or any enactment, no claim for compensation lies against the Crown in right of the Province by reason of any act or thing done pursuant to this Act or the regulations, except as provided pursuant to this Section.
  - (4) A decision pursuant to this Section is final and binding.
  - (5) Where a person makes a claim for compensation pursuant to subsection (1), the Minister
    - (a) shall require the person to provide
      - (i) evidence of the particulars of the expenditures incurred in the form of a statutory declaration, and
      - (ii) such other information as the Minister may require; and
    - (b) may determine the form, manner in which and conditions and terms under which any compensation is awarded. 1998, c. 27, s. 37.

#### Claim for compensation

**39** Notwithstanding Section 38, where a licence has been issued pursuant to Section 26 to a person who owns land completely surrounded by a wilderness area and reasonable access for the use of the land is not provided by the licence, the person is not precluded from making a claim for compensation pursuant to the *Expropriation Act* if that person can establish a right to compensation pursuant to that Act. 1998, c. 27, s. 38.

#### Regulations

- 40** (1) The Governor in Council may make regulations
- (a) respecting the erection, development, operation, maintenance, use or licensing of structures or facilities or the type of construction, location or cost of structures or facilities within a wilderness area;
  - (b) respecting the posting, erection or other display of notices, plaques, markers, signs or other devices in a wilderness area;
  - (c) for the classification or zoning of wilderness areas and the uses to which each classification or zone may be put;
  - (d) controlling, licensing, regulating, restricting or prohibiting any entry, use, activity, development or occupation of the land

or of any of the natural features, phenomena or processes in a wilderness area;

(e) regulating, restricting or prohibiting modes of travel in or through a wilderness area;

(f) respecting any activity undertaken in accordance with a mineral right or other interest held before June 30, 1999;

(g) respecting any matter necessary or advisable for the administration of a system of administrative penalties;

(h) respecting information or documents required to be included in the environmental registry;

(i) defining a word or expression used, but not defined, in this Act or further defining a word or expression used in this Act;

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

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

(3) A regulation made pursuant to subsection (1) may be made applicable to all wilderness areas or to any wilderness area or to any part of a wilderness area.

(4) A regulation made pursuant to subsection (1), or a substantive amendment thereto, may not be made until there has been such public consultation as the Minister considers appropriate. 1998, c. 27, s. 39.

## SCHEDULE A

### 1. ALDER GROUND WILDERNESS AREA

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Guysborough, Province of Nova Scotia, shown outlined in bold line as Alder Ground Wilderness Area on Plan C.L.R. No. E-21-16 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

### 2. BOGGY LAKE WILDERNESS AREA

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Guysborough and Halifax, Province of Nova Scotia, shown outlined in bold line as Boggy Lake Wilderness Area on Plan C.L.R. No. E-21-17 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

### 3. BONNET LAKE BARRENS WILDERNESS AREA

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Guysborough, Province of Nova Scotia, shown outlined in bold line as Bonnet Lake Barrens Wilderness Area on Plan C.L.R. No. E-21-12 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.



**4. BOWERS MEADOWS WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Shelburne, Province of Nova Scotia, shown outlined in bold line as Bowers Meadows Wilderness Area on Plan C.L.R. No. E-21-30 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**5. CANSO COASTAL BARRENS WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Guysborough, Province of Nova Scotia, shown outlined in bold line as Canso Coastal Barrens Wilderness Area on Plan C.L.R. No. E-21-13 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**6. CLATTENBURGH BROOK WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Halifax, Province of Nova Scotia, shown outlined in bold line as Clattenburgh Brook Wilderness Area on Plan C.L.R. No. E-21-20 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**7. CLOUD LAKE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Kings and Annapolis, Province of Nova Scotia, shown outlined in bold line as Cloud Lake Wilderness Area on Plan C.L.R. No. E-21-25 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**8. ECONOMY RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Colchester and Cumberland, Province of Nova Scotia, shown outlined in bold line as Economy River Wilderness Area on Plan C.L.R. No. E-21-23 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**9. FRENCH RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Victoria, Province of Nova Scotia, shown outlined in bold line as French River Wilderness Area on Plan C.L.R. No. E-21-3 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**10. GABARUS WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Cape Breton, Province of Nova Scotia, shown outlined in bold line as Gabarus Wilderness Area on Plan C.L.R. No. E-21-9 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**11. JIM CAMPBELLS BARREN WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Inverness, Province of Nova Scotia, shown outlined in bold line as Jim Campbells Barren Wilderness Area on Plan C.L.R. No. E-21-31 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**12. LAKE ROSSIGNOL WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Queens, Province of Nova Scotia, shown outlined in bold line as Lake Rossignol Wilderness Area on Plan C.L.R. No. E-21-27 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**13. LISCOMB RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Guysborough, Province of Nova Scotia, shown outlined in bold line as Liscomb River Wilderness Area on Plan C.L.R. No. E-21-14 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**14. MARGAREE RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Inverness, Province of Nova Scotia, shown outlined in bold line as Margaree River Wilderness Area on Plan C.L.R. No. E-21-2 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**15. MCGILL LAKE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Annapolis, Province of Nova Scotia, shown outlined in bold line as McGill Lake Wilderness Area on Plan C.L.R. No. E-21-26 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**16. MIDDLE RIVER FRAMBOISE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Cape Breton and Richmond, Province of Nova Scotia, shown outlined in bold line as Middle River Framboise Wilderness Area on Plan C.L.R. No. E-21-8 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**17. MIDDLE RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Victoria and Inverness, Province of Nova Scotia, shown outlined in bold line as Middle River Wilderness Area on Plan C.L.R. No. E-21-5 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**18. NORTH RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Victoria, Province of Nova Scotia, shown outlined in bold line as North River Wilderness Area on Plan C.L.R. No. E-21-6 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**19. OGDEN ROUND LAKE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Guysborough, Province of Nova Scotia, shown outlined in bold line as Ogden Round Lake Wilderness Area on Plan C.L.R. No. E-21-11 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**20. PORTAPIQUE RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Colchester and Cumberland, Province of Nova Scotia, shown outlined in bold line as Portapique Wilderness Area on Plan C.L.R. No. E-21-24 deposited on May 20, 1998, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**21. SCATARIE ISLAND WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Cape Breton, Province of Nova Scotia, shown outlined in bold line as Scatarie Island Wilderness Area on Plan C.L.R. No. E-21-10 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**22. SUGARLOAF MOUNTAIN WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Inverness, Province of Nova Scotia, shown outlined in bold line as Sugarloaf Mountain Wilderness Area on Plan C.L.R. No. E-21-4 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**23. TANGIER GRAND LAKE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Halifax, Province of Nova Scotia, shown outlined in bold line as Tangier Grand Lake Wilderness Area on Plan C.L.R. No. E-21-18 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**24. TERENCE BAY WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Halifax, Province of Nova Scotia, shown outlined in bold line as Terence Bay Wilderness Area on Plan C.L.R. No. E-21-22 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**25. THE BIG BOG WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Guysborough, Province of Nova Scotia, shown outlined in bold line as The Big Bog Wilderness Area on Plan C.L.R. No. E-21-15 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**26. TIDNEY RIVER WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Shelburne and Queens, Province of Nova Scotia, shown outlined in bold line as Tidney River Wilderness Area on Plan C.L.R. No. E-21-29 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**27. TOBEATIC WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Annapolis, Digby, Yarmouth, Shelburne and Queens, Province of Nova Scotia, shown outlined in bold line as Tobeatic Wilderness Area on Plan C.L.R. No. E-21-28 deposited on May 20, 1998, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**28. TROUT BROOK WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Inverness and Victoria, Province of Nova Scotia, shown outlined in bold line as Trout Brook Wilderness Area on Plan C.L.R. No. E-21-7 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**29. WAVERLEY - SALMON RIVER LONG LAKE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Halifax, Province of Nova Scotia, shown outlined in bold line as Waverley-Salmon River Long Lake Wilderness Area on Plan C.L.R. No. E-21-21 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

**30. WHITE LAKE WILDERNESS AREA**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the County of Halifax, Province of Nova Scotia, shown outlined in bold line as White Lake Wilderness Area on Plan C.L.R. No. E-21-19 deposited on December 9, 1997, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

1998, c. 27, Sch. A; O.I.C. 2018-188.

**SCHEDULE B****POLLETTS COVE – ASPY FAULT**

ALL and singular that certain lot, piece, parcel or tract of land and land covered by water located in the Counties of Inverness and Victoria, Province of Nova Scotia, shown outlined in

bold line as Polletts Cove-Aspy Fault on Plan C.L.R. No. E-21-1 deposited on June 24, 1998, at the Provincial Crown Lands Record Centre, Nova Scotia Department of Natural Resources, Halifax, Nova Scotia.

1998, c. 27, Sch. B; O.I.C. 2018-188.

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## CHAPTER W-6

# **An Act to Provide for the Protection, Management and Conservation of Wildlife and Wildlife Habitats**

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

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### Short title

- 1 This Act may be cited as the *Wildlife Act*. R.S., c. 504, s. 2.

### Object and purpose

- 2 The object and purpose of this Act is to
- (a) develop and implement policies and programs for wildlife designed to maintain diversity of species at levels of abundance to meet management objectives;
  - (b) integrate appropriate protective measures into policies for use on Crown lands and in guidelines for forest management and other programs on privately owned land to ensure adequate habitat for established populations of wildlife;
  - (c) recognize that angling, hunting and trapping are valued and safe parts of the heritage of the Province and that the continuing opportunity to participate in those activities will be maintained in accordance with this Act and the regulations;
  - (d) provide for the regulation of hunting and fishing and the possession and sale of wildlife; and
  - (e) provide for the continuing renewal of the resource while managing for its optimum recreational and economic uses. R.S., c. 504, s. 2; 2001, c. 46, s. 1.

### Interpretation

- 3 (1) In this Act,  
“analyst” means a person designated as an analyst pursuant to this Act;



“automatic firearm” means a firearm that is capable of firing bullets in rapid succession during one press of the trigger;

“bag limit” means the total number of a species that may be taken by a hunter, trapper or fish harvester per day per season or for any time period specified in the regulations;

“big game” means bear, moose, deer and any wildlife that may be designated as big game by the Governor in Council, and includes any part of such wildlife;

“bow” means a tool for projecting arrows that consists of a handle and one or more flexible limbs that are held bent by a string or cable that is drawn, pulled or released or held in a drawn position by hand or hand held release and not by any mechanical device attached to any portion of the bow other than the bowstring;

“camp” means a temporary residence other than a principal place of residence, and includes a tent, trailer, vehicle or vessel that may be used for the purpose of a shelter or temporary residence;

“certificate”, except in Section 133 and clause 141(1)(bm), means an instrument issued pursuant to regulations made pursuant to Section 35;

“climatologist” means a person who specializes in dealing with climates and their phenomena;

“closed season” means a period other than the open season for the hunting or fishing of a species of wildlife during which that species is protected by this Act or the regulations;

“conservation” means the wise use of the wildlife resource through management, including both complete protection and utilization, towards the maintenance of sustained optimum populations of wildlife;

“conservation officer” means any person designated a conservation officer pursuant to this Act or the *Forests Act*;

“Crown lands” means land, whether or not it is covered by water, or an interest in land vested in the Crown in right of the Province;

“deer family” means moose, caribou and deer;

“Department” means the Department of Natural Resources and Renewables;

“Director of Wildlife” means a person appointed to the position of Director of Wildlife in the Department;

“domestic organism” means an organism that has been substantially altered from its wild progenitor through a long process of selective breeding;

“endangered species” means wildlife of a kind prescribed as such pursuant to this Act or the regulations;

“exotic wildlife” means all birds, mammals and other vertebrates that are not indigenous to the Province and that in their natural

habitat are usually wild by nature, and includes any part of such birds, mammals or other vertebrates;

“firearm” means any barrelled weapon from which any shot, bullet or other missile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm;

“fish” means all species of fish and any part of such fish found in Provincial waters;

“fishing” means fishing for, catching or attempting to catch fish by any method;

“forest land” means land bearing forest growth or land from which the forest has been removed but that shows surface evidence of past forest occupancy and is not now in other use;

“fur-bearing animal” means beaver, muskrat, red squirrel, mink, otter, skunk, weasel, fisher, marten, lynx, bobcat, cougar, fox, coyote, raccoon and any other non-domesticated animal that may be designated as a fur-bearing animal by the Governor in Council, and includes any part of such animal, but does not include bear or snowshoe hare;

“fur buyer” means a person engaged in the business of buying, selling or trading in pelts or skins of fur-bearing animals or other wildlife designated by the Governor in Council;

“gallinaceous bird” includes all species of grouse, partridge, pheasant, quail, ptarmigan and wild turkey and the eggs of all such species;

“game” means all big game, small game and fur-bearing animals, and all species of animals and birds that are wild by nature and designated as game by the Governor in Council;

“game bird” means a wild gallinaceous bird or a migratory game bird as defined in the *Migratory Birds Convention Act, 1994* (Canada);

“green hide” means any fresh untanned hide or pelt;

“guide” means any person who meets the qualification requirements set out in the regulations and who, for compensation or reward received or contracted for, supervises and assists another person to hunt wildlife or angle for fish and is licensed by the Minister as a guide;

“highway” means a public highway, street, lane, road, alley, park or place, and includes the bridges thereon;

“hunting” means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, searching for, trapping, attempting to trap, snaring or attempting to snare, shooting at, stalking or lying in wait for any wildlife whether or not the wildlife is then or subsequently captured, killed, taken or wounded, but does not include stalking, attracting, searching for or lying in wait for any

wildlife by an unarmed person solely for the purpose of watching or taking pictures of it;

“licence” or “permit” means an instrument issued pursuant to this Act or the regulations conferring upon the holder the privilege of doing the things set forth in it subject to the conditions, limitations and restrictions contained in it and in this Act and the regulations;

“Minister” means the Minister of Natural Resources and Renewables;

“non-resident” means any person who is not a resident;

“open season” means a period specified by the regulations during which time certain wildlife may be taken;

“pelt” means the untanned skin of any wildlife but does not include the green hide of a moose or deer;

“possession limit” means the maximum number of a wildlife species that may be possessed by a hunter, trapper or fish harvester for any time period specified in the regulations;

“prescribed” means prescribed by regulation;

“protected”, as applied to wildlife, means protected throughout the year or for any open or closed season, pursuant to this Act or the regulations;

“resident”, at any time, means a person permanently or ordinarily resident in the Province for the two months immediately preceding that time, and includes

(a) an officer of the diplomatic or consular service of a foreign country stationed within the Province;

(b) a member of the Royal Canadian Mounted Police or the Canadian Armed Forces stationed or born in the Province;

(c) a person born in the Province and the owner of real property in the Province;

“shooting preserve” means land on which wildlife has been released for the purpose of hunting whether that wildlife has been raised in captivity on that land or other lands;

“small game” means snowshoe hare and any gallinaceous bird or game bird as herein defined and any other animal or bird designated as small game by the Governor in Council;

“snare” means a device for the taking of wildlife whereby they are caught in a noose;

“snaring” means the placing of one or more snares in locations where wildlife are likely to be caught in a noose;

“tag” means the instrument issued pursuant to this Act or the regulations and that forms part of the licence or permit under which it was issued;

“take”, where used in relation to wildlife, includes the capturing or taking into possession of wildlife whether dead or alive;

“taxidermist” means any person who engages in the business of the preservation or mounting of wildlife or parts thereof or their eggs;

“threatened species” means wildlife of a kind prescribed as such pursuant to this Act or the regulations;

“trap” means a snare, spring trap, deadfall, box trap, net or device used to capture wildlife;

“trapping” means the placing of one or more traps in locations where wildlife may be trapped;

“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;

“vendor” means a person who has been appointed a vendor of licences or permits by the Minister;

“vessel” means a means of conveyance of a kind used on water, and includes any accessory to the vessel;

“wildlife” means vertebrates that, in their natural habitat, are usually wild by nature, and includes

(a) domestic organisms that are physically similar to their wild counterparts;

(b) exotic wildlife;

(c) hybrid descendants of wildlife or of wildlife and a domestic organism;

(d) the eggs, sperm or embryos of wildlife; and

(e) any other organism designated as wildlife by the Governor in Council in accordance with this Act and the regulations;

“wildlife habitat” means any water or land where wildlife may be found and the roads and highways thereon;

“wildlife management” means any purposeful intervention designed to preserve, protect, control, maintain or enhance wildlife populations or wildlife habitats;

“wildlife management area” means an area designated pursuant to this Act for the management of wildlife;

“wildlife park” means an area of land designated or licensed pursuant to this Act as a wildlife park;

“wildlife sanctuary” means an area of land designated pursuant to this Act as a wildlife sanctuary;

“woods” means forest land and rock barren, brushland, dry marsh, bog and muskeg.

(2) For the purpose of this Act,

(a) a person is in possession of a thing when it is in that person’s personal possession or when that person knowingly

- (i) has it in the actual possession or custody of another person, or
- (ii) has it in any place, whether or not that place belongs to or is occupied by that person, for the use or benefit of that person or of another person;
- (b) when one of two or more persons, with the knowledge and consent of the rest has anything in that person's custody or possession, it is in the possession of each of them. R.S., c. 504, s. 3; 1990, c. 50, s. 1; 1995-96, c. 8, s. 22; 2001, c. 46, s. 2.

#### **Ownership of wildlife**

**4 (1)** Subject to subsection (2), the property in all wildlife situate within the Province, while in a state of nature, is declared to be vested in the Crown in right of the Province and no person shall acquire any right or property therein otherwise than in accordance with this Act and the regulations.

**(2)** A person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife. R.S., c. 504, s. 4.

#### **No action against Province**

**5** Notwithstanding anything in this Act, no right of action lies and no right of compensation exists against the Crown in right of the Province for death, personal injury or property damage caused by wildlife, or any wildlife that escapes or is released from captivity or is abandoned within the Province. R.S., c. 504, s. 4.

#### **Declaration of organism as wildlife**

**6 (1)** Where it is made to appear to the Governor in Council that an organism should be treated as wildlife, the Governor in Council may, by regulation, declare the organism to be wildlife.

**(2)** A copy of a declaration made pursuant to subsection (1) must be published in the Royal Gazette and in such other manner as the Governor in Council directs. 2001, c. 46, s. 3.

#### **Supervision and management**

**7 (1)** The Minister has the general supervision and management of this Act and the regulations.

**(2)** The Minister may designate persons to act on behalf of the Minister. R.S., c. 504, s. 5.

#### **Responsibilities and powers of ministers**

**8 (1)** The Minister is responsible for overseeing the protection, management and conservation of wildlife in the Province.

- (2)** The Minister may
  - (a)** undertake, promote or recommend measures allowing for public co-operation in wildlife conservation;

- (b) coordinate and implement wildlife policies and programs in co-operation with a federal, provincial or municipal government or agency thereof;
- (c) coordinate the development and implementation of policies and programs designed to protect and conserve wildlife and wildlife habitats;
- (d) develop and implement suitable programs of education, safety, training and certification for hunters and trappers;
- (e) enter into an agreement with any person to provide for the undertaking of wildlife research and conservation programs and measures and the administration of lands for such purposes;
- (f) take such measures as the Minister considers necessary for the protection of threatened or endangered wildlife;
- (g) initiate conferences and meetings respecting wildlife;
- (h) develop suitable guidelines and standards to optimize the impacts of various forest management practices on wildlife and wildlife habitats, taking into consideration the provisions of the *Forests Act* and the *Forest Enhancement Act*;
- (i) undertake matters that may be assigned pursuant to this Act and the regulations.

(3) Except with respect to licensing, enforcement and wildlife habitat, where wildlife management involves fish, the primary responsibility is that of the Minister of Fisheries and Aquaculture. R.S., c. 504, s. 6.

#### **Director of Wildlife, conservation officers and other personnel**

9 (1) The Minister may appoint a Director of Wildlife and conservation officers to administer and enforce this Act and the regulations.

(2) The Director of Wildlife, conservation officers and other persons required for the administration of this Act and the regulations must be appointed in accordance with the *Civil Service Act*.

(3) Notwithstanding subsection (2), the Minister may utilize, upon such terms and conditions as the Minister considers fit, the services of such persons as the Minister considers necessary for the efficient carrying out of the intent and purpose of this Act and the regulations.

(4) A member of the Royal Canadian Mounted Police and a police officer of a regional municipality or town is by virtue of office a conservation officer pursuant to this Act and has the powers of a conservation officer. R.S., c. 504, s. 8; 1990, c. 50, s. 2.

#### **Powers and immunities of conservation officer**

10 (1) A conservation officer, in carrying out duties pursuant to this Act and the regulations, has and may exercise in any part of the Province all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada).

(2) The protection afforded by this Act and any other enactment to a conservation officer extends to any other person while and to the extent that the person is in the course of assisting a conservation officer under the conservation officer's direction.

(3) A conservation officer may administer oaths to any person making a declaration or affidavit pursuant to this Act. R.S., c. 504, s. 8.

#### **Impersonating conservation officer**

11 No person, except a conservation officer, shall use or wear a uniform or badge identifying that person as a conservation officer. R.S., c. 504, s. 8.

#### **Oath or affirmation**

12 (1) A conservation officer, before commencing duties pursuant to this Act, shall take an oath or affirmation as prescribed by the regulations.

(2) Subsection (1) does not apply to members of the Royal Canadian Mounted Police, federal fisheries officers, national park wardens or conservation officers who have already taken and subscribed an oath of office. R.S., c. 504, s. 9.

#### **Identification card as proof of office**

13 A copy of an identification card purporting to be signed by the Minister is proof in any court of law that the individual named therein is a conservation officer pursuant to this Act or the regulations, without any further proof. R.S., c. 504, s. 9.

#### **Duty to report violations**

14 (1) Every conservation officer having knowledge of any violation of this Act or the regulations shall report the violation and act in accordance with the directions of the Department.

(2) A conservation officer who is furnished with information respecting a violation of this Act or the regulations is not required to disclose the name of the informant. R.S., c. 504, s. 10.

#### **Agreements**

15 The Minister may, on behalf of the Province, enter into an agreement with the Government of Canada, the government of a province or the government of a foreign country, or state thereof, or an agency of any of the foregoing, or with a municipality or local government district or any society, group, organization, person or individual for

(a) the joint management of wildlife or mutual assistance in the enforcement of laws relative to wildlife;

(b) the development and implementation of joint informational, educational or training programs;

(c) the conduct of joint biological or ecological investigations;

(d) reciprocal arrangements for fees to be charged for licences, permits or wildlife certificates issued pursuant to this Act and their counterparts issued in the other jurisdictions;

- (e) the joint management of wildlife habitats;
- (f) the development and implementation of joint programs for the prevention of damage caused by wildlife;
- (g) the development and implementation of joint programs for the control of wildlife,

and the agreement may include provisions for contributions by the Province towards the cost of implementing the provisions thereof. R.S., c. 504, s. 11.

#### **Habitat Conservation Fund**

**16 (1)** The Habitat Conservation Fund is established for the purpose of funding programs for the protection and enhancement of wildlife and wildlife habitats.

- (2)** There must be paid into the Habitat Conservation Fund
- (a) money acquired by gift, donation and bequest or by disposition of any land acquired for the purpose of the Fund;
  - (b) income accruing to the Fund; and
  - (c) in accordance with the *Finance Act*, money that accrues from any programs of the Province, including programs conducted under agreements with other governments, entered into for any of the purposes for which the Fund is established.

**(3)** The Minister may expend, in accordance with the *Finance Act*, money from the Habitat Conservation Fund for

- (a) the enhancement of wildlife and wildlife habitats;
  - (b) the acquisition of land with the approval of the Governor in Council for the maintenance and management of a population of any species of wildlife and wildlife habitats;
  - (c) the furthering, stimulation and encouragement of knowledge and awareness of the Fund and of wildlife generally by way of promotional, educational or other programs;
  - (d) research pertaining to wildlife and wildlife habitats.
- R.S., c. 504, s. 12; 2010, c. 2, s. 156.

#### **Acquisition of land**

**17** The Minister, with the approval of the Governor in Council, may, for the purpose of access to or the protection, management or conservation of wildlife, purchase, lease or otherwise acquire title to land. R.S., c. 504, s. 13.

#### **Wildlife sanctuary**

- 18** The Governor in Council may
- (a) declare any Crown lands or, with the consent of the land-owner, privately owned land a wildlife sanctuary and make such regulations as may be necessary for the control thereof and the protection of wildlife and associated habitats therein;
  - (b) add to or subtract from the area of any wildlife sanctuary;



- (c) declare any area previously declared to be a wildlife sanctuary to no longer be a wildlife sanctuary. R.S., c. 504, s. 14.

**Wildlife management area**

**19** The Governor in Council may

- (a) declare any Crown lands or, with the consent of the landowner, privately owned land a wildlife management area and make such regulations as may be necessary for the control thereof and the management of wildlife and associated habitats therein;
- (b) add to or subtract from any wildlife management area;
- (c) declare any area previously declared to be a wildlife management area to no longer be a wildlife management area. R.S., c. 504, s. 15.

**Wildlife park**

**20 (1)** The Governor in Council may declare any Crown lands or, with the consent of the landowner, privately owned land a wildlife park and make such regulations as may be necessary for the control thereof and the management of wildlife and wildlife habitats.

**(2)** Wildlife parks established pursuant to subsection (1) must be used for the primary purpose of nature education where

- (a) wildlife may be exhibited;
- (b) research may be performed;
- (c) breeding programs of certain wildlife species may be established;
- (d) nature reserves may be established;
- (e) camping or travelling may be prohibited or may be permitted subject to restrictions; and
- (f) other public activities may be held subject to conditions set forth in the regulations.

**(3)** No person shall operate a privately owned wildlife park without first obtaining a licence or permit from the Minister. R.S., c. 504, s. 16.

**Wildlife research**

**21** The Minister may undertake studies and carry out programs on wildlife and wildlife habitats to

- (a) identify, evaluate, monitor and study wildlife and wildlife habitats;
- (b) provide for inventories of wildlife and wildlife habitats throughout the Province;
- (c) assess the impacts of land-use activities on particular wildlife and wildlife habitats;

- (d) establish priorities for wildlife conservation based on consistent evaluation systems of wildlife and wildlife habitats throughout the Province;
- (e) assess the forestry and wildlife interface and the environmental impact of various forestry practices;
- (f) promote the long-term productivity, diversity and stability of forest and wetlands systems. R.S., c. 504, s. 17.

**Wildlife education**

**22** In an effort to promote greater public awareness and understanding of wildlife and wildlife habitats, the Minister may

- (a) work with private agencies and individuals to achieve the objectives of the Minister with respect to wildlife and wildlife habitats;
- (b) promote educational programs with a focus on natural resource conservation and the role of safe and ethical hunting and fishing practices in the overall management of the wildlife resource;
- (c) encourage an exchange of information between the public and private sectors with a view to a significant improvement in wildlife habitats;
- (d) establish positive management measures that will allow acceptable economic uses of the land to coexist with wildlife. R.S., c. 504, s. 18.

**Export for scientific or educational purposes**

**23 (1)** The Minister may grant a permit to any person or the government of any province or state to secure and export, for propagation or for scientific, educational or other purpose that the Minister considers to be in the public interest,

- (a) a specified number of any species of wildlife;
- (b) a specified number of nests or eggs of any species of bird,

and the Minister may specify the time, place and method of taking such wildlife, nests or eggs.

**(2)** A detailed statement of the wildlife secured pursuant to subsection (1) must be returned to the Department as required by the permit. R.S., c. 504, s. 20.

**Order of Minister respecting hunting or trapping**

**24 (1)** Notwithstanding anything contained in this Act, the Minister may, by order, either prohibit or allow hunting or trapping, or a method of hunting or trapping, in any defined area of the Province for a period considered necessary for the proper management of wildlife in that area.

**(2)** The Minister shall endeavour to give notice of any order made pursuant to subsection (1), by whatever method the Minister considers most appropriate, to all those who may be affected by the order.

**(3)** No person shall, without permission from a conservation officer, hunt or trap in an area closed pursuant to subsection (1). R.S., c. 504, s. 21.

**Vendors**

- 25** (1) The Minister may
- (a) appoint a vendor to sell licences or permits pursuant to this Act;
  - (b) require a vendor to provide a bond or other security for the faithful discharge of the vendor's duties in such amount and with such sureties as the Minister considers necessary;
  - (c) terminate the appointment of any vendor at any time without notice.

(2) No person shall issue a licence or permit pursuant to this Act or the regulations or collect any fees in respect thereof unless appointed as a vendor pursuant to this Act. R.S., c. 504, s. 22.

**Licences and permits issued by vendor**

**26** (1) All licences or permits issued by a vendor must indicate the date of issue.

(2) No licence or permit is valid unless the name, address and signature of the applicant is plainly and legibly written thereon.

(3) The vendor may require the applicant to furnish proof of age, residency, identity and other qualifications before any licence or permit is issued.

(4) No licence or permit may be issued to a person who does not comply with the age, residency, identity and other qualifications set out in this Act or the regulations.

- (5) No person shall issue or possess a licence or permit that
- (a) does not bear the name and address of the applicant;
  - (b) is not dated; or
  - (c) is incomplete in some material respect.

(6) No person shall back date any licence or permit issued pursuant to this Act or the regulations.

(7) Except as provided in the regulations, no vendor shall issue to any person in the same year more than one of the same type of licence or permit. R.S., c. 504, s. 23; 2001, c. 46, s. 4.

**Fees collected, returns and examination of books**

**27** (1) Every vendor of a licence or permit issued pursuant to this Act or the regulations is deemed to be a trustee of the Crown for any fee collected for the licence or permit.

(2) Every vendor shall complete, at such times as the Minister directs, such returns and deliver to the Minister all unsold licences or permits, all stubs of sold licences or permits and all money received from the sale of a licence or permit, less any percentage allowed by way of commission.

(3) Every vendor of a licence or permit shall permit a conservation officer or a designated employee of the Department to examine any books or records required by the Minister to be kept by the vendor. R.S., c. 504, s. 24.

**Vendor commission**

28 The Minister may prescribe the fees to be paid to vendors as a commission for the sale of any licence or permit issued pursuant to this Act or the regulations. R.S., c. 504, s. 24.

**Appointment of vendor terminated**

29 Where a vendor

- (a) fails or refuses to comply with the provisions of this Act or the regulations;
- (b) fails or refuses to comply with an order of the Minister; or
- (c) is convicted of an offence pursuant to this Act or the regulations,

the Minister may terminate the appointment of the vendor and the vendor shall return to the Minister all unsold licences or permits and the stubs of all sold licences and permits together with money received from the sale of licences or permits, less any percentage allowed by way of commission. R.S., c. 504, s. 25.

**Requirement for licence or permit to hunt or fish**

30 Except as provided by this Act or the regulations or any other enactment, no person shall hunt or fish or pursue with the intent to hunt or fish any wildlife without a valid licence or permit issued pursuant to this Act or the regulations. R.S., c. 504, s. 26.

**Form and expiry date of licence or permit**

31 (1) All licences or permits must be signed by the Minister or other person authorized in writing by the Minister and no licence or permit is valid unless it contains such signature.

(2) No licence or permit is valid unless the signature and address of the person to whom it is issued is written thereon.

(3) The Minister may issue with and as a part of a licence or permit a tag for each species of wildlife that may be killed under the licence or permit.

(4) Unless provided otherwise by the regulations, a licence or permit issued pursuant to this Act is in force from the date on which it is issued until December 31st of the year in which the licence or permit is issued. R.S., c. 504, s. 27.

**Terms and conditions of licence or permit**

32 (1) The rights attached to any licence or permit are subject to the terms and conditions as provided in this Act and the regulations or as may be endorsed by the Minister on the licence or permit.

(2) No person shall contravene the terms and conditions of a licence or permit. R.S., c. 504, s. 27.

**Altered licence or permit void**

**33** Where a licence or permit is tampered with, altered or mutilated in any manner or any tag or seal is detached from the licence or permit in any manner not permitted by this Act or the regulations, the licence or permit is void. R.S., c. 504, s. 27.

**Control of nuisance wildlife**

**34 (1)** Notwithstanding Section 30, where wildlife is found doing actual damage to a growing cultivated crop, an orchard, livestock or private property or is in a position where it may cause such damage, the owner or occupier of the property may use all reasonable methods to scare away the offending wildlife.

**(2)** Where a conservation officer is satisfied that

(a) the scaring of wildlife did not work; or

(b) the scaring of wildlife will not be a sufficient deterrent,

a permit may be issued to the owner or occupier to destroy the offending wildlife.

**(3)** A permit issued pursuant to subsection (2) may cover the growing season for the cultivated crop that is being or may be damaged by the wildlife.

**(4)** All wildlife destroyed pursuant to subsection (2) must be reported to the Department within 24 hours and the carcass disposed of as the Minister may order. R.S., c. 504, s. 28.

**Hunter safety program**

**35** The Governor in Council may make regulations

(a) requiring a person, before being entitled to hunt, to successfully complete a course of training;

(b) prescribing fees for the course and examinations in the course;

(c) respecting the issuance of a certificate that must be obtained before a person applies for a licence or permit. R.S., c. 504, s. 29.

**Issuance of licence, permit or certificate**

**36 (1)** The issuance of any licence, permit or certificate pursuant to this Act or the regulations is in the discretion of the Minister.

**(2)** The Minister may refuse to issue a licence, permit or certificate to any person found guilty of an offence pursuant to this Act, the regulations or any other enactment relating to wildlife. R.S., c. 504, s. 30.

**Cancellation of licence, permit or certificate**

**37 (1)** The Minister may at any time cancel a licence, permit or certificate issued pursuant to this Act or the regulations.

**(2)** The Minister may cancel any licence, permit or certificate by having a notice of cancellation served personally on the holder of the licence or per-

mit or by mailing by registered mail a notice to the address of the holder as noted on the licence or permit.

(3) A notice of cancellation is effective on the date of delivery or five business days after the mailing, after which the licence, permit or certificate is void and of no effect. R.S., c. 504, s. 30.

#### **Reinstatement of licence, permit or certificate**

38 The Minister may reinstate any licence, permit or certificate cancelled pursuant to this Act or the regulations, subject to any conditions the Minister considers appropriate. R.S., c. 504, s. 30; 2001, c. 46, s. 5.

#### **Forfeiture of licence upon conviction**

39 (1) Upon the conviction of any person of an offence pursuant to this Act or the regulations as designated by order of the Minister made pursuant to this Section, the licence or permit relating to the designated offence and held by that person is deemed forfeited in addition to any other penalty that is imposed.

(2) Where any person has a licence or permit forfeited pursuant to subsection (1), that person may not obtain or apply for the same form of licence or permit for a period of time as prescribed in this Act or the regulations or as ordered by the Minister from the date of conviction. R.S., c. 504, s. 31; 2001, c. 46, s. 6.

#### **Return of licence, permit or certificate upon request**

40 It is an offence for the holder of a licence, permit or certificate cancelled or forfeited pursuant to this Act or the regulations to fail upon request to deliver the same to the Department. R.S., c. 504, s. 30.

#### **Discharge of weapon causing injury or death**

41 (1) Where a person inadvertently or otherwise discharges a firearm or bow that causes injury or death to a person, the Minister may cancel any licence or permit issued to the person who discharged the firearm or bow for such time period as the Minister considers fit and proper.

(2) Except with the permission of the Minister, no person having had a licence or permit cancelled as a result of a hunting accident shall

(a) have in the person's possession a firearm or bow in a wildlife habitat; or

(b) hunt, take or kill, or pursue with intent to hunt, take or kill, any wildlife except the snaring of snowshoe hare.

(3) Every person involved in a hunting accident involving a firearm or bow who fails to immediately report the accident to a conservation officer is guilty of an offence. R.S., c. 504, s. 32.

#### **Falsely obtaining or possessing licence, permit or tag**

42 Every person who

(a) obtains or attempts to obtain a licence, permit or tag to which that person is not entitled;

- (b) obtains a licence, permit or tag by false or misleading information; or
- (c) possesses a licence, permit or tag to which that person is not entitled,

is guilty of an offence. R.S., c. 504, s. 33.

#### **Purchase of only one licence or permit**

**43** Except as provided in this Act or the regulations, no person to whom a licence or permit has been issued to hunt or fish shall in the same year purchase or attempt to purchase an identical licence or permit. R.S., c. 504, s. 34.

#### **Replacement of licence, permit or tag**

**44 (1)** Where a licence, permit or tag issued pursuant to this Act or the regulations has been lost or destroyed or needs to be replaced for any other reason, the Minister may replace it.

**(2)** Notwithstanding Section 43, any person who lawfully kills wildlife subsequently found to be diseased shall report that fact to a conservation officer and the Minister, if satisfied that the wildlife is diseased, may issue a replacement licence, permit or tag and direct how to dispose of the carcass. R.S., c. 504, s. 34.

#### **Duty to carry and produce licence, permit or certificate**

**45 (1)** Every person, while hunting or fishing or attempting to hunt or fish, shall carry the licence, permit or certificate issued to that person pursuant to this Act or the regulations and shall produce the same for inspection upon demand by a conservation officer.

**(2)** Every person who, without reasonable excuse, fails to produce or carry a licence, permit or certificate, as required by subsection (1), is guilty of an offence. R.S., c. 504, s. 35.

#### **Use of licence, permit or tag by another**

- 46** Except as provided in this Act or the regulations, every person who
- (a) furnishes to another person or permits another person to have or to use a licence, permit or tag issued to that person; or
  - (b) carries a licence, permit or tag issued to another person,

is guilty of an offence. R.S., c. 504, s. 36.

#### **Information returns**

**47 (1)** Every person who holds a licence or permit pursuant to this Act or the regulations shall complete such information returns as the Minister may require.

**(2)** A person who fails to complete and submit any returns required pursuant to subsection (1) is guilty of an offence. R.S., c. 504, s. 37.

**Interference or disturbance of hunting, fishing or wildlife**

**48** (1) No person shall interfere with the lawful hunting or fishing of wildlife by another person, or with any lawful activity preparatory to such hunting or fishing, with the intention of preventing or impeding hunting or fishing or the continuation of the hunting or fishing.

(2) No person shall disturb, or engage in an activity that will tend to disturb, wildlife with the intention of preventing or impeding its being lawfully hunted or fished.

(3) No person shall disturb another person who is engaged in the lawful hunting or fishing of wildlife or in any lawful activity preparatory to such hunting or fishing with the intention of dissuading that person from hunting or fishing or otherwise preventing the hunting or fishing.

(4) Nothing in this Section authorizes a person who is lawfully hunting to trespass on privately owned land. R.S., c. 504, s. 38.

**Trapping on forest land prohibited by sign**

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

“forest land” means forest land as defined in Section 14 of the *Protection of Property Act*; and

“occupier” means occupier as defined in the *Protection of Property Act*.

(2) Notwithstanding Section 14 of the *Protection of Property Act*, where an occupier of forest land posts notice in writing by means of a sign prohibiting trapping, without permission, on the forest land, no person shall trap wildlife on the forest land without the permission of the occupier.

(3) A sign referred to in subsection (2) must include the name and telephone number of the occupier or, where regulations are made respecting the posting of forest land, the occupier shall post the land in accordance with the regulations.

(4) Every person who, without legal justification, the proof of which rests upon the person asserting justification, removes a notice posted by an occupier is guilty of an offence.

(5) Every person who, not being an occupier of forest land or acting on behalf of the occupier, posts a notice on forest land is guilty of an offence.

(6) It is a defence to a charge pursuant to subsection (2) that the person charged reasonably believed that the person had permission of the occupier to trap on the forest land.

(7) It is a defence to a charge of trapping without permission that the person was unable to see or understand the notice referred to in subsection (2).

(8) Nothing contained in this Section restricts the availability of injunctive relief or any other civil remedy for trespass to property that is otherwise available and, where the occupier has not posted the forest land in accordance with



this Section, that fact alone does not imply permission of the occupier to enter upon the forest land for the purpose of trapping.

(9) In this Section, trapping does not include the snaring of snowshoe hare. 1995-96, c. 25, s. 1.

**Open season, bag limits and possession limits**

50 (1) The Governor in Council may prescribe open seasons for the taking of wildlife in the Province, bag limits and possession limits.

(2) Except as provided in this Act or the regulations, no person shall

(a) take, hunt or kill or attempt to take, hunt or kill any wildlife except during the open season for that species of wildlife; or

(b) exceed the bag limit or possession limit for that species.

(3) The Governor in Council may prescribe wildlife that may be taken, hunted or killed at any time during the year. R.S., c. 504, s. 39.

**Hunting moose or deer by trap or snare**

51 A person who hunts a moose or deer by means of a trap or snare is guilty of an offence. R.S., c. 504, s. 40.

**Killing swimming deer, moose or bear**

52 A person who kills a deer, moose or bear while it is swimming is guilty of an offence. R.S., c. 504, s. 40.

**Possessing deer carcass**

53 Every person who at any time has in the person's possession the carcass or any part thereof of a member of the deer family, except in accordance with this Act or the regulations, is guilty of an offence. R.S., c. 504, s. 40.

**Dog at large in wildlife habitat**

54 (1) In this Section,

(a) a person who has the custody, care or control of a dog or who harbours a dog is deemed to be the owner of the dog; and

(b) a dog is deemed to be running at large if it is found running while unaccompanied by the owner.

(2) The owner of a dog shall not allow the dog to run at large in a wildlife habitat.

(3) Where a conservation officer has reasonable and probable grounds to believe that a dog is running at large in a wildlife habitat, the conservation officer may order the owner to confine the dog in the manner directed by the conservation officer or order the owner to destroy the dog, and the owner shall comply with the order.

(4) Where a dog is found running at large in a wildlife habitat and a conservation officer has reasonable and probable grounds to believe that the dog is harassing wildlife and the conservation officer is unable, after reasonable inquiry, to ascertain the owner of the dog, the conservation officer may destroy the dog or cause the same to be destroyed.

(5) Any person may lawfully destroy a dog that is attacking a moose, deer or bear. R.S., c. 504, s. 41; 1995-96, c. 25, s. 2.

#### **Hunting with dog**

55 Except as provided in this Act or the regulations, no person shall take, hunt or kill or pursue with intent to take, hunt or kill any wildlife with a dog. R.S., c. 504, s. 42.

#### **Field trials for dogs**

56 (1) The Minister may issue a permit to any person to hold a field trial for one or more breeds of dogs, including the hunting or killing of wildlife and the use of a firearm or a bow.

(2) A field trial for which a permit is issued must be organized and conducted in accordance with the conditions stated in the permit. R.S., c. 504, s. 43.

#### **Designation of dog training area**

57 The Minister may designate areas of Crown lands and, with the consent of the landowner, privately owned land as a dog training area and prescribe regulations to administer such areas. R.S., c. 504, s. 43.

#### **Hunting or trapping fur-bearing animals**

58 (1) The Governor in Council may prescribe the type of snare or trap or other device that may be used to take fur-bearing animals.

(2) Except as provided in this Act or the regulations or the *Fur Industry Act*, no person shall

(a) hunt, take or kill or pursue to hunt, take or kill or possess any fur-bearing animal;

(b) set, attempt to set or maintain any trap, snare or other device capable of taking a fur-bearing animal; or

(c) have possession of any such trap, snare or other device, in a place where fur-bearing animals may be found. R.S., c. 504, s. 44; 2010, c. 4, s. 41.

#### **Sale, possession or disposal of fur-bearing animal or pelt**

59 Except as provided in this Act and the regulations or the *Fur Industry Act*, no person shall

(a) buy or sell, barter, offer for sale or barter or have in that person's possession any fur-bearing animal, whether dead or alive;

(b) buy or sell, barter, offer for sale or barter or have in that person's possession the green hide or untanned pelt or any part thereof of a fur-bearing animal; or

(c) release or dispose of a fur-bearing animal. R.S., c. 504, s. 45; 2010, c. 4, s. 42.

#### **Fur buyer or green-hide dealer licence**

**60** The Minister may issue a licence authorizing a person to

(a) buy, sell or barter, or offer for sale or barter, the pelt of fur-bearing animals and carry on the business of a fur buyer in the Province;

(b) buy, sell or barter, or offer for sale or barter, the green hides of deer or moose and carry on the business of a green-hide dealer in the Province. R.S., c. 504, s. 46.

#### **Records and returns**

**61 (1)** The Minister may prescribe the records that must be kept and returns to be completed by fur buyers and green-hide dealers in the Province.

**(2)** It is an offence to fail to complete the records and submit any information returns prescribed by the Minister.

**(3)** Upon request, a conservation officer or a designated employee of the Department is permitted access to the records provided for by this Section. R.S., c. 504, s. 46.

#### **Purchase from unlicensed person**

**62** It is an offence for a person licensed pursuant to Section 60 to buy a pelt or green hide from a person who does not hold a valid licence or permit to take, hunt or kill that species of wildlife. R.S., c. 504, s. 46.

#### **Export or storage permit**

**63 (1)** The Minister may issue

(a) to a fur buyer, an export permit authorizing the exporting of pelts bought or otherwise acquired;

(b) to a green-hide dealer, an export permit authorizing the exporting of green hides bought or otherwise acquired.

**(2)** No person shall export, cause to be exported or possess for the purpose of export from the Province any live fur-bearing animal, or any carcass, skin or pelt of a fur-bearing animal, except in accordance with this Act or the regulations or the *Fur Industry Act*.

**(3)** The Minister may prescribe export returns to be completed by fur buyers and green-hide dealers.

**(4)** Every person who fails to submit the returns prescribed by the Minister pursuant to subsection (3) is guilty of an offence. R.S., c. 504, s. 47; 2010, c. 4, s. 43.

**Storage permit**

**64** The Minister may issue a storage permit authorizing a person, for such time period as the Minister considers fit, to possess at that person's residence or some other identified place the green hides of fur-bearers lawfully killed. R.S., c. 504, s. 47.

**Sending fur-bearer to tanner or taxidermist**

**65** No person shall send or have sent any fur-bearer, its carcass or its pelt to a tanner or taxidermist to be tanned, plucked or treated in any way except as provided in this Act or the regulations. R.S., c. 504, s. 48.

**Removal of snare or trap**

**66** A person who has set a snare or trap for fur-bearers shall take up and remove the same at the end of the open season during which the snare or trap may be legally set. R.S., c. 504, s. 48.

**Disturbance of den or beaver dam**

**67** Except with the permission of the Department, no person shall damage, disturb or destroy or attempt to do the same to the den or usual place of habitation of a fur-bearer or to a beaver dam. R.S., c. 504, s. 48.

**Interference with set traps**

**68** No person shall knowingly touch or interfere with any trap set in accordance with this Act or the regulations unless authorized to do so by this Act or the regulations. R.S., c. 504, s. 48.

**Game-farming licence**

**69 (1)** The Minister may issue a game-farming licence authorizing a person to keep in captivity on premises defined in the licence any wildlife for any and all purposes of sale, barter, exchange, preservation, consumption and propagation.

**(2)** Such licence may be revoked at any time by the Minister for any reason that the Minister considers sufficient.

**(3)** Notice of revocation must be sent to the licensee by registered mail and the revocation is effective five business days after being sent.

**(4)** Any wildlife kept in captivity pursuant to this Section and the places in which they are kept must at all times be open to the inspection of any conservation officer. R.S., c. 504, s. 49.

**Protected wildlife**

**70 (1)** Except with a permit issued by the Minister, no person shall take, hunt or kill, or attempt to take, hunt or kill, or possess any

- (a) eagle;
- (b) osprey;
- (c) falcon;

- (d) hawk;
- (e) owl;
- (f) wildlife declared by regulation to be protected wildlife pursuant to this Act.

(2) Except with a permit issued by the Minister, no person shall buy, barter, offer for sale or sell protected wildlife, whether dead or alive, or any part thereof. R.S., c. 504, s. 50; 1990, c. 50, s. 3.

#### **Prohibitions re birds and turtles**

71 Except with a permit issued by the Minister, no person shall

- (a) destroy, take, possess, buy or sell any egg of a bird or turtle;
- (b) disturb the nest of a bird or turtle; or
- (c) use a snare, net or trap to take any bird. 1995-96, c. 25, s. 3.

#### **Licence for shooting preserve**

72 No person shall own or operate a shooting preserve for gallinaceous birds or other wildlife except under the authority of a licence or permit issued pursuant to this Act or the regulations. R.S., c. 504, s. 52.

#### **Fishing licence and tagging of fish**

73 (1) In this Section, "Provincial waters" means such of the waters upon any shore or land, or on or in any lake, river, stream or watercourse, wholly or partially within the Province, over or in respect of which the Province has authority to legislate with respect to fishing.

(2) The Governor in Council may make regulations with respect to licences issued to persons who fish in Provincial waters and provide for the tagging of any fish taken.

(3) No person shall angle or fish in Provincial waters without a valid licence issued pursuant to this Act or the regulations.

(4) Every person is guilty of an offence who is found in possession of a fish that is not tagged in the manner prescribed by the regulations. R.S., c. 504, s. 53.

#### **Hunting or snaring of snowshoe hare**

74 No person shall take, hunt or kill, or attempt to take, hunt or kill, or snare any snowshoe hare except as provided by the regulations. R.S., c. 504, s. 54.

#### **Guide licence or special permit**

75 (1) The Minister may license as a guide a person who meets the qualifications set out in the regulations or the Minister may issue a special permit to authorize a person to act as a guide.

(2) The terms and conditions of a licence to guide and a special permit to guide may be prescribed by the regulations. R.S., c. 504, s. 55; 1995-96, c. 8, s. 22.

**Guide licence or special permit required**

76 (1) Except as provided in this Act or the regulations, every person who

(a) has not been issued a licence or special permit to act as a guide; and

(b) acts as a guide for non-residents for the purpose of hunting wildlife or fishing whether or not for fee or reward,

is guilty of an offence.

(2) No person shall knowingly use another person as a guide unless that person is satisfied that the person acting as a guide holds a valid licence or special permit issued pursuant to this Act and the regulations. R.S., c. 504, s. 56.

**Licensed guide duty to report violation**

77 Where a licensed guide believes or has reason to believe that a person whom the guide is guiding has violated this Act or the regulations, the guide shall report the violation immediately to a conservation officer and, if the guide neglects or omits to do so, the guide is guilty of an offence. R.S., c. 504, s. 56.

**Offences by guide**

78 Every licensed guide or special permit holder who

(a) fails to supervise the persons being guided;

(b) supervises more than the number of persons the guide is authorized by regulation to guide; or

(c) supervises a person who has not been issued a licence pursuant to this Act or the regulations,

is guilty of an offence. R.S., c. 504, s. 56.

**Guide supervision of non-resident required**

79 (1) Except as provided in this Act or the regulations, a non-resident must be supervised by a guide while hunting in the Province or fishing Atlantic salmon on rivers prescribed by the Governor in Council.

(2) A non-resident who hunts or fishes Atlantic salmon on rivers prescribed by the Governor in Council while not supervised by a guide is guilty of an offence.

(3) Notwithstanding subsection (1), a non-resident may hunt while accompanied by a guide who has a special permit to guide. R.S., c. 504, s. 57; 1995-96, c. 8, s. 22.

**Information returns to be filed by guide**

**80 (1)** The Minister may prescribe information returns to be filed by a guide, containing such information as the Minister considers necessary.

**(2)** Every guide who fails to file the returns referred to in subsection (1) is guilty of an offence. R.S., c. 504, s. 58.

**Outfitter licence**

**81 (1)** In this Section, “outfitter” means a person who carries on a business that provides lodging to the public along with supplies and services for the purpose of hunting or fishing.

**(2)** The Minister may issue a licence to an outfitter in the Province.

**(3)** Except as provided in this Act or the regulations, every person who acts as an outfitter without a licence commits an offence.

**(4)** The Governor in Council may make regulations respecting

(a) classes of licences, the term and cost of an outfitter’s licence and the maximum number of each class of licence to be issued;

(b) conditions for obtaining, transferring and renewing licences;

(c) obligations with which the holder of an outfitter’s licence of each class must comply;

(d) standards respecting the quality of services of each class of outfitter’s licence;

(e) cases where an outfitter’s licence is not required;

(f) standards relating to the protection of users of the services of an outfitter;

(g) information reports to be filed by an outfitter who has an outfitter’s licence pursuant to this Act;

(h) the designation of persons to enforce the provisions of this Act and the regulations respecting outfitters. 1990, c. 50, s. 4.

**Taxidermist licence**

**82 (1)** The Minister may issue a licence to any person to carry on the business of a taxidermist at the location described in the licence.

**(2)** No person shall engage in the business of a taxidermist unless licensed pursuant to this Act and the regulations. R.S., c. 504, s. 59.

**Duties of taxidermist**

**83 (1)** No taxidermist shall receive or accept wildlife for preservation or mounting unless the specimens are accompanied by a statement in writing signed by the owner giving the date on which such specimens were taken, the cir-

cumstances in which they were obtained and the full name and address of the owner.

(2) Every taxidermist shall keep such books and records as are prescribed by the Minister.

(3) Every taxidermist shall permit a conservation officer or a designated employee of the Department to examine any books and records required to be kept by the taxidermist pursuant to this Section.

(4) Every taxidermist shall submit such information returns as are required by this Act or the regulations.

(5) Every taxidermist who fails to submit the returns required pursuant to subsection (4) is guilty of an offence. R.S., c. 504, s. 60.

#### **Preservation of carcass**

84 No person, having taken or killed any wildlife, shall allow the carcass, pelt or green hide thereof to be destroyed, wasted, abandoned or spoiled except as provided in this Act or the regulations. R.S., c. 504, s. 61.

#### **Wildlife in captivity**

85 (1) Except as provided in this Act or the regulations or any other enactment, no person shall keep in captivity any wildlife or exotic wildlife.

(2) The Minister may issue a permit authorizing a person to capture or obtain wildlife and to keep the same in captivity, to take or kill wildlife for preservation as specimens of natural history or for scientific purposes, to export out of the Province any wildlife held in captivity or to release wildlife held in captivity.

(3) Every person who, without a permit issued pursuant to subsection (2), releases from captivity any wildlife or exotic wildlife is guilty of an offence. R.S., c. 504, s. 62; 2001, c. 46, s. 7.

#### **Export of wildlife**

86 (1) Every person commits an offence who exports or attempts to export out of the Province any live wildlife or the green hide or pelt or carcass or any part thereof except where that person is the holder of an export permit issued pursuant to this Act or the regulations.

(2) Notwithstanding subsection (1), the holder of a valid non-resident licence issued pursuant to this Act or the regulations may export from the Province any wildlife lawfully taken by that person.

(3) Every common carrier who transports out of the Province any live wildlife or the green hide or pelt or carcass or any part thereof of wildlife, except as authorized to be exported by this Act or the regulations, is guilty of an offence. R.S., c. 504, s. 63.



**Importing of wildlife**

**87 (1)** Except as provided in this Act or the regulations, no person shall import into the Province any live wildlife or exotic wildlife or any part thereof except where the person is the holder of an import permit issued pursuant to this Act or the regulations.

**(2)** Nothing in this Act prevents the importing of dead wildlife into the Province or the possession in the Province of wildlife taken outside of the Province if the wildlife has been legally taken. R.S., c. 504, s. 64.

**Sale or purchase of wildlife carcass**

**88** Except as provided in an enactment, every person commits an offence who at any time offers or exposes for sale, purchases or offers to purchase the carcass of wildlife or any part thereof. R.S., c. 504, s. 65.

**Possession of green hide, pelt or carcass during closed season**

**89 (1)** The Minister may make regulations dealing with the possession of the green hide or pelt or carcass or any part thereof of wildlife, except fish, during the closed season for that wildlife.

**(2)** Every person who possesses the green hide or pelt or carcass or any part thereof of wildlife during the closed season for that wildlife, in contravention of the regulations made pursuant to subsection (1), is guilty of an offence. R.S., c. 504, s. 66.

**Hunting with poisons, drugs, explosives or electrical charges**

**90 (1)** Except with the permission of the Minister, no person shall take, hunt or kill or attempt to take, hunt or kill any wildlife by means of a poison, drug, explosive, deleterious substance or electrical charge in any place where wildlife is or may be found.

**(2)** Notwithstanding subsection (1), poison may be used for the control of rats and mice in the protection of property. R.S., c. 504, s. 67.

**Hunting with light**

**91** Except as provided in this Act or the regulations, every person is guilty of an offence who takes, hunts or kills or pursues with intent to take, hunt or kill wildlife by means of, or with the assistance of, a light or flambeau. R.S., c. 504, s. 68.

**Shining light in wildlife habitat**

**92 (1)** Except as provided in this Act or the regulations, no person shall shine a light having a voltage of more than four and one-half volts in or upon any wildlife habitat not owned by that person at times when hunting is not permitted.

**(2)** For the purpose of subsection (1), it is prima facie evidence that the light or lights of a vehicle are more than four and one-half volts if the source of energy or energy for such light or lights is the electrical system of the vehicle. R.S., c. 504, s. 69.

**Use of vehicle or vessel to hunt or chase wildlife**

**93** (1) Except as provided in an enactment, no person shall use any air, land or water vehicle or vessel to chase, pursue, worry, molest, take, hunt or kill any wildlife or wilfully destroy wildlife habitat.

(2) Subsection (1) does not apply when nuisance wildlife is being sought with the consent of the Minister. R.S., c. 504, s. 70.

**Hunting on Sunday**

**94** (1) Except as provided in this Act or the regulations, no person shall take, hunt or kill or pursue with intent to take, hunt or kill, any wildlife, or carry any firearm or bow in any place frequented by wildlife on the first day of the week, commonly known as Sunday.

(2) Notwithstanding subsection (1), the holder of a valid licence or permit may set or visit any trap or snare and remove any wildlife caught therein and relocate the trap or snare. R.S., c. 504, s. 71; 1990, c. 50, s. 5.

**Hunting on or near highway**

**95** (1) Except as provided by the regulations, no person shall take, hunt or kill or attempt to take, hunt or kill any wildlife while such wildlife is within the boundaries of any common or public highway or within 100 feet of such boundary.

(2) For the purpose of this Act, the width of all common and public highways is, unless the contrary is proven, deemed to be 66 feet in width. R.S., c. 504, s. 72.

**Hours of hunting**

**96** (1) The Governor in Council may prescribe the hours of the day during which a person may take, hunt or kill wildlife or discharge a firearm or bow.

(2) Any person who takes, hunts or kills wildlife or discharges a firearm or bow during hours other than those prescribed pursuant to subsection (1) is guilty of an offence. R.S., c. 504, s. 73.

**Tags**

**97** Every person is guilty of an offence who

(a) having killed wildlife does not immediately affix to it the tag in the manner prescribed by the regulations; or

(b) is found in possession of wildlife that is not tagged in accordance with this Act or the regulations. R.S., c. 504, s. 74.

**Survival equipment**

**98** (1) No person shall enter any woods for the purpose of hunting unless that person possesses survival equipment that includes

(a) a compass in working order;

(b) a hand axe, or hunting knife or jackknife;

- (c) a supply of waterproof matches or matches in a waterproof container or a source that is capable of producing a flame; and
- (d) any other item prescribed by the regulations.

(2) Any person required by subsection (1) to possess a compass who fails to demonstrate ability to operate the compass to the satisfaction of a conservation officer is guilty of an offence.

(3) Any person who fails, upon request, to produce for inspection by a conservation officer the articles described in subsection (1) is guilty of an offence. R.S., c. 504, s. 75.

#### **Erection of sign, poster or notice by Minister**

99 (1) The Minister may erect any sign, poster or notice considered necessary or advisable in order to carry out the provisions of this Act or the regulations.

(2) No person shall deface, displace, destroy or remove any sign, poster or notice placed or erected pursuant to subsection (1). R.S., c. 504, s. 76.

#### **Hunter clothing**

100 (1) The Governor in Council may prescribe the type and colour of external garments and headgear to be worn while hunting in the Province.

(2) A person who does not wear the clothing prescribed pursuant to subsection (1) is guilty of an offence. R.S., c. 504, s. 77.

#### **Restricted access or no hunting area by order of Minister**

101 (1) Where the Minister believes that

- (a) the health or safety of the public is in jeopardy in any area owing to the presence of wildlife; or
- (b) the continuation of hunting in an area constitutes a safety hazard to any person,

the Minister may make an order that the area be closed or access restricted for the period specified in the order.

(2) The Minister shall endeavour to give notice of any order made pursuant to subsection (1) by whatever method the Minister considers most appropriate to all those who may be affected by the order.

(3) No person shall, without permission from a conservation officer, enter or hunt in an area closed pursuant to subsection (1). R.S., c. 504, s. 78.

#### **Possession of weapon in wildlife habitat**

102 Except as provided in this Act or the regulations, every person commits an offence who, not being the holder of a permit and not being a conservation officer exercising authority pursuant to this Act or any other enactment, takes, carries or possesses in and upon a wildlife habitat a firearm or bow. R.S., c. 504, s. 79; 1990, c. 50, s. 6.

**Transportation or possession of weapon on Sunday**

**103** Except as provided in this Act or the regulations, every person, other than a conservation officer exercising authority pursuant to this Act or any other enactment, commits an offence who transports or possesses a firearm or bow in a wildlife habitat on Sunday. R.S., c. 504, s. 80; 1990, c. 50, s. 7.

**Transportation of weapon to and from range**

**104** Where a member of the public is issued a permit pursuant to this Act or the regulations authorizing that person to discharge a firearm or bow on an approved rifle or archery range, that person may transport a firearm or bow to and from the range if the firearm or bow is

- (a) in a case that is properly fastened;
- (b) completely wrapped in material that is securely tied around the firearm or bow; or
- (c) in the locked luggage compartment of a vehicle and the contents of the compartment are not accessible to the occupants of the vehicle from inside the vehicle. R.S., c. 504, s. 80.

**Transportation of weapon to and from camp**

**105** Where a person is the holder of a valid hunting licence, that person may

- (a) two days before the opening and two days after the close of the open season on wildlife; or
- (b) on a Sunday during the open season on wildlife,

transport a firearm or bow to and from a camp that the person is to occupy or has occupied if the firearm or bow is

- (c) in a case that is properly fastened;
- (d) completely wrapped in material that is securely tied around the firearm or bow; or
- (e) in the locked luggage compartment of a vehicle and the contents of the compartment are not accessible to the occupants of the vehicle from inside the vehicle. R.S., c. 504, s. 80.

**Transportation or possession of weapon at night**

**106** Except as authorized by this Act or the regulations, no person shall transport or possess a firearm or bow in a wildlife habitat at night unless the firearm or bow is

- (a) in a case that is properly fastened;
- (b) completely wrapped in material that is securely tied around the firearm or bow; or
- (c) in the locked luggage compartment of a vehicle and the contents of the compartment are not accessible to the occupants of the vehicle from inside the vehicle. R.S., c. 504, s. 80; 1990, c. 50, s. 7.

**Prohibited weapons and ammunition**

**107** Every person is guilty of an offence who uses or possesses, in a wildlife habitat, any

- (a) automatic firearm;
- (b) prohibited or restricted firearm, except under the authority of the *Criminal Code* (Canada);
- (c) firearm that has been altered to operate as an automatic firearm;
- (d) bullet of a tracer or incendiary type;
- (e) arrow equipped with an explosive type of head of any description or tipped or carrying any poison or drug of any description;
- (f) full metal cased non-mushrooming or non-expanding bullet or ball; or
- (g) item prescribed by the regulations. R.S., c. 504, s. 81.

**Permitted types of weapons and ammunition**

**108** The Governor in Council may prescribe the quantity and the type of firearm or bow and ammunition or arrows that may be used to hunt, take or kill wildlife during the open season for a species. R.S., c. 504, s. 82.

**Set firearm or bow prohibited**

**109** No person shall, in a wildlife habitat, use a device connecting a firearm or bow to a mechanism that may cause the firearm or bow to discharge or shoot without that person operating it. R.S., c. 504, s. 83.

**Loaded firearm**

**110 (1)** In subsection (2), “loaded firearm” includes

- (a) in the case of a breech-loading firearm, a firearm carrying shells or cartridges in the breech or in a magazine attached to the firearm;
- (b) in the case of a percussion muzzle-loading firearm, a firearm charged with powder and projectile when the percussion cap is in place on the firearm; and
- (c) in the case of a flintlock muzzle-loading firearm, a firearm the barrel of which is charged with powder and projectile and the frizzen or pan of which is charged with powder.

**(2)** Except as provided in the regulations, no person shall have a loaded firearm on or in a vehicle or vessel.

**(3)** Subsection (2) does not apply to a disabled person who is the holder of a valid licence issued pursuant to Section 141 and who is complying with its terms and conditions. R.S., c. 504, s. 84.

**Discharge of weapon across or near highway**

**111** Except as authorized by the Minister, no person shall at any time discharge any firearm or bow within or across the travelled portion of any highway or within 100 feet of the travelled portion of any such highway. R.S., c. 504, s. 85.

**Discharge of weapon or hunting near dwelling or public building**

**112 (1)** No person shall at any time discharge any firearm or bow or hunt, take or kill wildlife or attempt to hunt, take or kill wildlife within such distances as may be prescribed by the Governor in Council from a dwelling house unless such person is the owner or occupier of the same or has the permission of the owner or occupier.

**(2)** No person shall at any time discharge a firearm or bow within such distances as may be prescribed by the Governor in Council from any public building or other place or any woods operation.

**(3)** Subsections (1) and (2) do not apply to a rifle or bow range approved by the Minister. R.S., c. 504, s. 86.

**Possession of weapon while impaired**

**113** No person shall be in possession of a firearm or bow, that is not in a properly fastened case or completely wrapped in material that is securely tied around the firearm or bow, with ammunition or arrows readily available in a wildlife habitat while impaired by alcohol or a drug. R.S., c. 504, s. 87.

**Careless hunting**

**114 (1)** Every person who, while possessing a firearm or bow for the purpose of hunting, discharges or causes to be discharged or handles a firearm or bow without due care and attention commits the offence of careless hunting.

**(2)** For the purpose of subsection (1), every person in possession of a firearm or bow in a wildlife habitat is deemed to be in possession of a firearm or bow for the purpose of hunting. R.S., c. 504, s. 87.

**Obstruction of conservation officer**

- 115** No person shall
- (a) obstruct;
  - (b) cause to obstruct;
  - (c) incite others to obstruct; or
  - (d) assault,

a conservation officer while the conservation officer is exercising authority pursuant to this Act or the regulations or any person assisting that conservation officer. R.S., c. 504, s. 88.

**False information**

**116** Everyone who makes a false statement to a conservation officer respecting

(a) the existence or the place of concealment or storage of any wildlife, whether dead or alive, or the carcass of wildlife or any portion thereof or the green hide or pelt thereof; or

(b) a violation of this Act or the regulations,

is guilty of an offence. R.S., c. 504, s. 89.

#### **Identification on department vehicles**

**117** For the purpose of enforcing this Act and the regulations, any vehicles used by a conservation officer in the execution of the conservation officer's duty may be equipped with such special equipment and markings as may be authorized by the Minister of Public Works. R.S., c. 504, s. 90.

#### **Failure to comply with order**

**118 (1)** It is an offence for any person to refuse or fail to comply with any order, visible signal or direction of any conservation officer in uniform.

**(2)** Where a conservation officer gives a direction to stop by means of a siren or audible signal, the driver of the vehicle that is directed to stop shall drive to a position as near as possible and parallel to the right-hand edge of the highway and shall stop and remain in that position until otherwise directed by the conservation officer. R.S., c. 504, s. 91.

#### **Identification of owner or operator of vehicle**

**119 (1)** Where a vehicle is operated in violation of any of the provisions of this Act, the owner of the vehicle on the request of a conservation officer shall, within 48 hours of the request, supply the conservation officer with the name and address of the person in charge of the vehicle at the time of such violation.

**(2)** Where, pursuant to this Section, the owner of a vehicle, at the request of a conservation officer, supplies the name of a person who had the vehicle with the consent of the owner, that person on the request of a conservation officer shall, within 48 hours of the request, supply the conservation officer with the name and address of the person operating the vehicle at the time of the violation.

**(3)** An owner or other person who is requested pursuant to this Section to supply the name and address of the person operating a vehicle and who refuses, fails, neglects or is unable to supply the name and address of the person operating the vehicle within 48 hours after being so requested is liable on summary conviction to a penalty prescribed for the offence of the operator.

**(4)** In any prosecution pursuant to this Section, it is a defence if the owner or the person who had the vehicle with the consent of the owner, as the case may be, can prove that the vehicle was being operated at the time of the violation without the knowledge or consent of the owner, either expressed or implied. R.S., c. 504, s. 92.

#### **Arrest without warrant**

**120** A conservation officer may arrest without a warrant a person whom

(a) the conservation officer finds committing an offence pursuant to this Act or the regulations; or

(b) on reasonable and probable grounds the conservation officer believes is committing or has recently committed an offence pursuant to this Act or the regulations. R.S., c. 504, s. 93.

**Search with warrant**

**121** Every conservation officer who has reasonable and probable grounds to believe a firearm or bow, wildlife or part thereof or any other item is being held or possessed in contravention of this Act or the regulations may, with a search warrant,

- (a) enter and search any residence, camp or other structure; and
- (b) seize such articles as may be found in contravention of this Act or the regulations. R.S., c. 504, s. 94.

**Search without warrant**

**122** Every conservation officer who has reasonable and probable grounds to believe a firearm or bow, wildlife or part thereof or any other item is being possessed or held in contravention of this Act or the regulations may, without a warrant,

- (a) stop, enter and search any air, land or water vehicle or vessel or conveyance of any other description for evidence of a violation pursuant to this Act or the regulations; or
- (b) open and inspect any box, bag, parcel, barrel, container or other receptacle. R.S., c. 504, s. 95.

**Liability for trespass**

**123** A conservation officer or employee of the Department, acting in the discharge of the person's duties pursuant to this Act or the regulations, and any person assisting the conservation officer or employee, may enter upon any lands without being liable for trespass, but the person is not exempted from liability for actual damage caused by such entry. 2001, c. 46, s. 8.

**Seizure by conservation officer**

**124** Every conservation officer may seize anything, including a vehicle or vessel, that the conservation officer believes on reasonable and probable grounds may afford evidence of an offence pursuant to this Act or the regulations. R.S., c. 504, s. 97.

**Detention and disposition of seized property**

**125 (1)** Except as provided in this Act or the regulations, a conservation officer who has seized property pursuant to this Act or the regulations may detain the same pending disposition of the prosecution.

- (2) A conservation officer may
  - (a) return the seized property to the person from whom it was seized or to whom it belongs before it is dealt with in the courts;
  - (b) in the case of dead wildlife or exotic wildlife, dispose, in accordance with the discretion of the Minister, of any part of it that is not required as evidence; or



- (c) in the case of live wildlife or exotic wildlife,
  - (i) in accordance with the direction of the Minister, keep it in captivity or deliver it to another person to have it kept in captivity, kill it or otherwise dispose of it, or
  - (ii) dispose of it in any manner agreed to by the owner.

(3) Where wildlife is delivered to another person, the Minister may assess the cost of keeping it in captivity to the owner or person in possession or both and that cost must be paid on demand by the person assessed and is recoverable by the Minister as a debt due to the Crown.

(4) Where any vehicle or vessel has been seized pursuant to this Act or the regulations, the registered owner or any person on the owner's behalf may file with the Minister a bond in favour of the Province that is executed by two personal sureties considered satisfactory by the Minister or an approved guarantee or surety company and that is conditional on payment of all damages and costs that may be recovered against the accused, whereupon the Minister may release the seized property to the owner or the owner's agent upon payment to the Minister of all fees and expenses incurred in connection with the seizure and detention of the seized property. R.S., c. 504, s. 98.

#### **Interest of third party in seized property**

126 (1) Where any property has been seized pursuant to this Act or the regulations, any person other than the person accused of an offence resulting in such seizure or the person in whose possession the property was when seized who claims an interest in it as owner, mortgagee, lien-holder or holder of any like interest may, within 60 days after such seizure, apply by notice in writing to a judge of the Supreme Court of Nova Scotia for an order declaring that the interest is not affected by such seizure.

(2) The judge shall fix a day not less than 30 days after the date of the filing of the application for the hearing thereof.

(3) The claimant shall serve notice of the application and of the hearing upon the Minister at least 15 clear days before the day fixed for the hearing.

(4) Where, upon the hearing of an application, it is made to appear to the satisfaction of the judge that

(a) the claimant is innocent of any complicity in the offence resulting in such seizure or of any collusion with the offender in relation thereto; and

(b) the claimant exercised all reasonable care, in respect of the person permitted to obtain the possession of such property, to satisfy the claimant that it was not likely to be used contrary to this Act or the regulations or, if a mortgagee or lien-holder, the claimant exercised reasonable care with respect to the mortgagor or person giving the lien,

the claimant is entitled to an order that the claimant's interest is not affected by such seizure.

(5) The claimant or the Crown may appeal to the Nova Scotia Court of Appeal from an order of a judge given pursuant to this Section and the appeal must be asserted, heard and decided according to the ordinary procedure governing appeals to that Court. R.S., c. 504, s. 99.

#### **Return of seized property**

127 (1) Where a person charged with an offence pursuant to this Act or the regulations is acquitted, any seized property must be returned.

(2) Notwithstanding subsection (1), if the seized property is wildlife, the Minister may return the property if it has not perished or pay such value for the property as is determined by the Minister.

(3) Where anything is seized pursuant to this Act and the regulations and the owner is unknown or cannot be ascertained or cannot be found within three months of the seizure, the Minister may direct that it be disposed of in any manner the Minister may see fit.

(4) The Minister is not liable for damages or costs for items wrongfully seized and detained if there were reasonable and probable grounds for the seizure. R.S., c. 504, s. 100.

#### **Forfeiture of seized property**

128 (1) Subject to subsection (2), the Governor in Council or the Minister may, by order, identify violations of this Act or the regulations for which there will be an automatic forfeiture to the Crown in right of the Province of seized property upon conviction.

(2) Where the property seized by a conservation officer is an air, land or water vehicle or vessel, the justice or judge who enters the conviction may order the seized property to be forfeited to the Crown in right of the Province and direct the registered owner to complete an appropriate form of transfer. R.S., c. 504, s. 101.

#### **Disposal at public auction**

129 The Minister may dispose of forfeited items at public auction or in such manner and at such times as the Minister considers fit. R.S., c. 504, s. 102.

#### **Possession as evidence**

130 (1) Where, in a prosecution of a person with respect to an offence pursuant to this Act or the regulations, it is proved that the person possessed the species of wildlife or any part thereof in respect of which that person is charged at a time during which the hunting of that species is prohibited, the possession of the species is prima facie evidence that the wildlife was hunted, killed, taken or possessed in the Province contrary to this Act or the regulations.

(2) The possession of any protected wildlife illegally taken or killed or any portion thereof is prima facie evidence of the illegal killing or taking of such wildlife by the person having possession of it. R.S., c. 504, s. 103.

**Parties to an offence**

**131** A person over the age of majority, who accompanies or assists another person at the time when the other person commits an offence contrary to this Act or the regulations, is a party to the offence and is liable to the penalty prescribed for the offence unless that person proves that the offence was committed without that person's knowledge and consent. R.S., c. 504, s. 104.

**Prima facie evidence of hunting with light**

**132** Where, on a prosecution of a person with respect to an offence contrary to Section 91, it is proved that the person charged or any person accompanying the person charged with such offence was, at the time and place where and when the offence is alleged to have been committed, in possession of

- (a) a firearm or bow; and
- (b) a light capable of being used to attract or locate wildlife,

it is prima facie evidence that that person did commit the offence charged. R.S., c. 504, s. 105.

**Certificate as evidence**

**133 (1)** In a prosecution or proceeding pursuant to this Act or the regulations in which proof is required with regard to

- (a) the issuance, cancellation, suspension or reinstatement of any licence or permit;
- (b) the identity of a person who is the licensee or permit holder named in a licence or permit;
- (c) the delivery, serving or mailing of any document or notice to be given by the Minister, the Deputy Minister of Natural Resources and Renewables or a designated employee of the Department;
- (d) whether or not any required return has been received by the Department; or
- (e) a previous conviction of a person,

a certificate purporting to be signed by the Minister or the Deputy Minister certifying with respect to the same is prima facie proof of the facts stated in the certificate and of the authority of the person who has signed the certificate, without further proof of appointment or signature.

**(2)** In any prosecution for an offence contrary to this Act or the regulations, a certificate stating the time of sunset or sunrise for any area of the Province and purporting to be signed by a climatologist or a climatology specialist in the employment of the Department of Environment and Climate Change (Canada) or its successor must be received in evidence without proof of the signature or of the official character of the person who signed the certificate and the certificate is prima facie proof of the facts stated therein.

**(3)** The Minister may designate a person as an analyst for the purpose of this Act or the regulations who, in the opinion of the Minister, is qualified to be so designated.

(4) Subject to this Section, a certificate purporting to be the certificate of an analyst stating that the analyst has analyzed or examined a substance, product, firearm, ammunition, meat or any other article or thing and the results of the analysis or examination are admissible in evidence in any prosecution for an offence pursuant to this Act or the regulations and, in absence of evidence to the contrary, are proof of the statement contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

(5) The party against whom a certificate of an analyst is produced pursuant to subsection (4) may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

(6) No certificate may be received in evidence pursuant to this Section unless the party intending to produce it has given, to the party against whom it is intended to be produced, reasonable notice of such intention, together with a copy of the certificate.

(7) Notice may be served on the accused by registered mail sent to the address given by the accused when that person was charged or the address that appears on that person's licence or permit. R.S., c. 504, s. 106; 2001, c. 46, s. 9.

#### **Summary Proceedings Act**

**134** The *Summary Proceedings Act* and forms authorized thereunder apply to all prosecutions and proceedings pursuant to this Act and the regulations as far as they are applicable and are not inconsistent with this Act and the regulations. R.S., c. 504, s. 107.

#### **Limitation period**

**135** A prosecution for an offence under this Act may not be commenced more than two years after

- (a) the date on which the offence was committed; or
- (b) the date on which evidence of the offence first came to the attention of a conservation officer, an employee of the Department or the Minister,

whichever is later. 2001, c. 46, s. 10.

#### **Reward for information leading to conviction**

**136** The Minister may pay a financial reward from any fines collected for information that will lead to the conviction of any person for a violation of this Act or the regulations. R.S., c. 504, s. 108.

#### **Disentitlement to licence**

**137** Where any person has had a licence, permit or certificate or the privilege of obtaining a licence, permit or certificate cancelled or forfeited pursuant to this Act, that person is not entitled to apply for and hold any licence, permit or certificate for such time as prescribed by this Act or the regulations or as ordered by the Minister from the date of conviction. R.S., c. 504, s. 109; 2001, c. 46, s. 11.

**Loss of licence or imprisonment for hunting with light conviction**

**138 (1)** Where a person has had a licence or permit forfeited by virtue of a conviction pursuant to Section 91, that person is not entitled to obtain or apply for the same form of licence or permit or carry a firearm or a bow in a wildlife habitat for a period of at least three years from the date of conviction.

**(2)** In addition to the penalty provided for in subsection (1), every person convicted of an offence pursuant to Section 91 may be imprisoned for a term of one month for the first offence and two to six months for a second or subsequent offence. R.S., c. 504, s. 110.

**Penalties**

**139 (1)** Everyone who is guilty of an offence contrary to this Act or the regulations is liable to the penalties provided by the *Summary Proceedings Act*.

**(2)** Notwithstanding subsection (1), a person convicted of an offence pursuant to regulations made pursuant to Section 18 or 19 or an offence contrary to clause 50(2)(a) or (b), Section 70, 92 or 113, subsection 114(1) or clause 115(d) is liable to a fine of not less than \$2,000 and not more than \$3,000.

**(3)** Notwithstanding subsection (1), a person convicted of an offence pursuant to Section 91 is liable to a fine of not less than \$2,000 and not more than \$3,500. R.S., c. 504, s. 111; 1995-96, c. 25, s. 4.

**Former designations**

**140** All game sanctuaries and wildlife management areas designated pursuant to Chapter 163 of the Revised Statutes, 1967, are deemed to be wildlife sanctuaries and wildlife management areas pursuant to this Act until otherwise determined. R.S., c. 504, s. 112.

**Regulations**

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

(a) designating wildlife that are to be classed as big game, small game, fur-bearers, fish and protected wildlife and designating wildlife not subject to this Act;

(b) respecting the operation and administration of the Habitat Conservation Fund;

(c) providing the designation of wildlife sanctuaries and wildlife management areas and establishing regulations for their management;

(d) providing for the designation of wildlife parks, licensing privately owned wildlife parks and establishing regulations for their management;

(e) providing for the protection, inventories, management, and scientific studies of wildlife and wildlife habitats;

(f) prohibiting or regulating the feeding of wildlife in all or any part of the Province;

(g) prescribing the powers, duties and obligations of vendors appointed pursuant to this Act;

- (h) prescribing the type of licence or permit required to take, hunt or kill wildlife in the Province and the conditions of eligibility to apply for such licences or permits;
- (i) respecting the duties of conservation officers and the oath or affirmation of office to be taken on appointment;
- (j) limiting the number of licences or permits and prescribing the manner in which they are to be allotted;
- (k) fixing fees for a licence or permit and prescribing the manner of their collection and persons entitled to collect them;
- (l) providing for the appointment of examiners and for the examination of applicants for licences or permits and prescribing the fees for the examinations;
- (m) exempting persons or classes of persons from the application of provisions of this Act or the regulations;
- (n) governing the issuance, cancellation, suspension, forfeiture, refusal and reinstatement of a licence or permit issued pursuant to this Act or the regulations and designating periods of ineligibility for a licence or permit;
- (o) respecting hunting accidents and the cancellation of permits or licences issued;
- (p) relating to the removal or destruction of nuisance wildlife;
- (q) prescribing the conditions under which licences or permits may be exchanged, replaced or transferred;
- (r) prescribing the number of licences or permits that may be held by an applicant;
- (s) prescribing courses relating to safety and education for hunters, trappers and fish harvesters, prescribing any certificate to be obtained before a licence or permit is issued and appointing instructors to teach courses;
- (t) providing for the returns and reports to be submitted by holders of licences and permits;
- (u) providing for the delivery of wildlife or parts thereof to the Department and establishing registration stations for such wildlife;
- (v) providing for the issuance and replacement of tags to holders of licences or permits and requiring where they be affixed to the carcass of any wildlife killed;
- (w) respecting the open season for hunting, trapping, snaring or taking any wildlife, including special seasons for hunting with a bow or muzzle-loaded firearm;
- (x) respecting the hours of the day during which a person may hunt wildlife;
- (y) respecting signs and the posting of signs for the purpose of Section 49;

(z) respecting the bag limit and possession limit of any species of wildlife in any described area that a person may take in any one day, year or season;

(aa) prohibiting and regulating methods and devices for hunting, trapping, snaring, capturing and taking wildlife, including falconry, and respecting safety in those activities;

(ab) prescribing the terms and conditions relating to the issuance of storage permits to store or possess wildlife;

(ac) prescribing when dogs may be used to hunt or be in a wildlife habitat;

(ad) respecting field trials for dogs and designating dog hunting areas;

(ae) prescribing terms and conditions under which fur-bearing animals may be trapped, hunted, possessed, utilized, sold or exported;

(af) prescribing the conditions and types of traps or snares that may be set or maintained for wildlife, prescribing times when such traps and snares must be tended and providing means to identify the owner of such traps or snares;

(ag) respecting fur buyers and green-hide dealers carrying on business in the Province;

(ah) prescribing terms and conditions of a game-farming licence;

(ai) prescribing protected wildlife;

(aj) respecting the establishment, operation, maintenance and licensing of shooting preserves for wildlife;

(ak) respecting the angling of fish in Provincial waters;

(al) respecting the tagging of wildlife;

(am) respecting the hunting or taking of deer, moose, bear, small game and fur-bearing animals;

(an) establishing firearm and bow ranges and prescribing the terms and conditions under which they may be used;

(ao) respecting the qualifications and licensing of guides and prescribing the rules governing the conduct of their activities;

(ap) respecting the use of guides by non-resident hunters and fish harvesters and identifying when guides are not required by non-residents;

(aq) respecting the issuance of a special permit to guide and the fee to be charged for the permit;

(ar) respecting the establishment and operation of wildlife registration stations, the examination and tagging of wildlife at such stations and the issuance of registration permits;

(as) prescribing the terms and conditions under which a person requires a licence or permit to engage in the business of taxi-

dermy or the buying or selling of the green hides, skins, pelts or fur of wildlife;

(at) prescribing the terms and conditions under which wildlife may be kept in or released from captivity and respecting permits to keep wildlife in or release wildlife from captivity;

(au) respecting the conditions under which any wildlife may be exported or imported into the Province;

(av) prescribing the terms and conditions governing the buying or selling of wildlife;

(aw) prescribing the terms and conditions relevant to the commercial marketing and processing of wildlife;

(ax) respecting the times and terms and conditions upon which a raccoon, fox or coyote may be taken;

(ay) respecting the hunting of certain wildlife during the hours of the day when hunting is prohibited;

(az) respecting the hunting of snowshoe hare;

(ba) respecting the terms and conditions for transporting wildlife within the Province;

(bb) respecting hunting or the discharge of a firearm by certain persons within the boundaries of a highway;

(bc) respecting the hours when a firearm or bow may be discharged;

(bd) respecting survival equipment to be possessed by a person while hunting, fishing or trapping;

(be) prescribing the proper clothing to be worn while hunting and when exemptions may be granted;

(bf) designating areas in which hunting is prohibited;

(bg) prescribing when and how a firearm or bow may be transported during the open and closed seasons;

(bh) designating prohibited weapons;

(bi) designating the quantity and types of firearms or bows and the ammunition or arrows that may be used to hunt wildlife;

(bj) prescribing the conditions under which an air, land or water vehicle or vessel may be used to hunt wildlife;

(bk) prescribing when a loaded firearm may be used from an air, land or water vehicle or vessel;

(bl) prescribing the distance for the discharge of a firearm or bow from a dwelling house, public or other building or woods operation;

(bm) respecting the appointment of an analyst pursuant to this Act and the certificates to be issued by the analyst;

(bn) prescribing the minimum and maximum fines to be paid for a violation of the regulations;



- (bo) prescribing when seized property is to be forfeited;
- (bp) respecting the recapture and management of captive wildlife that has escaped;
- (bq) respecting the recovery of costs incurred by the Department in the recapture and management of captive wildlife that has escaped;
- (br) declaring organisms to be wildlife for the purpose of this Act;
- (bs) defining any word or expression used in this Act but not defined therein;
- (bt) respecting the procedure and forms to be used;
- (bu) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Notwithstanding any other provision in this Act, the Governor in Council may make regulations

- (a) defining the expression “disabled person”;
- (b) regulating the hunting, taking and killing of wildlife by a disabled person;
- (c) providing for the issuance, cancellation and suspension of a licence for hunting wildlife by a disabled person;
- (d) prescribing the terms and conditions of such licences and fees therefor.

(3) The exercise by the Governor in Council of the authority contained in subsections (1) and (2) is a regulation within the meaning of the *Regulations Act*. R.S., c. 504, s. 113; 1993, c. 9, s. 8; 1995-96, c. 8, s. 22; 1995-96, c. 25, s. 5; 1998, c. 11, s. 29; 2001, c. 46, s. 12; 2022, c. 30, s. 1.

## CHAPTER W-7

# An Act Respecting a Memorial Day to Honour Miners

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WHEREAS June 11th is commonly known as Davis Day or Miners' Memorial Day in memory of William Davis, a coal miner who died on that day in 1925, and all miners who have died in Nova Scotia's coal mines:

#### Short title

**1** This Act may be cited as the *William Davis Miners' Memorial Day Act*. 2008, c. 47, s. 1.

#### William Davis Miners' Memorial Day

**2** Throughout the Province, in each and every year, June 11th shall be kept and observed under the name of William Davis Miners' Memorial Day. 2008, c. 47, s. 2.

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## CHAPTER W-8

# An Act Concerning Wills

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### Short title

- 1** This Act may be cited as the *Wills Act*. R.S., c. 505, s. 1.

## INTERPRETATION

### Interpretation

- 2** In this Act,
- “issue” includes all lawful lineal descendants of the ancestor;
- “person” includes a married woman;
- “personal property” includes leasehold estates and other chattels real, and also money, shares of government and other stocks or funds, securities for money not being real property, debts, rights of action, rights, credits, goods and all other property whatsoever, that by law devolves upon the executor or administrator, and any share or interest therein;
- “real property” includes messuages, lands, rents and hereditaments, whether of freehold or any other tenure whatsoever, and wheresoever situated, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right or interest, other than a chattel interest, therein;
- “testator” includes a married woman;
- “will” includes a codicil and an appointment by will or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament or devise of the custody and tuition of any child, and any other testamentary disposition. R.S., c. 505, s. 2.

## TESTAMENTARY CAPACITY

### Right to dispose of property by will

- 3** (1) Any person may devise, bequeath or dispose of by will, executed as in this Act provided, all real property and all personal property to which the person is entitled, either at law or in equity, at the time of the person’s death and that where not so devised, bequeathed or disposed of would devolve upon the person’s heirs-at-law or representatives.

- (2) No will, devise, bequest or disposition heretofore or hereafter made may be held to be invalid solely by reason of the testator not leaving any heir-at-law or any next of kin. R.S., c. 505, s. 3.

### Will by minor

- 4** (1) A will made by a person who is under the age of majority is not valid unless at the time of making the will the person is or has been married.
- (2) A person under the age of majority who has made a will may revoke the will. R.S., c. 505, s. 4.

**Appointment by will**

**5** Any person may make a will appointing one executor or more to a will whereof the person is the executor or an appointment by will made in pursuance of a power to be executed. R.S., c. 505, s. 5.

**FORM AND MODE OF EXECUTION****Formalities of execution**

**6 (1)** No will is valid unless it is in writing and executed in the manner hereinafter mentioned:

(a) it is signed at the end or foot thereof by the testator or by some other person in the testator's presence and by the testator's direction;

(b) such signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(c) such witnesses attest and subscribe the will in the presence of the testator, but no form of attestation is necessary.

**(2)** Notwithstanding subsection (1), a will is valid if it is wholly in the testator's own handwriting and it is signed by the testator. R.S., c. 505, s. 6; 2006, c. 49, s. 1.

**Signature to will**

**7** Every will is, so far only as regards the position of the signature of the testator or of the person signing for the testator, deemed to be valid if the signature is so placed at, after, following, under, beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed in the will, and no such will is affected by the circumstance that

(a) the signature does not follow, or is not immediately after, the foot or end of the will;

(b) a blank space intervenes between the concluding word of the will and the signature;

(c) the signature is placed among the words of the testimonium clause or of the clause of attestation, follows, is after or is under the clause of attestation, either with or without a blank space intervening, or follows, is after, is under or is beside the names or one of the names of the subscribing witness;

(d) the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or

(e) there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature,

and the enumeration of the above circumstances does not restrict the generality of the above enactment, but no signature is operative to give effect to any disposition

or direction that is underneath or that follows it nor does it give effect to any disposition or direction inserted after the signature was made. R.S., c. 505, s. 7.

#### **Execution of appointment by will**

**8** No appointment made by will in exercise of any power is valid unless the same is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power be executed with some additional or other form of execution or solemnity. R.S., c. 505, s. 8.

#### **Writing not in compliance with formal requirements**

**9** Where a court of competent jurisdiction is satisfied that a writing embodies

- (a) the testamentary intentions of the deceased; or
- (b) the intention of the deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will,

the court may, notwithstanding that the writing was not executed in compliance with the formal requirements imposed by this Act, order that the writing is valid and fully effective as if it had been executed in compliance with the formal requirements imposed by this Act. 2006, c. 49, s. 2.

#### **Bequest or devise by soldier or sailor**

**10 (1)** In subsection (2), “soldier” includes a member of the Air Force.

**(2)** Any soldier being in active service or any mariner or sailor being at sea, may dispose of that soldier’s, mariner’s or seaman’s personal property in the manner in which that soldier, mariner or sailor might have done before March 27, 1840.

**(3)** Subsection (2) extends to any member of His Majesty’s naval or marine forces, not only when the member is at sea but also when the member is so circumstanced that if the member were a soldier the member would be in active service within the meaning of subsection (2).

**(4)** A testamentary disposition of any real estate in the Province made by a person to whom subsection (2) applies is, notwithstanding that the person making the disposition was at the time of making it under the age of majority or that the disposition has not been made in such manner or form as was on said day required by law, valid in any case where the person making the disposition was of such age and the disposition has been made in such manner and form that where the disposition had been a disposition of personal estate made by such a person domiciled in the Province it would have been valid.

**(5)** In the case of the death of any person as well before as after May 17, 1919, having made a will that is or that where it had been a disposition of personal property would have been rendered valid by subsection (2), any appointment contained in that will of any person as guardian of the infant children of the testator is of full force and effect. R.S., c. 505, s. 9; 2006, c. 49, s. 3.

**Publication**

**11** Every will executed in the manner hereinbefore required is valid without any other publication thereof. R.S., c. 505, s. 10.

**Incompetency of witness to prove execution**

**12** No will is invalid on account of the incompetency of the witnesses thereto to prove its execution. R.S., c. 505, s. 11.

**Bequest or devise to attesting witness**

**13** Every devise, bequest or appointment, other than an appointment of an executor or a charge or direction for the payment of debts, to an attesting witness of the will, or to the spouse of such witness, is void, and such witness must be admitted to prove the execution of the will or the validity or invalidity thereof except that, where there are two competent witnesses to the will beside such person, such devise, bequest, or appointment is not void. R.S., c. 505, s. 12; 2006, c. 49, s. 4.

**Creditor as witness**

**14** Where by any will any real or personal property is charged with any debt and any creditor, or the spouse of any creditor, whose debt is so charged attests the execution of such will, such creditor notwithstanding such charge must be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof. R.S., c. 505, s. 13.

**Proof of execution or validity by executor**

**15** No person is on account of being an executor of a will incompetent to prove the execution of such will or to prove the validity or invalidity thereof. R.S., c. 505, s. 14.

**Validity of will made**

**16** As regards the manner and formalities of making a will, a will made either within or outside the Province is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where

- (a) the will was made;
- (b) the testator was domiciled or had the testator's habitual residence when the will was made; or
- (c) the testator had the testator's domicile of origin. 2006, c. 49, s. 5.

**REVOCATION AND ALTERATION****Change of domicile**

**17** No will may be held to be revoked or to have become invalid, nor may the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same. R.S., c. 505, s. 16.

**Marriage**

- 18** Every will is revoked by the marriage of the testator except if
- (a) it is declared in the will that the same is made in contemplation of such marriage;
  - (b) the spouse of the testator elects to take under the will by an instrument in writing signed by such spouse and filed, within one year after the testator's death, in the court of probate in which probate of such will is taken or sought to be taken; or
  - (c) the will is made in exercise of a power of appointment, when the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator or the person entitled as next of kin. R.S., c. 505, s. 17.

**Alteration in circumstances**

- 19** No will is revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances. R.S., c. 505, s. 18.

**Conditions for revocation of will**

- 20** No will or any part thereof is revoked otherwise than by
- (a) marriage as hereinbefore provided;
  - (b) another will executed in manner by this Act required;
  - (c) some writing declaring an intention to revoke the same and executed in the manner in which a will is by this Act required to be executed; or
  - (d) the burning, tearing or otherwise destroying the same by the testator, or by some person in the testator's presence and by the testator's direction, with the intention of revoking the same. R.S., c. 505, s. 19.

**Effect of divorce or declaration of nullity**

- 21** Notwithstanding Sections 19 and 20, except where a contrary intention appears by the will or a separation agreement or marriage contract, where, after the testator makes a will, the testator's marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to the testator's former spouse;
- (b) an appointment of the testator's former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on the testator's former spouse,

are revoked and the will is to be construed as if the former spouse had predeceased the testator. 2006, c. 49, s. 6.

**Alteration of will after execution**

- 22** No cancelling by drawing lines across a will or any part thereof, and no obliteration, interlineation or other alteration made in any will after the execution thereof, is valid or has any effect except so far as the words or the effect of the will



before such cancelling or alteration are not apparent, unless such cancelling or alteration is executed in the manner by this Act required for the execution of the will, but the will, with such cancellation or alteration as part thereof, is deemed to be duly executed if the signature of the testator, made by the testator or some other person in the testator's presence and by the testator's direction, and the subscription of the witnesses, is made in the margin or on some other part of the will opposite or near to such cancellation or alteration, or at the foot or end of or opposite to a memorandum referring to such cancellation or alteration and written at the end or some other part of the will. R.S., c. 505, s. 20.

#### **Reviving of revoked will**

**23** No will or any part thereof that has been in any manner revoked is revived otherwise than by the re-execution thereof, or by a codicil executed in manner in this Act required, and showing an intention to revive the same and, when any will that has been partly revoked and afterwards wholly revoked is revived, such revival does not extend to so much thereof as was revoked before the revocation of the whole thereof unless an intention to the contrary is shown. R.S., c. 505, s. 21.

### **OPERATION AND CONSTRUCTION**

#### **Effect of conveyance or other act**

**24** No conveyance or other act made or done subsequently to the execution of a will of any real or personal property therein comprised, except an act by which such will is revoked as in this Act mentioned, prevents the operation of the will with respect to such estate or interest in such real or personal property as the testator has power to dispose of by will at the time of the testator's death. R.S., c. 505, s. 22.

#### **Time of which will speaks**

**25** Every will is to be construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. R.S., c. 505, s. 23.

#### **Failed devise as part of residuary devise**

**26** Unless a contrary intention appears by the will such real property or interest therein as is comprised or intended to be comprised in any devise in such will contained that fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of the devise being contrary to law or otherwise incapable of taking effect, must be included in the residuary devise, if any, contained in such will. R.S., c. 505, s. 24.

#### **Construction regarding leasehold estate**

**27** A devise of the land of the testator, of the testator in any place, in the occupation of any person mentioned in the will or otherwise described in a general manner and any other general devise that would describe a leasehold estate, if the testator had no freehold estate that could be described by it, is to be construed to include the leasehold estate of the testator, or the testator's leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates unless a contrary intention appears by the will. R.S., c. 505, s. 25.

**Construction of general devise or bequest**

**28** A general devise or bequest of the real or personal property of the testator, of the testator in any place, in the possession of any person mentioned in the will or otherwise described in a general manner is to be construed to include any real or personal property, or any real or personal property to which such description extends, as the case may be, that the testator has power to appoint in any manner the testator thinks proper, and operates as an execution of such power unless a contrary intention appears by the will. R.S., c. 505, s. 26.

**Construction of devise where no words of limitation**

**29** Where any real property is devised to any person without any words of limitation, such devise is to be construed to pass the fee simple or other the whole estate or interest that the testator had power to dispose of by will in such real property, unless a contrary intention appears by the will. R.S., c. 505, s. 27.

**Interpretation of “die without issue” or like words**

**30** In any devise or bequest of real or personal property, “die without issue”, “die without leaving issue”, “have no issue” or any other words that import either a want or failure of issue of any person in the person’s lifetime or at the time of the person’s death or an indefinite failure of the person’s issue is to be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of the person’s issue, unless a contrary intention appears by the will by reason of such person having a prior estate tail or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise, but this Act does not extend to cases where such words so import if no issue described in a preceding gift are born or if there are no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S., c. 505, s. 28.

**Construction of devise to trustee or executor**

**31** Where any real property is devised to any trustee or executor, such devise is to be construed to pass the fee simple or other the whole estate or interest that the testator had power to dispose of by will in such real property, unless a definite term of years, absolute or determinable, or an estate of freehold is thereby given to the trustee or executor expressly or by implication. R.S., c. 505, s. 29.

**Death before testator of inheriting issue of testator**

**32** Where any person, being a child or other issue of the testator to whom any real or personal property is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator leaving issue and any such issue of such person are living at the time of the death of the testator, such devise or bequest does not lapse, but takes effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. R.S., c. 505, s. 31.

**MISCELLANEOUS****Contract for which liable at time of death**

**33** Where the testator at the time of death was liable to perform any contract for the sale and conveyance of any real or personal property, the executors of

the testator's will are, notwithstanding any devise or bequest of the real or personal property to which such contract refers, deemed trustees thereof so far as is necessary for performing such contract and have power to execute the necessary conveyances for the performance thereof, and the executors hold the purchase money subject to such uses and purposes as are in such will expressed respecting such real or personal property or such purchase money, or otherwise, for the use and benefit of the estate of the testator. R.S., c. 505, s. 32.

**Penalty for suppression of will**

**34** Every person who suppresses any will is, after 30 days from the time when such will should first have been made public, liable to a penalty of \$20 for each month during which such suppression continues. R.S., c. 505, s. 33.

**Sale of lands willed to be sold by executors**

**35 (1)** Where lands are willed to be sold by executors and part of them refuse to be executors and to accept the administration of the will, all sales by the executors that accept such administration are as valid as if all the executors had joined.

**(2)** Subsection (1) has the same force and effect as though the same had been contained in the *Wills Act* when originally enacted and is to be so construed. R.S., c. 505, s. 34.

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## CHAPTER W-9

# An Act Respecting the Municipal Taxation of Wind Turbine Facilities

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

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### Short title

**1** This Act may be cited as the *Wind Turbine Facilities Municipal Taxation Act*. 2006, c. 22, s. 1.

### Interpretation

- 2** (1) In this Act,
- “commissioned” means having been
- (a) electrically connected to the Nova Scotia Power Incorporated grid or, where not connected to the grid, connected directly to a power consumer; and
- (b) in continuous operation for at least 24 hours;
- “existing agreement” means an agreement with Nova Scotia Power Incorporated to sell electricity produced by a wind turbine facility to Nova Scotia Power Incorporated, that has been signed on or before March 31, 2006, and of which the original term, without any extension, has not expired;
- “nameplate capacity” of a wind turbine generator at any given time means its capacity to produce electricity commissioned on a date at least six months before the given time;
- “total nameplate capacity” of a wind turbine facility means the total of the nameplate capacity of all the wind turbine generators comprising the facility;
- “wind turbine facility” means one or more wind turbine generators located together and owned by the same person, and includes

(a) all interconnection equipment, devices and related structures connected to the wind turbine generator or generators; and

(b) all cables, equipment, devices and structures, and all things ancillary to them, that

(i) connect the wind turbine generator or generators to an electricity grid or to a facility that directly consumes the electricity produced by the wind turbine generator or generators,

(ii) facilitate the transmission of electrical energy from the generator or generators to the grid or facility, and

(iii) where applicable, facilitate voltage transformation before ultimate delivery of any electrical energy to the grid or facility,

including cable collection systems, whether above or below grade, and their conduits, switchgear equipment and devices, submarine cables, transmission lines, whether above or below grade, poles used to support transmission lines or cable collection systems, the complete and entire substation and all components and infrastructure contained in it including an electrical transformer, protection and isolation devices, switches, metering and monitoring equipment, pads or fencing,

but does not include any improvements to land due to road construction or improvement, or buildings, whether or not the buildings are used to house any part of the interconnection equipment;

“wind turbine generator” includes all of its components and, without limiting the generality of the foregoing, includes its foundation and all things above and attached or connected to the foundation, whether directly or indirectly, including tower sections and their contents, the nacelle and its contents, the rotor-hub and blades and any external pad-mounted transformer used only for the wind turbine generator.

(2) A wind turbine generator built on or before March 31, 2005, is deemed to have been commissioned on March 1, 2005. 2006, c. 22, s. 2; 2007, c. 9, s. 42.

### Application of Act

- 3 (1) This Act applies to wind turbine facilities with respect to
- (a) the 2005-06 and subsequent municipal taxation years;
- or
- (b) notwithstanding the *Nova Scotia Power Privatization Act*, where the facilities are owned by Nova Scotia Power Incorporated, the 2006-07 and subsequent municipal taxation years.

(2) Where wind turbine facilities are owned by Nova Scotia Power Incorporated, this Act applies only with respect to nameplate capacity commissioned on or after April 1, 2006. 2006, c. 22, s. 3.

#### **Exemption of wind turbine facilities from assessment taxes**

4 (1) Notwithstanding the *Assessment Act*, the *Municipal Government Act* or any other enactment, a wind turbine facility is exempt from all taxes based on assessment.

(2) For greater certainty, land on which a wind turbine facility is situate is taxed pursuant to the *Assessment Act*, the *Municipal Government Act* and any other applicable enactment except as provided in Section 7. 2006, c. 22, s. 4.

#### **Taxation of wind turbine facilities**

5 (1) This Section applies to wind turbine facilities with a total nameplate capacity of more than 100 kilowatts.

(2) The owner of a wind turbine facility is liable for the taxes under this Act with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situate.

(3) A wind turbine facility is liable to municipal taxation in an annual amount equal to total nameplate capacity of the facility in megawatts, including fractions of a megawatt, multiplied by the wind turbine facility tax rate.

(4) In the first municipal taxation year in which a wind turbine facility is taxed or in any municipal taxation year in which additional nameplate capacity is added to a wind turbine facility, the taxes on the initial or additional nameplate capacity, as the case may be, are prorated for the number of days remaining in the municipal taxation year.

(5) For the first municipal taxation year in which a wind turbine facility is taxed, the wind turbine facility tax rate is \$5,500 per megawatt plus a percentage of \$5,500 equal to the percentage increase in the Consumer Price Index for Canada at the end of the calendar year ending in the immediately preceding municipal taxation year relative to the Consumer Price Index for Canada at the end of the 2005 calendar year.

(6) Where in the first municipal taxation year in which a wind turbine facility is taxed the taxes on the initial nameplate capacity are for only part of the municipal taxation year, the tax is the same for the second municipal taxation year.

(7) For each municipal taxation year after the first municipal taxation year in which taxes are payable with respect to the wind turbine facility for the whole municipal taxation year, the wind turbine facility tax rate is increased by one per cent of the rate for the previous municipal taxation year.

(8) Where a wind turbine generator is dismantled during a municipal taxation year, the taxes are prorated for the number of days during which the generator was not dismantled.

(9) Where the capacity of a wind turbine generator to produce electricity is reduced but the wind turbine generator is not dismantled, the nameplate capacity of the generator is deemed to be unchanged. 2006, c. 22, s. 5.

#### Existing agreements

6 (1) Notwithstanding subsection 5(5), where there is an existing agreement with Nova Scotia Power Incorporated with respect to a wind turbine facility with a total nameplate capacity of more than 100 kilowatts, the wind turbine facility tax rate for the first municipal taxation year is \$4,500 per megawatt of the total nameplate capacity of the wind turbine facility to the extent that the total nameplate capacity does not exceed the capacity necessary to produce all the electricity that may be sold to Nova Scotia Power Incorporated pursuant to the agreement.

(2) For greater certainty, to the extent that the total nameplate capacity exceeds the capacity necessary to produce all the electricity that may be sold to Nova Scotia Power Incorporated pursuant to the agreement, it is taxed pursuant to Section 5.

(3) When an existing agreement expires, the wind turbine tax rate, with respect to nameplate capacity to which the rate in subsection (1) applies, is \$5,500 plus one per cent for each municipal taxation year since the 2006-07 municipal taxation year, compounded annually. 2006, c. 22, s. 6.

#### Nova Scotia Power Privatization Act does not apply

7 Notwithstanding the *Nova Scotia Power Privatization Act*, that Act does not apply to land acquired by Nova Scotia Power Incorporated on or after April 1, 2006, and used for a wind turbine facility, whether or not the facility is subsequently dismantled or removed and, for greater certainty, the land is taxed based on assessment. 2006, c. 22, s. 7.

#### Where facility crosses municipal boundaries

8 (1) Where a wind turbine facility crosses municipal boundaries and so is located in two or more municipalities, the taxes under this Act are to be shared by the municipalities based on the proportion of the construction costs of the portion of the facility that is in each municipality.

(2) The Director of Assessment shall determine the percentage to be received by each municipality and the Director's decision is final. 2006, c. 22, s. 8.

#### Grant in lieu of taxes

9 In each municipal taxation year, to a maximum of 20 years, commencing April 1, 2005, the Minister of Natural Resources and Renewables shall pay to municipalities a grant equal to the amount by which the taxes payable pursuant to Section 5 are reduced by Section 6. 2006, c. 22, s. 9.

#### Capitalized value of taxes to be used

10 Notwithstanding the *Assessment Act*, the *Municipal Grants Act* or any other enactment, the capitalized value of taxes paid pursuant to this Act shall be used in the calculation of uniform assessment pursuant to Section 14 of the *Municipal Grants Act*. 2007, c. 9, s. 43.

**Municipal Government Act does not apply**

**11** Section 616 of the *Municipal Government Act* does not apply to this Act. 2006, c. 22, s. 11.

**Regulations**

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

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

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

**(2)** A regulation made pursuant to subsection (1) may be made retroactive to the date set out in the regulation.

**(3)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2006, c. 22, s. 12.

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## CHAPTER W-10

# An Act Respecting the Women's Institutes of Nova Scotia

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### Short title

**1** This Act may be cited as the *Women's Institutes Act*. R.S., c. 506, s. 1.

### Interpretation

**2** In this Act, "former Act" means Chapter 153 of the Acts of 1914.

### Provincial Women's Institute

**3** (1) The Provincial Women's Institute formed in accordance with the former Act and known as the Women's Institutes of Nova Scotia is continued and constituted a body corporate to be known under the name "Women's Institutes of Nova Scotia".

(2) The Women's Institutes of Nova Scotia shall be composed of delegates as provided in the bylaws of the Women's Institutes of Nova Scotia, elected in accordance with such bylaws. R.S., c. 506, s. 2.

### Formation of branch women's institute

**4** Subject to the bylaw of the Women's Institutes of Nova Scotia, eight or more persons may organize themselves as a branch women's institute for an area where

(a) each person has paid a membership fee in an amount prescribed by the bylaw; and

(b) the boundaries of the area for which the branch institute is formed are approved by the Women's Institutes of Nova Scotia. R.S., c. 506, s. 3.

**Branch women's institutes**

**5** (1) Subject to the bylaws of the Women's Institutes of Nova Scotia, each branch women's institute formed pursuant to the former Act and registered with the Women's Institutes of Nova Scotia is continued as a body corporate.

(2) Each branch women's institute formed pursuant to this Act and registered with the Women's Institutes of Nova Scotia is a body corporate.

(3) A certificate purporting to be signed by an officer of the Women's Institutes of Nova Scotia and certifying that a branch women's institute is registered with the Women's Institutes of Nova Scotia is conclusive evidence that the branch women's institute is a body corporate under this Act. R.S., c. 506, s. 4.

**Resolution of boundaries of branch**

**6** If any difficulties arise as to the boundaries of an area for which a branch institute is formed, the Women's Institutes of Nova Scotia shall define the boundaries. R.S., c. 506, s. 5.

**Dissolution of branch**

**7** A branch women's institute organized pursuant to the former Act or this Act ceases to be a body corporate upon being removed from the register of the Women's Institutes of Nova Scotia in accordance with the bylaw of the Women's Institutes of Nova Scotia. R.S., c. 506, s. 6.

**Powers**

**8** The Women's Institutes of Nova Scotia and each branch women's institute organized pursuant to the former Act or this Act may exercise such powers as may be necessary to achieve its objects and, without restricting the generality of the foregoing, may

(a) acquire, by way of grant, gift, purchase, bequest, devise or otherwise, real and personal property and use and apply such property for its purposes;

(b) buy, own, hold, lease, mortgage, sell, convey, dispose of and deal with such real and personal property as may be necessary or desirable in the carrying out of its objects;

(c) borrow on the security of its real and personal property, or without security, all such money as it considers necessary to carry out its objects, and mortgage, pledge or otherwise charge its real and personal property or any part thereof for the purpose of securing the sum or sums of money so borrowed;

(d) make bylaws to carry out the intent and purpose of this Act, and respecting its constitution, internal management and affairs, including bylaws respecting the manner in which documents may be executed by it. R.S., c. 506, s. 7.

**Vesting of property of W.I.N.S.**

**9** (1) All property that, immediately before May 17, 1985, was purported to be held by or in trust for the Women's Institutes of Nova Scotia is vested in the Women's Institutes of Nova Scotia as continued and incorporated by this Act.

(2) All obligations and liabilities of the Women's Institutes of Nova Scotia immediately before May 17, 1985, are the obligations and liabilities of the Women's Institutes of Nova Scotia as continued and incorporated by this Act. R.S., c. 506, s. 8.

**Vesting of property of branch**

10 (1) All property that, immediately before May 17, 1985, was purported to be held by or in trust for a branch women's institute organized pursuant to the former Act is vested in that institute as continued and incorporated by this Act.

(2) All obligations and liabilities immediately before May 17, 1985, of a branch women's institute organized pursuant to the former Act are the obligations and liabilities of that institute as continued and incorporated by this Act. R.S., c. 506, s. 9.

**Rights unaffected**

11 Nothing in Section 9 or 10 affects the rights acquired by a person from a judgment or order of a court given or made in litigation or proceedings commenced before May 17, 1985. R.S., c. 506, s. 10.

**Powers of Minister**

12 (1) The Minister of Agriculture may appoint two persons, who are in the public service of the Province and who are members of the staff of the Department of Agriculture, to assist the Women's Institutes of Nova Scotia and to perform such other duties as are assigned to them by the Minister.

(2) The Minister may expend, from money appropriated by the Legislature, sums to

- (a) assist in the organization of women's institutes;
  - (b) pay grants to the Women's Institutes of Nova Scotia;
  - (c) promote and assist the objects and aims of the Women's Institutes of Nova Scotia. R.S., c. 506, s. 11.
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## CHAPTER W-11

# An Act Respecting Liens of Woods Workers for Services

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### Short title

- 1** This Act may be cited as the *Woods Workers Lien Act*. R.S., c. 507, s. 1.

### Interpretation

- 2** In this Act,
- “Court” means the Supreme Court of Nova Scotia;
  - “judge” means a judge of the Court;
  - “labour or service” include cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming any logs or timber and sawing

or any necessary work done in connection with a sawmill, and any work done by cooks, blacksmiths, artisans and others usually employed in connection therewith;

“logs or timber” include logs, timbers, boards, deals, scantlings or laths, telegraph poles, railway ties, pitprops, pulpwood, shingle bolts or staves, or any of them, and fence posts and cordwood while lying piled for shipment. R.S., c. 507, s. 2.

#### **No contracting out of Act**

**3 (1)** Every agreement or bargain, verbal or written, expressed or implied, that has heretofore been made or entered into or that may hereafter be made or entered into on the part of any worker, servant, labourer, mechanic or other person employed in any kind of manual labour intended to be dealt with in this Act, by which it is agreed that this Act does not apply or that the remedies provided by it are not available for the benefit of any person entering into such agreement, is null and void and of no effect as against any such worker, servant, labourer, mechanic or other person.

**(2)** This Section does not apply to a manager, officer or supervisor. R.S., c. 507, s. 3.

#### **Lien**

**4** Any person performing any labour or service in connection with any logs or timber within the Province has a lien thereon for the amount due for such labour or service, and the same is deemed a first lien or charge on such logs or timber and has priority over all other claims or liens thereon except any lien or claim that the Crown may have upon such logs or timber. R.S., c. 507, s. 4.

#### **Expiry of lien**

**5** The lien provided for in Section 4 does not continue to be a charge on the logs or timber after the time within which the statement of claim hereinafter provided for is required to be filed, unless such statement, verified upon oath by the person claiming such lien or someone duly authorized on the person's behalf, is filed as hereinafter directed. R.S., c. 507, s. 5.

#### **Filing of statement of claim**

**6** A statement of claim referred to in Section 5 must be in writing and filed with the Court. R.S., c. 507, s. 6.

#### **Form and content of statement of claim**

**7** A statement of claim referred to in Section 5 must set out briefly the nature of the debt, demand or claim, the amount due to the claimant as near as may be over and above all legal set-offs or counterclaims and a description of the logs or timber upon or against which the lien is claimed and may be in the form prescribed by the regulations or to the like effect. R.S., c. 507, s. 7.

**Time limit for filing of statement of claim**

**8** A statement of claim referred to in Section 5 must be filed within 60 days after the last day upon which labour or services or some part thereof were performed. R.S., c. 507, s. 8.

**Effect of alienating property under lien**

**9** No mortgage, sale or transfer of the logs or timber upon which a lien is claimed under this Act made during the time limited for the filing of a statement of claim referred to in Section 5 and previous to the filing thereof or after the filing thereof and during the time limited for enforcement thereof in any way affects such lien, but such lien remains and is in force against such logs or timber in whosever possession the same is found. R.S., c. 507, s. 9.

**Enforcement of lien and time limit**

**10 (1)** Any person or persons having a lien upon or against any logs or timber under this Act may enforce the same by action in the Court, and the action may be commenced to enforce the lien if the same be due immediately after the filing of a statement of claim, or if credit has been given immediately after the expiry of the period of credit, and the lien ceases to be a lien upon the property named in the statement unless the proceedings to enforce the same be commenced within 30 days after the filing of the statement of claim or within 30 days after the expiry of the period of credit.

**(2)** In all actions under subsection (1) the person, company or corporation liable for the payment of the debt or claim must be made the party defendant. R.S., c. 507, s. 10.

**Content of notice**

**11 (1)** There must be attached to or indorsed upon the originating notice a copy of the lien claim as hereinbefore provided and no other statement of claim is necessary unless ordered by the Court or judge.

**(2)** Except as herein otherwise provided, the practice is that of the Court.

**(3)** Originating notices may be served anywhere in the Province in the same manner as in other cases, and the judgment must declare that the same is for labour or services, the amount thereof and costs, and that the plaintiff has a lien therefor and the property described when such is the case. R.S., c. 507, s. 11.

**Sale under execution**

**12** Where an execution has issued and has been placed in the sheriff's hands for execution and no attachment has been issued, the proceedings for the enforcement of the lien must be by sale under the execution and the proceedings relating to proof of other claims, and the payment of other money into Court and the distribution of money and otherwise shall, as far as practicable, be the same as hereinafter provided for proceedings upon and subsequent to an attachment. R.S., c. 507, s. 12.

**Actions may be summarily heard**

**13 (1)** The judge may direct that any action brought to enforce a lien under this Act be disposed of summarily by the judge in chambers without waiting for the regular sitting of the Court, upon such terms as to notice and otherwise as the order provides, and the same must be so heard and disposed of.

**(2)** The judge may also entertain in chambers any application to set aside an attachment or seizure or to release logs or timbers that have been seized and may summarily dispose of the same. R.S., c. 507, s. 13.

**Order of attachment**

**14** Where the amount of any claim whereon action has been commenced as aforesaid is not less than \$10, upon the production and filing of a copy of said claim and affidavit and of an affidavit made and sworn by the claimant of the amount of the claim due and owing and showing that the same has been filed as aforesaid and stating that

(a) the claimant has good reason to believe and does believe that the logs or timber are about to be removed out of the Province;

(b) the person indebted for the amount of such lien has absconded from the Province with intent to defraud or defeat the person's creditors; or

(c) the logs or timber are about to be cut into lumber or other timber so that the same cannot be identified,

and that the claimant is in danger of losing the said claim if an attachment does not issue, and if an affidavit corroborating the affidavit of the plaintiff in respect to clauses (a), (b) and (c) is also filed, then the judge of the Court may, on application made to the judge *ex parte*, direct the clerk of the Court to issue an attachment order directed to the sheriff of such Court, commanding such sheriff to attach, seize, take and safely keep such logs or timber, or a sufficient portion thereof, to secure the sum mentioned in the order and the costs of the action and of the proceedings to enforce the lien, and to return the order forthwith to the Court out of which the same is issued. R.S., c. 507, s. 14.

**Subsequent seizures**

**15** Where additional claims are made, or the amount of claim is increased, or sufficient seizure has not been made, a second or subsequent seizure may be made either under execution or attachment. R.S., c. 507, s. 15.

**Service of attachment order**

**16** A copy of the attachment order must be served upon the defendant and, where the defendant in such attachment is not the owner of the logs or timber described in the attachment order, a copy of the order must also be served upon the owner of said logs or timber or upon the agent or person in whose possession, custody or control for the owner they may be found and the owner may, on the owner's own application or by the direction of a judge, be made a party defendant at the trial. R.S., c. 507, s. 16.

**Substituted service of order**

**17** In case the defendant or owner cannot be found within the Province, or the owner cannot be ascertained, and no agent or person is in possession for the

owner, the order may be served in such a manner as the judge by order directs. R.S., c. 507, s. 17.

#### **No seizure of timber in transit by water**

**18** No sheriff may seize upon or detain any log or timber under this Act while in transit by water from the place where cut to the place of destination. R.S., c. 507, s. 18.

#### **Release of attached property upon filing of bond**

**19** In case of an attachment, where the owner of said logs or timber, or any person on the owner's behalf, executes and files with the clerk of the Court out of which the attachment has been issued a good and sufficient bond to the person claiming the lien, executed by two sureties and conditional for the payment of the claim and of all damages, costs, charges, disbursements and expenses that may be recovered by the claimant in such proceedings, together with the amount for which a lien is claimed in any other action, if any, the judge may, upon application, *ex parte*, if satisfied as to the sufficiency of the bond, issue an order to the sheriff having in charge the logs or timber, directing their release, and upon service of such order upon the sheriff, the sheriff shall release the same. R.S., c. 507, s. 19.

#### **Procedure for disputing attachment order**

**20** Any person who has been served with a copy of an attachment order under this Act and who desires to dispute the same shall, within 20 days after such service, enter, in the Court in which proceedings are pending, a notice that the person disputes the claim upon the lien in whole or in part, or file a statement of defence as the practice of the Court may require. R.S., c. 507, s. 20.

#### **Lien vacated upon payment**

**21** The defendant may, at any time after service of the attachment order and before the sale of the logs or timber, pay into Court the amount for which a lien is claimed in the action, together with the amount for which a lien is claimed in any other action, if any, and together with the costs of the proceedings thereon to the date of the payment taxed by the judge if so required, and the person making the payment is thereupon entitled to a certificate vacating the lien, and upon the certificate being filed with the clerk of the Court in which the original statement of claim was filed, the lien is vacated and all further proceedings thereon cease, and the person making the payment is further entitled to an order directing the delivery up of the logs or timber seized under the attachment or the cancellation of any bond given under Section 19. R.S., c. 507, s. 21.

#### **Hearing and determination of claim for lien**

**22** After the expiration of the time specified under Section 20 within which notice of dispute may be entered or statement of defence filed, the judge shall, in chambers, as provided by Section 13, or at the next sitting of the Court, after due notice to all parties to the action and to all persons claiming liens on the logs or timber, and whose liens are duly filed as aforesaid, or to their solicitors,

- (a) hear all such parties and claimants;
- (b) take all accounts necessary to determine the amounts, if any, due to them or any of them or to any other holders of liens who may be called by the judge to prove their liens;



(c) tax to them their costs and determine by whom the same is payable; and

(d) settle their priorities and generally determine all such matters as may be necessary for the adjustment of the rights of the several parties. R.S., c. 507, s. 22.

#### **Report and order of judge**

**23** At the conclusion of the inquiry the judge shall make a report and order that states the judge's findings and directs the payment into the Court in which proceedings are pending of the amounts, if any, so found due, and the costs, within 10 days thereafter, and in default of such payment that the logs or timber must be sold by the sheriff for the satisfaction of the amount found due to the several parties upon the inquiry and costs. R.S., c. 507, s. 23.

#### **Sale where default of payment into Court**

**24 (1)** In default of payment into Court under Section 23 within the time named therein, the said logs or timber must, within 20 days thereafter, be sold by the sheriff holding the same, in the manner and subject to the same provisions of law as goods and chattels seized or taken in execution, unless the judge directs that additional publicity be given to the sale.

**(2)** The amount realized by the sale must, after deducting the expenses thereof payable to the sheriff, be paid into the Court in which the proceedings are pending and must, upon the application of the several parties found to be entitled thereto under the order of the judge, be paid out to them by the clerk of the Court, provided that where the amount realized upon the sale is not sufficient to pay the claims in full and costs, the judge shall apportion the amount realized pro rata among the different claimants. R.S., c. 507, s. 24.

#### **Where balance due after distribution of sale proceeds**

**25** Where, after such sale and distribution of the proceeds thereof under Section 24, any balance remains due to any person under the said order of the judge, judgment may be entered therefor against the person or persons by whom the claim was directed to be paid and execution may be issued thereupon as in the case of other judgments in the Court. R.S., c. 507, s. 25.

#### **Discharge of lien**

**26** Where nothing is found due upon the several claims filed under this Act or upon the lien or liens in respect to which proceedings have been taken, the judge may direct by the judge's order that the lien or liens be discharged and the logs or timber released or the security given therefor be delivered up and cancelled, and shall also by order direct payment forthwith of any costs that may be found due to the defendant or owner of the logs or timber. R.S., c. 507, s. 26.

#### **Surplus**

**27** Where more money is paid into Court as the proceeds of the sale of logs or timber than is required to satisfy the liens that have been proved, and the interest and costs, the remaining money must be paid over to the party entitled to the same unless the judge otherwise orders. R.S., c. 507, s. 27.

**Application for dismissal for want of prosecution**

**28** Any person affected by proceedings taken under this Act may apply to the judge to dismiss the same for want of prosecution, and the judge may make an order upon the application as to costs or otherwise as may be just. R.S., c. 507, s. 28.

**Addition of party**

**29** The judge may, at any stage of such proceedings on the application of any party, or as the judge may see fit, order that any person who may be considered a necessary party to any such proceedings be added as a party thereto or be served with any process or notice provided for by this Act, and the judge may make such order as to the costs of adding such person or corporation or as to the service as may be just. R.S., c. 507, s. 29.

**Other remedies preserved**

**30** Nothing in this Act disentitles any person to any other remedy than that afforded by this Act for the recovery of any amount due in respect of labour or services performed upon or in connection with any logs or timber, and where action is brought to enforce a lien, but no lien be found to exist, judgment may be directed for the amount found due as in an ordinary case. R.S., c. 507, s. 30.

**Procedure where joinder or assignment of claims**

**31** Any number of lien holders may join in taking proceedings under this Act, or may assign their claims to any one or more persons, but the statement of claim to be filed under Section 6 must include particular statements of the several claims of persons so joining and be verified by the affidavits of such persons so joining, or separate statements of claim may be filed and verified as by this Act provided, and one attachment order or originating notice issued on behalf of all the persons so joining. R.S., c. 507, s. 31.

**Practice and procedure**

**32** The forms necessary to be used in any action or proceeding under this Act, the costs to be taxed to any party therein and the procedure regulating the practice in actions brought and other proceedings taken under this Act must, so far as the same are not inconsistent with this Act, be as nearly as may be according to the forms, tariff of costs and procedure in force in the Court. R.S., c. 507, s. 33.

**Forms**

**33 (1)** The Governor in Council may make regulations prescribing forms for the purpose of this Act.

**(2)** The form contained in the Schedule to Chapter 507 of the Revised Statutes, 1989, is deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed in accordance with this Act.

**(3)** The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*.

# CHAPTER W-12

## An Act Respecting Compensation for Workers

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Workers' Advisers

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### Short title

**1** This Act may be cited as the *Workers' Compensation Act*. 1994-95, c. 10, s. 1.

### Interpretation

**2** In this Act,

“accident” includes

- (a) a wilful and intentional act, not being the act of the worker claiming compensation;
- (b) a chance event occasioned by a physical or natural cause; or
- (c) disablement, including occupational disease, arising out of and in the course of employment,

but does not include stress other than an acute reaction to a traumatic event;

“Accident Fund” means the fund provided for the payment of any compensation or other expenditures made pursuant to Part I;

“Appeals Tribunal” means the Nova Scotia Workers' Compensation Appeals Tribunal established pursuant to this Act;

“assessment” includes any assessment, part of an assessment, penalty or other amount that may be collected in the same manner as an assessment may be collected, and any cost of enforcing the assessment or entering judgment;

“Board” means the Workers' Compensation Board of Nova Scotia;

“Board of Directors” means the Board of Directors established pursuant to Section 167;

“Canada Pension Plan” means the pension plan established by the *Canada Pension Plan*;

“child” includes a child born outside marriage, a grandchild, a child of a spouse by a former marriage and a child to whom a worker stands *in loco parentis*;

"class of employer" includes any class of employer determined by the Board;

"collateral benefits" means

(a) any periodic benefit a worker is entitled to receive or is receiving pursuant to the *Employment Insurance Act* (Canada), payable in connection with the injury for which compensation is payable pursuant to Part I of this Act;

(b) any payment to a worker by the worker's employer, including any benefit, gratuity or allowance, payable in connection with the injury for which compensation is payable pursuant to Part I; or

(c) any other benefit the Board may prescribe by regulation;

"day" includes a shift;

"dependant" means a member of the family of a worker who was wholly or substantially dependent upon the worker's earnings at the time of the worker's injury or death, or who, but for the loss of earnings due to the injury or death, would have been so dependent;

"Director" means a member of the Board of Directors, and includes the Chair and the Deputy Chair of the Board of Directors;

"employer" means an employer within the scope of Part I, and includes

(a) every person having in the person's service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry within the scope of Part I;

(b) the principal, contractor and subcontractor referred to in Sections 156 and 157;

(c) a receiver, liquidator, executor or administrator and any person appointed by a court, who has authority to carry on the business of an employer;

(d) a municipal corporation;

(e) a public service commission;

(f) any person who authorizes or permits a learner to be in or about an industry for the purpose described under the definition of "learner";

(g) the Crown in right of the Province;

(h) the Crown in right of Canada in so far as the Crown in right of Canada submits to the operation of Part I;

(i) any person operating a boat, vessel, ship, dredge, tug, scow or other craft usually employed or intended to be employed in an industry to which Part I applies and, with respect to the industry of fishing, the owner or operator of a boat or vessel rented, chartered or otherwise provided to a worker employed in the fishing industry and

used in or in connection with an industry carried on by the employer to which Part I applies; and

(j) in relation to a particular employer, the whole or any part of any establishment, undertaking, work, operation, trade or business within the scope of Part I;

“extended earnings-replacement benefit” means an earnings-replacement benefit payable to a worker from the later of

(a) the date on which the Board determines the worker has a permanent impairment pursuant to Section 44; and

(b) the date on which the worker completes a rehabilitation program pursuant to Section 126, if the worker is engaged in a rehabilitation program on or after the date the Board determines the worker has a permanent impairment pursuant to Section 44;

“injury” means personal injury, but does not include any type or class of personal injury excluded by regulation pursuant to Section 10;

“learner” means

(a) an apprentice; or

(b) any person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of any industry to which Part I applies for the purpose of undergoing testing, training or probationary work as a preliminary to employment;

“medical aid” includes

(a) any healthcare service, product or device that may be authorized by the Board and is provided to a worker as a result of a compensable injury, including those forms and reports required by the Board respecting the aid or services; and

(b) reasonable expenses, authorized by the Board, incurred by a worker in order to obtain medical aid;

“member of the family” means a worker’s spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling, or a person who stands *in loco parentis* to the worker or to whom the worker stands *in loco parentis*;

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

“municipality” means a regional municipality, town or county or district municipality;

“occupational disease” means a disease arising out of and in the course of employment and resulting from causes or conditions

(a) peculiar to or characteristic of a particular trade or occupation; or

(b) peculiar to the particular employment,

and includes silicosis and pneumoconiosis;

“person” includes a partnership;

“pneumoconiosis” means permanent alteration of lung structure due to the inhalation of dust and the tissue reactions of the lung to its presence;

"principal" includes a person engaged in the manufacture, purchase or sale of forest products who finances, in whole or in part, the operations of another person in the lumbering industry;

"Quebec Pension Plan" means the Quebec Pension Plan established pursuant to Chapter R-9 of the Revised Statutes of Quebec, 1977, as amended;

"regulation" means a regulation made or approved by the Governor in Council pursuant to Section 201;

"spouse" includes a person who, not being married to a worker,

(a) was wholly or substantially dependent upon the worker's earnings at the time of the worker's injury or death, or who, but for the loss of earnings due to the injury or death, would have been so dependent; and

(b) cohabited with the worker as husband and wife at the time of the worker's injury or death and immediately prior to the worker's injury or death for a period of at least 12 continuous months;

"subclass of employer" includes any subclass of employer determined by the Board;

"temporary earnings-replacement benefit" means any earnings-replacement benefit payable to a worker prior to the date on which an extended earnings-replacement benefit, if any, becomes payable;

"worker" means a worker within the scope of Part I, and includes

(a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied;

(b) an officer, director or manager of an employer, if the person is actively engaged in the business and is carried on the payroll of the business at the person's actual earnings;

(c) a learner;

(d) a student admitted pursuant to Section 6;

(e) a volunteer firefighter who is a member of a fire department registered by a municipality under Section 363 of the *Municipal Government Act* or under Section 377 of the *Halifax Regional Municipality Charter*;

(f) in respect of the industry of fishing, a person who becomes a member of the crew of a vessel under any profit-sharing arrangement;

(g) in respect of the industry of mining, a person while actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the approval, express or implied, of an employer in whose employment the person is employed as a worker in that industry;

(h) in respect of any industry, a person while actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion, a fire or other emergency, that endangers either life or property in or about the industry in which the person is employed;

(i) any other person who, pursuant to Part I, the regulations or an order of the Board, is deemed to be a worker; and

(j) in relation to compensation payable to a dependant, a dependant,

but, subject to Section 4, does not include

(k) a receiver, liquidator or other person appointed by a court or a judge with power to manage or carry on the business of an employer for winding-up or other purposes;

(l) an employer; or

(m) a member of the family of an employer or a member of the family of a director of a corporation who

(i) is employed by the employer or the corporation, and

(ii) lives with the employer or director as a member of the employer's or director's household. 1994-95, c. 10, s. 2; 2017, c. 16, s. 1; 2019, c. 40, s. 1; 2023, c. 23, s. 1.

## PART I

### WORKERS' COMPENSATION

#### SCOPE

#### Application of Part I

**3 (1)** This Part applies to employers and workers engaged in, about or in connection with any industry prescribed by the Governor in Council by regulation.

**(2)** The Governor in Council may, by regulation, exclude any employer, class of employer, or class of worker engaged in, about or in connection with any industry prescribed pursuant to subsection (1).

**(3)** A class of employer prescribed pursuant to subsection (2) may include a class of employer employing fewer than the prescribed number of workers.

**(4)** A class of workers prescribed pursuant to subsection (2) may include classes based on any one or more of the following factors:

(a) the nature of work or duties;

(b) the nature of the business or undertaking;

(c) a geographical area within which work is performed;

(d) the source of remuneration;

(e) the method by which workers are assigned to places to perform work;

(f) a description of any program or scheme in which work is performed. 1994-95, c. 10, s. 3.

**Power to extend application of Part**

**4 (1)** In this Section, "independent contractor" means a person who is not an employer or a worker but who performs work that, where the person were a worker other than by operation of subsection (4), would be within the scope of this Part.

**(2)** Subject to subsection 3(2), the Board may, on application, admit to the operation of this Part any person not otherwise within the operation of this Part.

**(3)** The Board may, on the application of an independent contractor, admit the independent contractor to the operation of this Part as if the independent contractor were a worker if the independent contractor performs work, the nature of which falls within the scope of this Part.

**(4)** Where an independent contractor is admitted to the operation of this Part, the independent contractor is

(a) a worker in so far as this Part applies to workers employed by an employer; and

(b) an employer, in so far as this Part applies to employers of a worker.

**(5)** The Board may, on the application of a person who is an employer but who is not a worker within the meaning of this Part, determine that that person is a worker within the operation of this Part and entitled to compensation pursuant to this Part.

**(6)** The Board may, on the application of an employer, admit to the operation of this Part a person referred to in clause (m) of the definition of "worker" in Section 2.

**(7)** The Board may admit a person to the operation of this Part pursuant to subsection (2), (3), (5) or (6) subject to any terms of admission that, in the opinion of the Board, are necessary or expedient. 1994-95, c. 10, s. 4.

**Application of Part to volunteer fire departments and municipalities**

**5 (1)** This Part applies to

(a) the volunteer firefighter members of each fire department that is registered by a municipality under Section 363 of the *Municipal Government Act* or under Section 377 of the *Halifax Regional Municipality Charter*; and

(b) municipalities within whose boundaries a fire department referred to in clause (a) that includes volunteer firefighters is located and serves.

**(2)** For the purpose of this Part, the municipality within whose boundaries a fire department referred to in clause (1)(a) is located and serves is the employer of the volunteer firefighter members of that fire department.

**(3)** The volunteer firefighter members of a fire department are deemed to be in the course of their employment from the time they

(a) arrive at the place where a training exercise begins until the exercise has been completed; or

(b) receive a notification, by any means, of a fire or emergency, including the time of travel to the fire station, fire scene or the site of the emergency where they perform duties until, after being released from duty, they return home, to the place where the notification was received, to their place of regular employment or to any place for treatment, refreshment or recreation, whichever they reach first.

(4) The Board shall, by regulation, determine the minimum and maximum earnings of the volunteer firefighter members of the fire department for the purpose of calculating the average earnings of the volunteer firefighters pursuant to subsection (5).

(5) The municipality that is the employer of a volunteer firefighter pursuant to subsection (2) shall choose an amount between the minimum and maximum amounts determined by the Board pursuant to subsection (4) to apply as the average earnings for the volunteer firefighter members of the fire department of which the volunteer firefighters are members.

(6) The amount chosen by a municipality pursuant to subsection (5) applies to every volunteer firefighter who is a member of a fire department in that municipality.

(7) The municipality that is the employer of a volunteer firefighter pursuant to subsection (2) shall notify the Board of

(a) the number of volunteer firefighter members in each fire department that is registered by the municipality under Section 363 of the *Municipal Government Act* or Section 377 of the *Halifax Regional Municipality Charter*; and

(b) the average earnings of the volunteer firefighter members of each fire department referred to in clause (a) for the purpose of this Part. 2019, c. 40, s. 2.

#### Application of Part to students

6 (1) The Governor in Council may, by order, admit any student of

(a) a school within the meaning of the *Education Act*;

(b) a vocational school, regional vocational school, technical institution, or any educational facility under the supervision and management of the Minister of Labour, Skills and Immigration; or

(c) a community college within the meaning of the *Community Colleges Act*,

to the application of this Part.

(2) Where the Governor in Council admits any student to the application of this Part pursuant to subsection (1),

(a) the student is a worker for the purpose of this Part; and

(b) the Board shall fix an amount that is deemed to be the student's average earnings for the purpose of this Part.

(3) Where a student is admitted to the application of this Part pursuant to subsection (1), the assessment determined by the Board must be paid out of the General Revenue Fund.

(4) On the application of an educational facility other than an educational facility referred to in subsection (1), the Board may admit any student of the facility to the application of this Part.

(5) Where the Board admits any student to the application of this Part pursuant to subsection (4),

(a) the student is a worker for the purpose of this Part; and

(b) the Board shall fix an amount that is deemed to be the student's average earnings for the purpose of this Part.

(6) Where a student is admitted to the application of this Part pursuant to subsection (4), the assessment determined by the Board must be paid by the student's educational facility or in the manner prescribed by the Governor in Council by regulation. 1994-95, c. 10, s. 6; 2017, c. 16, s. 2.

#### **Application to municipality**

7 The exercise and performance of the powers and duties of

(a) a municipality; and

(b) any commission or board having the management and conduct of any work or service owned or operated by a municipality,

is, for the purpose of this Part, the trade or business of the municipality, commission or board. 1994-95, c. 10, s. 7.

#### **Temporary hiring**

8 Where the employer of a worker temporarily lets or hires the services of the worker to another person,

(a) the worker continues to be the worker of the employer for the purpose of this Part while the worker is working for the other person;

(b) the person who lets or hires the services of the worker is the employer of the worker for the purpose of this Part while the worker is working for that person; and

(c) the employer of the worker and the person who lets or hires the services of the worker are jointly and severally liable to fulfill any obligations of an employer as set out in this Part. 1994-95, c. 10, s. 8.

#### **Deemed worker**

9 Notwithstanding the other provisions of this Part, where a person who is not a worker within the scope of this Part performs work for the benefit of another person, the Board may



- (a) deem the first person to be a worker and the second person to be the employer of the first person, within the meaning of this Part; and
- (b) determine an amount that is deemed to be the earnings of the worker, for the purpose of this Part. 1994-95, c. 10, s. 9.

#### ELIGIBILITY

##### Payment of compensation

**10** (1) Where, in an industry to which this Part applies, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation to the worker as provided by this Part.

(2) The compensation payable pursuant to subsection (1) must be paid out of the Accident Fund.

(3) Where a personal injury is attributable wholly or primarily to the serious and wilful misconduct of the worker, the Board shall not pay compensation to the worker unless the personal injury

- (a) results in death or serious and permanent impairment;
- or
- (b) is likely, in the opinion of the Board, to result in serious and permanent impairment.

(4) Where the accident arose out of employment, unless the contrary is shown, it is presumed that it occurred in the course of employment and, where the accident occurred in the course of employment, unless the contrary is shown, it is presumed that it arose out of the employment.

(5) Where a personal injury by accident referred to in subsection (1) results in loss of earnings or permanent impairment

- (a) due in part to the injury and in part to causes other than the injury; or
- (b) due to an aggravation, activation or acceleration of a disease or disability existing prior to the injury,

compensation is payable for the proportion of the loss of earnings or permanent impairment that may reasonably be attributed to the injury.

(6) The Board may, by regulation, exclude any type or class of personal injury or occupational disease from the operation of this Part.

(7) The Board may, by regulation, include any type or class of personal injury or occupational disease on terms or conditions, including rates, types and durations of compensation other than those specified in this Part, that the Board may prescribe. 1994-95, c. 10, s. 10.

##### Interpretation

**11** In this Act, "chronic pain" means pain

- (a) continuing beyond the normal recovery time for the type of personal injury that precipitated, triggered or otherwise predated the pain; or

(b) disproportionate to the type of personal injury that precipitated, triggered or otherwise predated the pain,

and includes chronic pain syndrome, fibromyalgia, myofascial pain syndrome and all other like or related conditions, but does not include pain supported by significant, objective, physical findings at the site of the injury that indicate that the injury has not healed. 1999, c. 1, s. 1.

### Exclusions

**12** Notwithstanding this Act, Chapter 508 of the Revised Statutes, 1989, or any of its predecessors, the *Interpretation Act* or any other enactment,

(a) except for the purpose of Section 38, a personal injury by accident that occurred on or after March 23, 1990, and before February 1, 1996, is deemed never to have included chronic pain;

(b) a personal injury by accident that occurred before February 1, 1996, is deemed never to have created a vested right to receive compensation for chronic pain; and

(c) no compensation is payable to a worker in connection with chronic pain, except as provided in this Section or in Section 15 or 17 or, in the case of a worker injured on or after February 1, 1996, as provided in the Functional Restoration (Multi-Faceted Pain Services) Program Regulations contained in Order in Council 96-207 made on March 26, 1996, as amended from time to time, and, for greater certainty, those regulations are deemed to have been validly made pursuant to this Act and to have been in full force and effect on and after February 1, 1996. 1999, c. 1, s. 1.

### Interpretation of Sections 14 and 15

**13** In Sections 14 and 15, "former Act" means Chapter 508 of the Revised Statutes, 1989. 1999, c. 1, s. 1.

### Substituted benefit

**14** (1) Subject to subsection (2), where a worker

(a) was injured before March 23, 1990;

(b) was granted a permanent partial disability or a permanent total disability benefit under Section 43 or 45 of the former Act as a result of the injury referred to in clause (a); and

(c) was granted an amended interim earnings loss benefit pursuant to the Amended Interim Earnings Loss Policy adopted by the Board on November 24, 1993, pursuant to the former Act and the worker's benefit was reduced on or before February 1, 1996,

the Board shall pay to the worker the benefit the worker was receiving pursuant to the Amended Interim Earnings Loss Policy adopted by the Board on November 24, 1993, pursuant to the former Act and, for greater certainty, this benefit is in substitution for any permanent partial disability or permanent total disability the worker was receiving with respect to the claim on which the amended interim earnings loss benefit was paid if it is a greater benefit on February 1, 1996.

(2) Where a worker referred to in subsection (1) has an appeal pending before the Appeals Tribunal on February 1, 1996, the worker is entitled to

the benefit referred to in subsection (1) only if the worker abandons the appeal before the Appeals Tribunal.

(3) For greater certainty, where a worker abandons an appeal pursuant to subsection (2), the appeal is null and void and no further appeal may be taken with respect to the matter.

(4) For greater certainty, the benefit referred to in subsection (1) must be paid to the worker until the worker attains the age of 65 years.

(5) For the purpose of this Section, an appeal does not include an appeal seeking medical aid. 1999, c. 1, s. 1.

#### **Permanent-impairment benefit**

15 Where a worker

(a) was injured on or after March 23, 1990, and before February 1, 1996;

(b) has chronic pain that commenced following the injury referred to in clause (a); and

(c) as of November 25, 1998, was in receipt of temporary earnings-replacement benefits; or

(d) as of November 25, 1998, had a claim under appeal

(i) for reconsideration,

(ii) to a hearing officer,

(iii) to the Appeals Tribunal, or

(iv) to the Nova Scotia Court of Appeal,

or whose appeal period with respect to an appeal referred to in subclauses (i) to (iv) had not expired,

the Board shall pay to the worker a permanent-impairment benefit based on a permanent medical impairment award of 25% multiplied by 50%, and an extended earnings replacement benefit, if payable pursuant to Sections 50 to 61, multiplied by 50%, and any appeal referred to in clause (d) is null and void regardless of the issue or issues on appeal. 1999, c. 1, s. 1.

#### **Finality of decision**

16 A decision of the Appeals Tribunal on a matter referred to in Section 15 is not subject to appeal, review or challenge in any court. 1999, c. 1, s. 1.

#### **Entitlement to medical aid**

17 A worker who is entitled to receive a benefit pursuant to Section 15 may also be entitled to receive medical aid and Sections 116 to 125 apply with necessary changes. 1999, c. 1, s. 1.

#### **Regulations**

18 (1) The Governor in Council may make regulations to implement the benefits referred to in Sections 14 to 17.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1999, c. 1, s. 1.

#### **Effective date of benefits**

19 (1) The benefits referred to in Sections 14 and 15 must be paid effective January 1, 1999.

(2) For greater certainty, a worker referred to in Section 14 or 15 is not entitled to a benefit pursuant to those Sections for a period of time prior to January 1, 1999. 1999, c. 1, s. 1.

#### **Presumption re coal miners**

20 Any worker found dead in the underground workings of a coal mine is presumed to have died as a result of personal injury by accident arising out of and in the course of the worker's employment, unless there is evidence sufficient to rebut the presumption. 1994-95, c. 10, s. 11.

#### **Compensation for occupational disease**

21 (1) Where an occupational disease is due to the nature of any employment to which this Part applies in which a worker was engaged, whether under one or more employments, and

(a) the occupational disease results in loss of earnings or permanent impairment; or

(b) the worker's death is caused by the occupational disease,

the worker is entitled to compensation as if the occupational disease was a personal injury by accident.

(2) Where a worker suffers from an occupational disease, the date of the worker's injury, for the purpose of this Act, is the earliest of

(a) the date on which the occupational disease results in loss of earnings;

(b) the date on which the Board determines the worker has a permanent impairment caused by the occupational disease; and

(c) the date on which the worker's death is caused by the occupational disease.

(3) Where any worker

(a) was employed at or immediately before the date of injury in any process, trade or occupation prescribed by the Board by regulation; and

(b) the disease contracted by the worker is set opposite to the description of the process, trade or occupation in the regulations,

the disease contracted by the worker is presumed, unless the contrary is shown, to have been due to the worker's employment in that process, trade or occupation.

(4) Nothing in this Section affects the right of a worker to compensation in respect of a disease to which this Section does not apply, if the disease is the result of any injury in respect of which the worker is entitled to compensation pursuant to this Part.

(5) Notwithstanding subsection (1), no compensation is payable to a worker who suffers from an occupational disease if, at the time of entering into employment, the worker has made a wilful and false representation that the worker did not previously suffer from the occupational disease for which the worker is claiming compensation. 1994-95, c. 10, s. 12.

#### **Post-traumatic stress disorder**

22 (1) In this Section,

“front-line or emergency-response worker” means a continuing-care assistant, correctional officer, emergency-response dispatcher, firefighter, nurse, paramedic, police officer or person in an occupation prescribed by the regulations;

“post-traumatic stress disorder” means post-traumatic stress disorder as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association;

“prescribed diagnostician” means a person prescribed by the regulations who may diagnose a worker with post-traumatic stress disorder for the purpose of this Section.

(2) Subject to subsections (3) to (5), where a front-line or emergency-response worker is diagnosed with post-traumatic stress disorder by a prescribed diagnostician, the post-traumatic stress disorder is, unless the contrary is shown, presumed to have arisen out of and in the course of the worker's employment in response to a traumatic event or a series of traumatic events to which the worker was exposed in carrying out the worker's duties as a front-line or emergency-response worker.

(3) The presumption created by subsection (2) applies on and after October 26, 2013.

(4) The presumption created by subsection (2) applies if the worker is diagnosed

(a) while the worker is employed as a front-line or emergency-response worker; or

(b) within the period prescribed by the regulations following the worker ceasing to be employed as a front-line or emergency-response worker.

(5) A worker is not entitled to benefits under this Act for post-traumatic stress disorder if it is shown that the worker's post-traumatic stress disorder was caused by a decision or action of the worker's employer relating to the worker's employment, including a decision to

(a) change the work to be performed or the working conditions;

- (b) discipline the worker; or
- (c) terminate the worker's employment.

(6) Subject to the regulations, the Board shall assist a front-line or emergency-response worker who is entitled to benefits for post-traumatic stress disorder under this Act in obtaining treatment from a culturally competent clinician who is familiar with the research concerning treatment for post-traumatic stress disorder.

(7) Where a worker has filed a claim in respect of post-traumatic stress disorder before October 26, 2018, and the claim has been denied, the worker may re-file the claim under this Section unless prohibited from doing so by the regulations.

(8) The Governor in Council may make regulations

- (a) prescribing occupations for the purpose of the definition of front-line or emergency-response worker;
- (b) prescribing persons as prescribed diagnosticians;
- (c) prescribing the period following the worker ceasing to be employed as a front-line or emergency-response worker within which a diagnosis of post-traumatic stress disorder must be made for the presumption created by subsection (2) to apply;
- (d) respecting the obligation of the Board to assist a front-line or emergency-response worker under subsection (6);
- (e) respecting the circumstances in which a worker is prohibited from re-filing a claim under subsection (7);
- (f) defining "continuing-care assistant", "correctional officer", "emergency-response dispatcher", "firefighter", "nurse", "paramedic", "police officer" and any other word or expression used but not defined in this Section;
- (g) respecting any matter the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Section.

(9) The exercise by the Governor in Council of the authority contained in subsection (8) is a regulation within the meaning of the *Regulations Act*, 2017, c. 16, s. 3.

### **Silicosis or pneumoconiosis**

**23 (1)** Where

- (a) the occupational disease from which the worker suffers is silicosis or pneumoconiosis; and
- (b) the worker was exposed to silica dust or coal dust outside the Province,

compensation is payable to the worker if the provisions of subsection 21(1) are satisfied and

(c) the worker was a resident of the Province during the three years immediately preceding the date of the injury determined pursuant to subsection 21(2); and

(d) at least 50% of the worker's exposure to silica dust or coal dust was in the worker's employment in an industry to which this Part applies.

(2) Where compensation is payable pursuant to subsection (1), the worker is eligible for compensation proportionate to the period of the worker's total exposure to silica dust or coal dust that occurred within the Province.

(3) Where

(a) compensation is payable pursuant to subsection (1); and

(b) compensation is also payable to the worker in a jurisdiction outside the Province as a result of the worker's exposure to silica dust or coal dust,

the Board may reduce any compensation payable pursuant to this Part by the amount payable pursuant to the legislation of the other jurisdiction. 1994-95, c. 10, s. 13; 2017, c. 16, s. 4.

#### **Time limit for submitting claim**

**24 (1)** No compensation is payable pursuant to Section 23 unless the claim for compensation is filed with the Board

(a) within five years after the worker ceased to be regularly employed in an industry where the worker was exposed to silica dust or coal dust; and

(b) within one year after the worker or worker's dependant learns that the injury or death resulted from silicosis or pneumoconiosis.

(2) Notwithstanding subsection (1), the Board may pay a claim for uncomplicated silicosis if

(a) the worker is a resident of the Province at the time the claim is made; and

(b) the worker has not been exposed to silica dust elsewhere than in the Province.

(3) The Board shall not pay compensation pursuant to subsection (2) for any period of time prior to the date the worker's claim is filed with the Board.

(4) Notwithstanding subsections (1) and (2), the Board in its discretion, upon written application, may at any time reconsider or receive a claim for compensation based upon the injury or death of a worker resulting from silicosis or pneumoconiosis and consider the claim on its merits and may pay compensation, but no compensation may be paid for any period of time prior to the date the application, pursuant to this subsection, is filed with the Board. 1994-95, c. 10, s. 14; 2017, c. 16, s. 5.

**Compensation for exposure to radiation**

**25 (1)** Where the occupational disease from which the worker suffers was caused by exposure to radiation, the worker is eligible for compensation proportionate to the amount of the worker's total exposure to radiation that occurred within the Province.

**(2)** Every employer, who makes use of X-rays, isotopes or any other form of radiation likely to prove a hazard to a worker exposed to it, shall make, retain and furnish to the Board a record of the exposure on a form and in a manner prescribed or approved by the Board. 1994-95, c. 10, s. 15.

**Payments subject to agreements**

**26** Sections 23 to 25 are subject to any agreement entered into pursuant to Section 182 with respect to the sharing of costs between the Board and a workers' compensation board or similar authority in any jurisdiction where the worker was exposed to silica dust, coal dust or radiation. 1994-95, c. 10, s. 16.

**Medical examination for occupational disease**

**27** The Board or an employer, with the approval of the Board, may, in writing, require any worker employed by the employer to undergo a medical examination for the purpose of determining whether or to what extent the worker is affected by an occupational disease. 1994-95, c. 10, s. 17.

**Apportionment of cost of claim**

**28** Where an occupational disease is contracted gradually, the Board may apportion the cost of compensation and other expenditures made by the Board among the employers who have employed the worker in employment to which the occupational disease is due. 1994-95, c. 10, s. 18.

**RESIDENCY AND ELECTION TO CLAIM****Residency rules**

**29** Subject to Sections 30 to 37 and 182, no compensation is payable to a worker pursuant to this Part unless

- (a) the place where the worker usually works for the employer is in the Province; and
- (b) the accident occurs in the Province. 1994-95, c. 10, s. 19.

**Accident during absence from Province**

- 30 (1)** Where
- (a) a worker's residence is within the Province;
  - (b) the place where the worker usually works for the employer is within the Province;
  - (c) the place of business or chief place of business of the employer is within the Province;
  - (d) an accident occurs while a worker is employed outside the Province; and



(e) at the time of the accident the worker had been employed outside the Province for less than six months,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province.

**(2) Where**

- (a) a worker's residence is within the Province;
- (b) the place where the worker usually works for the employer is within the Province;
- (c) the place of business or chief place of business of the employer is within the Province; and
- (d) the employment of the worker outside the Province lasts or is likely to last for six or more months,

the worker's employer may apply to the Board to be assessed on the earnings of the worker.

**(3) Where**

- (a) an application made pursuant to subsection (2) is approved by the Board; and
- (b) an accident occurs while the worker is employed outside the Province,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province. 1994-95, c. 10, s. 20.

**Application by employer to be assessed**

**31 Where**

- (a) the residence of a worker is outside the Province;
- (b) the place where the worker usually works for the employer is outside the Province; and
- (c) the worker's employment within the Province lasts or is likely to last for more than five days,

the worker's employer shall apply to the Board to be assessed on the earnings of the worker and the worker is a worker for the purpose of subsection 3(1). 1994-95, c. 10, s. 21; 1999, c. 1, s. 2.

**Accident during temporary absence**

**32 Where**

- (a) the residence of a worker is outside the Province;
  - (b) the place where the worker usually works for the employer is within the Province;
  - (c) the place of business or chief place of business of the employer is within the Province;
  - (d) an accident occurs while the worker is outside the Province;
- and

- (e) at the time of the accident the worker was outside the Province merely for some temporary purpose connected with the worker's employment within the Province,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province. 1994-95, c. 10, s. 22.

#### **Compensation where entitlement outside Province**

##### **33 Where**

- (a) an accident occurs while a worker is outside the Province;
- (b) the place of business or chief place of business of the employer is outside the Province; and
- (c) the worker is entitled to compensation pursuant to the law of the place where the accident occurred,

the worker may not claim compensation pursuant to this Part, whether the worker's residence is within or outside the Province, unless

- (d) the place where the worker usually works for the employer is within the Province; and
- (e) at the time of the accident the worker was outside the Province merely for some temporary purpose connected with the worker's employment within the Province. 1994-95, c. 10, s. 23.

#### **Accident outside Province in transportation industry**

##### **34 Where**

- (a) an accident occurs outside the Province in connection with the operation of
  - (i) a ship, boat or other vessel, or
  - (ii) an aircraft, train, truck, bus or other vehicle used to transport goods or passengers;
- (b) the worker's residence is within the Province; and
- (c) the work or service performed by the worker is required to be performed both within and outside the Province,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province. 1994-95, c. 10, s. 24.

#### **Assessment of employer**

**35** Where a worker is employed outside the Province and the circumstances of

- (a) the place of business or chief place of business of the worker's employer;
- (b) the residence of the worker; and
- (c) the worker's usual place of employment,

are such that, where an accident occurred while the worker was outside the Province, the worker could claim compensation as if the accident had occurred in the

Province, the worker's employer shall declare and must be assessed on the earnings of the worker in the same way and in the same amounts as though the worker was employed within the Province. 1994-95, c. 10, s. 25.

**Liability of employer where earnings not reported**

**36 (1)** Where

(a) compensation is payable for an injury that occurred outside the Province; and

(b) the worker's employer has not reported the full earnings of the worker to whom the injury occurred,

the employer is liable, unless relieved by the Board, for the full amount of compensation and other expenditures made by the Board.

(2) The Board may collect the amount for which the employer is liable pursuant to subsection (1) in the same manner as the collection of an assessment. 1994-95, c. 10, s. 26.

**Election to claim compensation**

**37 (1)** Where a worker is entitled to compensation pursuant to

(a) the laws of the jurisdiction where the accident occurred; and

(b) this Part,

the worker shall decide to be compensated according to either the laws of the jurisdiction where the accident occurred or this Part.

(2) Notice in writing of a decision made pursuant to subsection (1) must be given to the Board within six months of the occurrence of the accident.

(3) Where, pursuant to subsection (1), a worker

(a) decides to claim compensation in the jurisdiction where the accident occurred; or

(b) fails to make an election,

the worker may not claim compensation pursuant to this Part. 1994-95, c. 10, s. 27.

**THIRD PARTY CLAIMS AND SUBROGATION**

**Compensation as exclusive right**

**38 (1)** The rights provided by this Part are in lieu of all rights and rights of action to which a worker, a worker's dependant or a worker's employer are or may be entitled against

(a) the worker's employer or that employer's servants or agents; and

(b) any other employer subject to this Part, or any of that employer's servants or agents,

as a result of any personal injury by accident

(c) in respect of which compensation is payable pursuant to this Part; or

(d) arising out of and in the course of the worker's employment in an industry to which this Part applies.

(2) Clause (1)(b) does not apply where the injury results from the use or operation of a motor vehicle registered or required to be registered pursuant to the *Motor Vehicle Act*. 1994-95, c. 10, s. 28.

#### **Determination whether right of action is barred**

**39** (1) Any party to an action may apply to the Chief Appeal Commissioner of the Appeals Tribunal for determination of whether the right of action is barred by this Part.

(2) An application made pursuant to subsection (1) may be determined only by the Appeals Tribunal.

(3) The Appeals Tribunal has exclusive jurisdiction to make a determination of whether the right of action is removed by this Part.

(4) The decision of the Appeals Tribunal pursuant to this Section is final and conclusive and not open to appeal, challenge or review in any court, and, where the Appeals Tribunal determines that the right of action is barred by this Part, the action is forever stayed. 1994-95, c. 10, s. 29.

#### **Claims against other persons**

**40** (1) Where a worker suffers a personal injury by accident arising out of and in the course of employment in such circumstances as to entitle the worker or the worker's dependants to an action against some person other than a person against whom all rights of action are barred pursuant to Section 38, the worker or the worker's dependants, where entitled to compensation under this Part, may claim such compensation, or may bring such action, provided a written notice of election to bring such action is made to the Board.

(2) A written election must be received by the Board within 180 days of the date of the accident and, notwithstanding any enactment, the time for filing a written election may not be extended.

(3) Where any compensation is paid prior to the date of election, the Board is subrogated to the position of the worker or the worker's dependants to the extent of such payment and must be paid in priority from any amount the worker or dependant receives from any action pursuant to subsection (1).

(4) Where no written election is received by the Board within 180 days, the Board is

(a) subrogated to the position of the worker or dependant for the whole or any outstanding part of the cause of action; and

(b) vested with all the rights of the worker or dependant to the cause of action.

(5) Where the Board is subrogated to a cause of action pursuant to subsection (4), an action may be taken against any person by

(a) the Board in the name of the worker, the worker's personal representative or a dependant of the worker, without the consent of the person in whose name the action was taken;

(b) the Board in its own name; or

(c) where the Board does not exercise its rights pursuant to clause (a) or (b), the worker, the worker's personal representative or a dependant of the worker, with the prior consent of the Board.

(6) Where a cause of action is pursued by a worker under subsection (1) or clause (5)(c) and less is recovered and collected than the amount of the compensation to which the worker or the worker's dependants would be entitled under this Part, the worker or the worker's dependants are entitled to compensation under this Part to the extent of the amount of such difference, if the prior written approval of the Board to such settlement has been given.

(7) Where the Board is subrogated to a cause of action, the Board has full discretion to conduct the litigation as the Board considers appropriate.

(8) Where a worker has received compensation prior to the election referred to in subsection (1), any settlement of any right of action by the worker or the worker's dependants is of no effect unless made with the prior written approval of the Board.

(9) The Board may, at any time and on any terms, agree to a settlement in respect of a cause of action it is subrogated to pursuant to subsection (4).

(10) The cost of any medical aid rendered to a worker may be recovered in the action by the Board taking the cause of action referred to in subsection (4).

(11) A worker shall co-operate with the Board in respect of a cause of action referred to in subsection (4) and where, in the opinion of the Board, the worker has failed to co-operate with the Board, the Board may suspend, reduce or terminate compensation being paid to the worker pursuant to this Part.

(12) Where the Board is subrogated to a cause of action pursuant to this Section, any settlement of the cause of action by any party or parties, other than the Board, is of no force and effect unless made with the written approval of the Board. 1999, c. 1, s. 3.

#### **Application of money recovered**

**41 (1)** Money recovered in an action or settlement of the action pursuant to Section 40 must be paid to the Board.

(2) Where any amount received by the Board is in excess of the cost, as determined by the Board, of the compensation payable to the worker by the Board and other expenditures payable by the Board, the Board shall pay the excess amount to the worker, the worker's personal representative or the worker's dependant.

(3) Where the Board accepts an amount in full settlement of the cause of action, the Board has the authority to release the person paying the money, or the person on whose behalf the money is paid, from all liability in the cause of action including any rights of the worker or the worker's dependants. 1999, c. 1, s. 3.

#### **Right of action in another jurisdiction**

42 Where a worker or worker's dependant entitled to compensation pursuant to this Part has a right of action in a jurisdiction other than the Province in connection with the loss of earnings or permanent impairment for which compensation is payable,

(a) the Board may request the worker or worker's dependant to take an action in that other jurisdiction; and

(b) the worker or worker's dependant shall assign the right to damages recoverable, and all damages that the worker or worker's dependant recovers, under that action to the Board,

and the Board may withhold payment of compensation to the worker or worker's dependant until the worker or worker's dependant takes the action or makes the assignment. 1994-95, c. 10, s. 32.

#### **Bar to third party proceedings**

43 (1) No party in any action may bring any action or proceeding for contribution or indemnity against any employer or worker against whom the plaintiff in the action is barred from taking an action pursuant to this Part.

(2) Where the defendant in the action is barred from taking third party proceedings against an employer or worker pursuant to subsection (1) and the employer or worker contributed to the damage or loss of the plaintiff in the action, the court shall hold the defendant liable only for that portion of the damage or loss caused by the defendant's own fault or negligence. 1994-95, c. 10, s. 33.

### **PERMANENT-IMPAIRMENT BENEFIT**

#### **Permanent-impairment benefit**

44 (1) Where a permanent impairment results from an injury, the Board shall pay the worker a permanent-impairment benefit.

(2) The existence and degree of a worker's permanent impairment shall be

(a) determined by the Board; and

(b) expressed as a percentage of total impairment.

(3) The Board

(a) shall establish a permanent-impairment rating schedule to be applied in calculating the award for a permanent impairment resulting from an injury; and

(b) may prescribe the rating schedule referred to in clause (a) as a regulation.

(4) Subject to subsection (5), the Board shall determine the amount of a worker's permanent-impairment benefit by the amount determined by the formula

$$A \times B$$

where

A is 30% of 85% of the worker's net average earnings calculated in accordance with Sections 50 to 59; and

B is the percentage of permanent impairment suffered by the worker, calculated in accordance with the rating schedule established pursuant to subsection (3).

(5) Subject to Section 84, the permanent-impairment benefit established by subsection (4) is payable for the lifetime of the worker.

(6) This Section does not apply in respect of a worker who dies as a result of an injury before a determination of the degree of permanent impairment is made. 1994-95, c. 10, s. 34.

#### **Compensation for coal miners**

45 (1) Any coal miner who

(a) has worked at the face of a mine or in similar conditions 20 years or more; and

(b) suffers from a permanent impairment that is a loss of lung function,

must be compensated according to the permanent impairment as calculated pursuant to Section 44.

(2) Notwithstanding clause 84(1)(a), the Board may adjust its determination of the amount of compensation payable as a permanent-impairment benefit to a coal miner who qualifies for compensation pursuant to subsection (1) only if there is, in the Board's opinion, an increase in the coal miner's loss of lung function that was not taken into account at the most recent determination of the coal miner's permanent-impairment rating. 1994-95, c. 10, s. 35; 2012, c. 65, s. 1.

#### **Presumption respecting firefighter**

46 (1) In this Section and Section 47, "firefighter" means an employee, including officers and technicians, employed by a municipality or the Department of National Defence and assigned exclusively to fire protection and fire prevention duties notwithstanding that those duties may include the performance of ambulance or rescue services, and includes a volunteer firefighter member of a fire department who performs those duties.

(2) Where a worker who is or has been a firefighter suffers an accident that is a cancer or other disease that is prescribed by the Governor in Council by regulation, the accident is presumed to be an occupational disease, the dominant cause of which is the employment or deemed employment as a firefighter, unless the contrary is proven.

who (3) The presumption in subsection (2) applies only to a worker

(a) has been a member of a fire protection service of a municipality, the Department of National Defence or a fire department that includes or has as members volunteer firefighters;

(b) has been a member of the fire protection service referred to in clause (a) for a minimum period prescribed by the Governor in Council by regulation;

(c) has been regularly exposed to the hazards of a fire scene, other than a forest-fire scene, throughout that period; and

(d) satisfies any other condition or restriction on the availability of the presumption in relation to a particular disease as prescribed by the Governor in Council by regulation.

(4) Subject to subsection (5), the presumption in subsection (2) applies to accidents that happen on or after January 1, 1993.

(5) For any disease prescribed pursuant to this Section on or after October 30, 2020, the presumption in subsection (2) applies only to accidents that happen no sooner than one year before the date the disease is prescribed.

(6) For the purpose of this Section and Sections 47 and 48, with respect to an accident referred to in subsection (2) that happens no sooner than one year before October 30, 2020,

(a) a volunteer firefighter member of a fire department is deemed to be a worker; and

(b) the municipality within whose boundaries the fire department referred to in clause (a) is located and serves is deemed to be the employer of the volunteer firefighter.

(7) The Governor in Council may make regulations

(a) prescribing diseases for the purpose of subsection (2);

(b) prescribing periods of employment or volunteer work for the purpose of subsection (3), including different periods for different diseases;

(c) prescribing any other condition or restriction on the availability of the presumption in relation to a particular disease.

(8) The exercise by the Governor in Council of the authority contained in subsection (7) is a regulation within the meaning of the *Regulations Act*, 2019, c. 40, s. 3.

### Exclusions

47 (1) Subsection 97(2) does not apply with respect to a firefighter who learned before July 30, 2003, that the firefighter suffered from a disease prescribed pursuant to Section 46.

(2) For any disease prescribed pursuant to Section 46 on or after October 30, 2020, subsection 97(2) does not apply with respect to a firefighter who



learned before the disease was prescribed that the firefighter suffered from the disease.

(3) For greater certainty, subsection (2) applies only to a firefighter to whom the presumption in subsection 46(2) applies, in accordance with subsection 46(5). 2019, c. 40, s. 3.

#### **Compensation calculation**

48 For greater certainty, compensation payable for the period before October 30, 2020, must be calculated in accordance with this Part and not in accordance with Chapter 508 of the Revised Statutes, 1989, as it read from time to time prior to February 1, 1996. 2019, c. 40, s. 3.

#### **Presumption where 100% impairment**

49 Where

(a) any worker has a permanent impairment rated at 100% on the permanent-impairment rating schedule established pursuant to Section 44; and

(b) the worker dies,

the worker's death is presumed to be the result of the injury, unless there is evidence sufficient to rebut the presumption. 1994-95, c. 10, s. 36.

### **EARNINGS-REPLACEMENT BENEFITS**

#### **Earnings-replacement benefit**

50 (1) Where a loss of earnings results from an injury, an earnings-replacement benefit is payable to the worker in accordance with this Section.

(2) The amount of any earnings-replacement benefit payable to a worker is the difference between

(a) an amount equal to 75% of the worker's loss of earnings; and

(b) the amount of any permanent-impairment benefit payable to the worker pursuant to Section 44.

(3) The amount of any earnings-replacement benefit payable to a worker after the worker has received compensation pursuant to subsection (2) for a total of 26 weeks is the difference between

(a) an amount equal to 85% of the worker's loss of earnings; and

(b) the amount of any permanent-impairment benefit payable to the worker pursuant to Section 44.

(4) Notwithstanding subsection (1), the Board shall not pay compensation pursuant to subsection (1) until the worker who is injured is unable to continue to work with the employer for whom the worker was working when the injury occurred for a period of time during which the worker would have received

remuneration from that employer equivalent to 40% of the worker's net average weekly compensation.

(5) The Board shall not pay compensation to a worker in respect of the period of time referred to in subsection (4) except as provided for in subsection (6).

(6) Where a loss of earnings results from an injury for more than five weeks, the Board shall pay to the worker the amount deducted pursuant to subsection (4).

(7) Subject to subsection (8) and Sections 85 and 86, earnings-replacement benefits are payable until the earlier of

(a) the date the Board determines that the loss of earnings has ended or no longer results from the injury; and

(b) the date the worker attains the age of 65 years.

(8) Where a worker is 63 years of age or older at the commencement of the worker's loss of earnings, the Board may pay the earnings-replacement benefits for a period of not more than 24 months following the date the loss of earnings commences.

(9) The loss of earnings referred to in subsection (1) must be calculated in accordance with Section 51.

(10) Earnings-replacement benefits are payable periodically, in the manner and form and at the times determined by the Board. 1994-95, c. 10, s. 37; 1999, c. 1, s. 4.

## LOSS OF EARNINGS

### Calculation of loss of earnings

51 For the purpose of this Part, the loss of earnings of the worker is the difference between

(a) the worker's net average weekly earnings before the loss of earnings commences; and

(b) the net average weekly amount that the Board determines the worker

(i) is earning,

(ii) is capable of earning in suitable and reasonably available employment, or

(iii) is receiving or is entitled to receive as a periodic benefit pursuant to the Canada Pension Plan or the Quebec Pension Plan, in which case, the Board shall include 50% of the benefit,

after the loss of earnings commences. 1994-95, c. 10, s. 38.

**Calculation of net average earnings**

**52 (1)** For the purpose of this Part, the net average earnings of a worker are the worker's gross average earnings calculated in accordance with Section 55, less the probable deductions for

- (a) income tax payable by the worker;
- (b) Canada Pension Plan premiums or Quebec Pension Plan premiums payable by the worker;
- (c) employment-insurance premiums payable by the worker; and
- (d) any other type of deduction the Board may prescribe by regulation.

**(2)** The income tax payable pursuant to clause (1)(a) may be calculated by using

- (a) as income the worker's income from employment and, where employment-insurance benefits have been included in average earnings, the worker's income from employment-insurance benefits; and
- (b) as deductions the worker's basic personal tax credits or exemptions and tax credits or exemptions for a person who is a dependant of the worker pursuant to the *Income Tax Act* (Canada).

**(3)** The Board shall, as of January 1st in each year, establish a schedule or procedure for determining the probable deductions required by subsection (1).

**(4)** In establishing a schedule and procedure pursuant to subsection (3) and in calculating probable deductions pursuant to subsection (1), it is not necessary that the Board consider a worker's actual circumstances or deductions. 1994-95, c. 10, s. 39.

**Relevant times**

**53 (1)** Subject to subsections (2) and (3), a worker's net average earnings and maximum earnings are the worker's net average earnings and maximum earnings as of the date of injury.

**(2)** Where a worker's loss of earnings resulting from an injury has ended, and

- (a) the worker subsequently suffers a loss of earnings resulting from the same injury; and
- (b) the subsequent loss of earnings occurs more than 12 months after the initial loss of earnings has ended,

the worker's net average earnings and maximum earnings are

- (c) the worker's net average earnings and maximum earnings before the initial loss of earnings; or
- (d) the worker's net average earnings and maximum earnings at the time of the subsequent loss of earnings,

whichever appears to the Board to best represent the actual loss of earnings suffered by the worker by reason of the injury.

(3) Where a worker's loss of earnings resulting from an injury commences more than 12 months after the injury, the worker's net average earnings are

(a) the worker's net average earnings and maximum earnings before the injury; or

(b) the worker's net average earnings and maximum earnings before the loss of earnings commences,

whichever appears to the Board to best represent the actual loss of earnings suffered by the worker by reason of the injury. 1994-95, c. 10, s. 40.

#### AVERAGE EARNINGS

##### Maximum gross annual earnings

54 The maximum amount for a worker's gross annual earnings for the purpose of this Part is

(a) where the injury occurs before February 1, 1996, the maximum amount established from time to time pursuant to a predecessor Act;

(b) \$38,000 on and after February 1, 1996; and

(c) on and after January 1, 1996, a percentage, determined by the Governor in Council, of the average industrial wage for the Province. 1994-95, c. 10, s. 41.

##### Gross average earnings

55 (1) Subject to this Section, a worker's gross average earnings are

(a) the worker's regular salary or wages; and

(b) any other types or amounts of income as the Board may prescribe by regulation,

calculated over a period up to three years immediately preceding the commencement of the loss of earnings, expressed as a weekly amount.

(2) In choosing the period for the purpose of subsection (1), the Board may

(a) choose any period that, in the opinion of the Board, allows it to best represent the actual loss of earnings suffered by the worker as a result of the injury; and

(b) vary the period from time to time.

(3) In prescribing types and amounts of income pursuant to subsection (1) the Board

(a) may not prescribe as income pregnancy or parental benefits received pursuant to the *Employment Insurance Act* (Canada); and

(b) may make distinctions between temporary and extended earnings-replacement benefits. 1994-95, c. 10, s. 42.

**Earnings where impracticable to compute**

**56** Where it is impracticable to compute the earnings of a worker as a consequence of

- (a) the length of time the worker has been employed; or
- (b) the casual nature of the worker's employment,

the Board may determine the worker's earnings in the way that appears to the Board to best represent the actual loss of earnings suffered by the worker by reason of the injury. 1994-95, c. 10, s. 43.

**Earnings where concurrent contracts of employment**

**57** Where a worker enters into concurrent contracts of service with two or more employers, the worker's average earnings must be computed on the basis of what the worker was earning from all the worker's employers. 1994-95, c. 10, s. 44.

**Earnings where worker is learner**

**58 (1)** Where the Board is satisfied that a worker's average earnings before the loss of earnings commences do not fairly represent the worker's actual loss of earnings because the worker was a learner, the Board may deem the worker's average earnings to be an amount that it determines better reflects the probable earnings of the worker had the worker, in the normal course, become qualified in the worker's trade or occupation.

**(2)** The Board may, by regulation, prescribe a maximum amount of average earnings that may be deemed for the purpose of this Section. 1994-95, c. 10, s. 45.

**Earnings where worker is young**

**59 (1)** Where the Board is satisfied that a worker's average earnings before the loss of earnings commences do not fairly represent the worker's actual loss of earnings because of the worker's age, the Board may deem the worker's average earnings to be an amount that it determines better reflects the probable earnings of the worker.

**(2)** Subsection (1) does not apply to a worker who had attained the age of 30 years on or before the date of the injury.

**(3)** The Board may, by regulation, prescribe a maximum amount of average earnings that may be deemed for the purpose of this Section. 1994-95, c. 10, s. 46.

**Allocation of cost of additional earnings**

**60** The Board may allocate to any fund or funds any additional cost or portion of the cost incurred pursuant to Section 57, 58 or 59 as a result of

- (a) including earnings from a worker's employment in an industry to which this Part does not apply;

- (b) including earnings from employers other than the employer at which the injury occurs; and
- (c) adjusting earnings pursuant to Sections 58 and 59. 1994-95, c. 10, s. 47.

### Maximum compensation

**61 (1)** Notwithstanding any other provision of this Part, the total amount of compensation payable to a worker pursuant to this Part and any predecessor Act may not exceed

- (a) 75% of the net maximum earnings for the most recent year in which the worker suffered an injury resulting in loss of earnings; and
- (b) 85% of the net maximum earnings for the most recent year in which the worker suffered an injury resulting in loss of earnings, after the worker has received compensation pursuant to clause (a) for a total of 26 weeks.

**(2)** To give effect to subsection (1), the Board may

- (a) consider the length of time a worker is in receipt of any compensation during any year and the resulting effect on probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums or employment-insurance premiums payable by the worker, and recalculate the compensation based on those considerations;
- (b) deem any entitlement to a refund or reduction of the probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums, or unemployment-insurance premiums payable by the worker to be earnings that the worker is capable of earning after the injury;
- (c) deduct from compensation to which the worker may become entitled to prevent any payment of compensation in excess of the amounts set out in subsection (1);
- (d) prescribe, by regulation, criteria to reduce the deduction referred to in clause (c);
- (e) consider any compensation paid in excess of the compensation set out in subsection (1) to be overpayments of compensation.

**(3)** Subsection (1) does not apply to any worker who was, on February 1, 1996, receiving compensation pursuant to a predecessor Act, the total amount of which exceeded the amounts set out in subsection (1), until there is for any reason a decrease in the amount of compensation payable to the worker so that the compensation payable to the worker is equal to or less than the amount set out in subsection (1). 1994-95, c. 10, s. 48.

## ANNUITY

### Annuity for worker

**62 (1)** When a worker becomes entitled to an extended earnings-replacement benefit, the Board shall reserve an amount equal to five per cent of the

extended earnings-replacement benefit and any permanent-impairment benefit payable to the worker to provide an annuity for the worker.

(2) Where a worker would have been entitled to an extended earnings-replacement benefit but for subsection 50(3), the Board shall reserve an amount equal to five per cent of the extended earnings-replacement benefit that would have been payable to provide an annuity for the worker.

(3) The amount reserved pursuant to subsections (1) and (2) must be paid and administered in accordance with Sections 63 to 70. 1994-95, c. 10, s. 50.

#### GENERAL ANNUITY PROVISIONS

##### Application of annuity provisions

63 Sections 64 to 70 apply to any amount reserved as an annuity pursuant to Section 62 or 79. 1994-95, c. 10, s. 51.

##### Payment and term of annuity

64 (1) Any amount reserved as an annuity, together with accrued interest, is payable

(a) in periodic instalments beginning at

(i) the date the worker attains the age of 65 years,  
or

(ii) in the case of a person receiving a survivor pension, the date the survivor pension terminates pursuant to subsection 72(3); or

(b) at any time and in the manner the Board determines, if the amount reserved by the Board as an annuity is less than an amount prescribed by the Board by regulation.

(2) The term of the annuity is as determined by the Board. 1994-95, c. 10, s. 52.

##### Annuity not deducted from other compensation

65 The Board shall not deduct any amount payable as an annuity from any other compensation paid by the Board. 1994-95, c. 10, s. 53.

##### Payment into fund or plan

66 (1) Any amount reserved as an annuity may be

(a) paid into a fund established by the Board; or

(b) where requested by the recipient, paid into a registered retirement plan.

(2) Any fund established pursuant to clause (1)(a) may, with the approval of the Board of Directors, be administered by a recognized financial institution. 1994-95, c. 10, s. 54.

**Annuity is in addition to other benefits**

**67** The annuity created pursuant to Section 62 is in addition to and not in lieu of any benefit paid pursuant to the Canada Pension Plan, the Quebec Pension Plan or the *Old Age Security Act* (Canada). 1994-95, c. 10, s. 55.

**Payment where worker dies before annuity payable**

**68 (1)** Where a person for whom the Board reserves an annuity dies before the date fixed in Section 64, the Board may pay

(a) where the person is survived by a spouse, to the spouse; or

(b) where the person is survived by a dependent child or children but not a spouse, to the dependent child or children,

a lump sum equivalent to the value of the accumulated capital and interest.

**(2)** Where the lump sum referred to in subsection (1) is greater than an amount that may be determined by the Board by regulation, the Board may reserve the lump sum as an annuity to be administered by the Board in accordance with Section 66. 1994-95, c. 10, s. 56.

**Payment where worker dies after annuity payable**

**69** Where the recipient of an annuity dies before the term of the annuity expires, the balance of the annuity must be paid

(a) to any person who has been designated, in a manner satisfactory to the Board, by the recipient; or

(b) where no designation is made pursuant to clause (a) and the recipient is

(i) survived by a spouse, to the spouse, or

(ii) survived by a dependent child or children but not a spouse, to the dependent child or children. 1994-95, c. 10, s. 57.

**Payment of annuity into Accident Fund**

**70 (1)** Where

(a) there is no surviving spouse or dependent child for the purpose of Section 68 or 69; or

(b) the recipient has not made a designation for the purpose of Section 69,

the accumulated capital and interest must be paid into the Accident Fund.

**(2)** Where money payable under an annuity is unclaimed more than six years from the day the Board determines the first unclaimed payment is due, the accumulated capital and interest must be paid into the Accident Fund.

**(3)** Where the Board has paid an annuity into the Accident Fund pursuant to subsection (1) or (2), the Board is not liable to make any payment under the annuity. 1994-95, c. 10, s. 58.



## SURVIVOR BENEFITS

**Interpretation of Sections 72 to 81**

**71** For the purpose of Sections 72 to 81,

“death benefit” means a sum not less than \$15,000 prescribed by the Board by regulation;

“dependent-child benefit” means an amount, not less than \$196, prescribed by the Board by regulation;

“survivor pension” means an amount equal to 85% of the worker’s net average earnings before the accident. 1994-95, c. 10, s. 59.

**Survivor benefits**

**72 (1)** Where a worker dies as the result of an injury, the amount of compensation payable is

(a) the necessary expenses of the burial of the worker not exceeding \$4,000, or a larger amount prescribed by the Board by regulation;

(b) the expenses, or a portion of the expenses the Board considers reasonable, for transportation of the body of the worker from the place of death to the worker’s usual place of residence, not exceeding an amount prescribed by the Board by regulation; and

(c) where the worker has a dependent spouse,

(i) a death benefit, and

(ii) a survivor pension,

and where the worker has dependent children, each dependent child under the age of 18 years shall receive the dependent-child benefit on a monthly basis.

**(2)** The amount paid pursuant to subclause (1)(c)(ii) may not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings.

**(3)** Subject to subsection (6), a survivor pension payable pursuant to subsection (1) is payable until the worker would have attained the age of 65 years or until the surviving spouse attains the age of 65 years, whichever is later.

**(4)** Notwithstanding subsection (3), a survivor pension payable pursuant to subsection (1) is payable for life where

(a) the worker was injured before February 1, 1996; and

(b) the worker died as a result of the injury on or after February 1, 1996.

**(5)** Where, pursuant to this Section, a survivor pension is payable for life, Section 79 does not apply.

**(6)** Where no compensation is payable pursuant to subsection (1), the Board may, subject to subsection (7),

(a) recognize persons other than a worker's spouse or children as dependants; and

(b) pay compensation proportionate to the pecuniary loss or loss of valuable services suffered by any person recognized pursuant to clause (a) as a result of the worker's death.

(7) The compensation payable pursuant to subsection (6) may not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings, to all of the worker's dependants.

(8) The Board shall pay compensation pursuant to subsection (6) until the earlier of

(a) the date when, in the opinion of the Board, the worker's support for the dependants might reasonably have been expected to cease; and

(b) five years after the date of the first payment made pursuant to subsection (6).

(9) Where a worker dies and at the time of the worker's death is in receipt of compensation payable to the worker pursuant to this Act, the dependent spouse or dependent children of the worker shall receive by way of compensation an amount equal to three times the monthly payment that would have been payable to the worker if the worker were alive.

(10) Notwithstanding subsection (9), where a worker dies and at the time of the worker's death is in receipt of compensation payable to the worker pursuant to this Act for a permanent impairment rated at 100% on the permanent-impairment rating schedule established pursuant to Section 44, the dependent spouse or dependent children of the worker shall receive by way of compensation in addition to the amount provided in subsection (9) a further amount equal to nine times the monthly payment that would have been payable to the worker if the worker were alive. 1994-95, c. 10, s. 60; 1999, c. 1, s. 6.

#### **Certain dependant spouses**

73 (1) In this Section, "former Act" means Chapter 508 of the Revised Statutes, 1989, as it read from time to time.

(2) This Section applies to a dependent spouse whose survivor benefits under the former Act were, before October 1, 1992, discontinued on remarriage pursuant to Section 61 of the former Act.

(3) A dependent spouse may apply to the Board to have survivor benefits reinstated pursuant to this Section and the Board may reinstate the benefits.

(4) An application pursuant to subsection (3) by a dependent spouse whose survivor benefits under the former Act were discontinued on remarriage before April 17, 1985, must be made on or before June 1, 2014.

(5) The Board may extend the deadline referred to in subsection (4), before or after it expires, if it appears to the Board that there are reasonable grounds for the extension.

(6) An application pursuant to subsection (3) must be made in writing.

(7) No application may be made pursuant to subsection (3) by the estate of a dependent spouse.

(8) No benefits may be reinstated pursuant to this Section for a period of time

(a) before April 17, 1985, for a dependent spouse whose survivor benefits under the former Act were discontinued before April 17, 1985; or

(b) before the later of April 17, 1985, and the date the survivor benefits were discontinued under the former Act for a dependent spouse whose survivor benefits under the former Act were discontinued on or after April 17, 1985, and before October 1, 1992.

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

(a) respecting the calculation of benefits pursuant to this Section;

(b) respecting the manner of reinstating benefits pursuant to this Section;

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

(10) The exercise by the Board of the authority contained in subsection (9) is a regulation within the meaning of the *Regulations Act*. 1999, c. 1, s. 7; 2002, c. 5, s. 56; 2013, c. 12, ss. 2, 3.

#### **Payment where no spouse**

74 (1) Where

(a) a worker dies leaving no spouse or the spouse of the worker dies; and

(b) there is a suitable person standing in the place of the parent and maintaining the worker's household,

the Board may, subject to subsection (2), pay compensation, in an amount and in the manner determined by the Board, to that person.

(2) The total of the dependent-child benefits paid to the worker's children and the compensation paid pursuant to subsection (1) may not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings. 1994-95, c. 10, s. 61.

**Additional payment to dependent child**

75 (1) Where a dependant

- (a) is a child under the age of 18 years; and
- (b) both of the dependant's parents are deceased,

the Board may, in addition to any amount the dependant may be entitled to pursuant to this Part, pay the dependant any further amount the Board may determine.

(2) The total of all amounts paid to dependent children may not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings. 1994-95, c. 10, s. 62.

**Limitation on survivor pension**

76 (1) The Board shall pay only one survivor pension in respect of a worker's death.

(2) Where more than one person qualifies for a survivor pension as a spouse, the Board may apportion the survivor pension. 1994-95, c. 10, s. 63.

**Duration of dependent-child benefit**

77 (1) Subject to subsections (2) and (3), any payment of compensation to a dependent child ceases when the dependent child

- (a) attains the age of 18 years; or
- (b) dies,

whichever is earlier.

(2) Where a dependent child is in full-time attendance

- (a) at a secondary or post-secondary educational facility approved by the Board; or
- (b) in any other program of education approved by the Board,

the Board may make or continue to make payments of compensation to the dependent child up to the end of the school year in which the child attains the age of 25 years.

(3) Subject to subsection (4), where a dependent child is physically or mentally incapable of earning, the Board may pay compensation until the dependent child

- (a) is, in the opinion of the Board, physically or mentally capable of earning; or
- (b) dies,

whichever is earlier.

(4) The Board shall pay compensation pursuant to subsections (2) and (3) only as long as, in the opinion of the Board, the worker might reasonably have been expected to continue to support the child. 1994-95, c. 10, s. 64.

**Apportionment of compensation among dependants**

**78** Where the Board

- (a) pays compensation to more than one of a worker's dependants; and
- (b) ceases to pay compensation to any one of the dependants,

the remaining dependants are entitled to receive the amount of compensation they would have received had they been the only dependants entitled to compensation at the time of the death of the worker. 1994-95, c. 10, s. 65.

**Annuity for surviving spouse**

**79** (1) Where the Board is paying a survivor pension, the Board shall reserve an amount equal to five per cent of the survivor pension to provide an annuity for the surviving spouse.

(2) The amount reserved pursuant to subsection (1) must be paid and administered in accordance with Sections 63 to 70. 1994-95, c. 10, s. 66.

**Limit on number of benefits**

**80** Where any person

- (a) is entitled to be paid a survivor pension or a dependent-child benefit as a result of the death of a worker; and
- (b) subsequently becomes entitled to be paid a survivor pension or a dependent-child benefit as a result of the death of another worker,

that person may only be paid the greater of the survivor pensions or dependent-child benefits. 1994-95, c. 10, s. 67.

**Autopsies**

**81** (1) The Board may request the permission of any dependant or dependants to have an autopsy performed and, where the dependant or dependants refuse to permit the autopsy, the Board may refuse any claim for compensation made pursuant to this Part.

(2) Notwithstanding subsection (1), any request made by the Board for an autopsy must be made prior to the time the body of the worker is buried.

(3) The expenses of the autopsy must be paid out of the Accident Fund. 1994-95, c. 10, s. 68.

**INDEXING****“consumer price index” defined**

**82** In this Section and Section 83, “consumer price index” means the “all-items” Consumer Price Index for the Province as published monthly by Statistics Canada except if

- (a) no figure is published for a particular month; or

(b) after February 1, 1996, Statistics Canada uses a new method to determine the consumer price index for the Province for a particular month and the new method results in a change of more than one percentage point when compared with the former method,

in which cases the Board shall determine an amount that, in its opinion, represents the annual rate of increase in consumer prices for the Province. 1994-95, c. 10, s. 69.

#### **Calculation of indexing factor**

**83 (1)** Commencing January 1, 2000, the Board shall, as of January 1st in each year, determine an indexing factor based on one half of the percentage change in the consumer price index for the preceding year.

**(2)** Commencing January 1, 2000, the Board shall, as of January 1st in each year, adjust the amount of compensation payable as

- (a) permanent-impairment benefits;
- (b) extended earnings-replacement benefits;
- (c) survivor pensions;
- (d) dependent-child benefits; and
- (e) permanent pensions payable pursuant to a predecessor

Act,

by applying the indexing factor determined pursuant to subsection (1) to the amount of compensation payable for the preceding year.

**(3)** Nothing in this Section entitles a person to claim additional compensation for

- (a) any period before the effective date of an increase in compensation pursuant to subsection (2); or
- (b) any award commuted or paid as a lump sum before the effective date of the increase.

**(4)** Where a worker has been receiving a temporary earnings-replacement benefit for more than 12 continuous months, the Board shall, as of the next following January 1st, adjust the compensation payable to the worker at the rate and according to the procedure provided in subsection (2). 1994-95, c. 10, s. 70.

### **REVIEW OF COMPENSATION**

#### **Review of permanent-impairment benefit**

**84 (1)** The Board may review and adjust its determination of the amount of compensation payable as a permanent-impairment benefit if there is, in the Board's opinion, a change in the worker's condition that was not taken into account at the most recent determination of the worker's permanent-impairment rating by the Board.

**(2)** The Board may not review or adjust a permanent-impairment benefit pursuant to subsection (1) until 16 months have elapsed from the time of the Board's most recent determination of the worker's permanent-impairment rating. 1994-95, c. 10, s. 71; 1999, c. 1, s. 8.

**Review of temporary earnings-replacement benefit**

**85** The Board may review and adjust its determination of the amount of compensation payable to a worker as a temporary earnings-replacement benefit at any time. 1994-95, c. 10, s. 72.

**Review of extended earnings-replacement benefit**

**86 (1)** Subject to subsection (2), the Board may review and adjust its determination of the amount of compensation payable to a worker as an extended earnings-replacement benefit

(a) once, commencing in the 36th month after the date of the initial award of the benefit;

(b) once, commencing in the 24th month after a review pursuant to clause (a) is completed, if at the time the review pursuant to clause (a) is completed the Board is of the opinion that a further review is necessary;

(c) after a review of the permanent-impairment rating of the worker pursuant to subsection 84(1) results in an adjustment of the permanent-impairment rating of at least 10 percentage points according to the schedule established pursuant to Section 44; and

(d) at any time, if the extended earnings-replacement benefit was based on a misrepresentation of fact.

**(2)** The Board may not vary the amount of compensation payable as an extended earnings-replacement benefit unless the amount of the variation would be equal to at least 10% of the amount of compensation being paid at the time of review.

**(3)** Notwithstanding subsections (1) and (2), where a worker's permanent-impairment benefit is adjusted pursuant to Section 84, the Board may adjust the amount of compensation payable as an extended earnings-replacement benefit pursuant to this Section so that the adjusted permanent-impairment and extended earnings-replacement benefits total 85% of the loss of earnings calculated pursuant to Section 51.

**(4)** An award of an extended earnings-replacement benefit is final, subject to subsection (1), and may not be further reviewed or adjusted. 1994-95, c. 10, s. 73; 1999, c. 1, s. 9.

**Effect of certain losses of earnings**

**87 (1)** Notwithstanding Section 86, where a worker who is receiving an extended earnings-replacement benefit suffers a loss of earnings that

(a) is temporary;

(b) results from the injury for which the extended earnings-replacement benefit is being paid; and

(c) was not taken into account in the most recent setting or review of the extended earnings-replacement benefit,

the Board may pay to the worker a temporary earnings-loss supplement.

(2) A temporary earnings-loss supplement must be calculated in accordance with Sections 50 to 61. 1999, c. 1, s. 10.

#### PAYMENT OF COMPENSATION

##### Payment of compensation

**88** (1) Payments of compensation must be made in the manner and form as may appear to the Board to be most convenient.

(2) Subject to subsection (3), the Board may, where in the opinion of the Board it is to the advantage of the worker to do so,

(a) commute any compensation payable as periodic payments to a lump sum; and

(b) pay any compensation payable as a lump sum in periodic payments.

(3) Without restricting the generality of subsections (1) and (2), where

(a) a worker's permanent-impairment rating according to the rating schedule prescribed pursuant to Section 44 does not exceed 30%; or

(b) no extended earnings-replacement benefit is payable to a worker after a review pursuant to clause 86(1)(a),

the Board may pay to the worker a lump sum in lieu of the worker's permanent-impairment benefit. 1994-95, c. 10, s. 74.

##### Computation and payment of benefit

**89** (1) Subject to subsection (2), where a temporary earnings-replacement benefit is payable, it must be computed in accordance with Section 50.

(2) Where a temporary earnings-replacement benefit is payable as the result of a recurrence of an injury, compensation must be computed and be payable from the day on which the loss of earnings resulting from the recurrence commences unless one year has elapsed since the worker's temporary earnings-replacement benefit for the injury ended, in which case, subsection (1) applies.

(3) Where an extended earnings-replacement benefit is payable, it must be computed and be payable from the later of

(a) the date on which the Board determines the worker has a permanent impairment pursuant to Section 44; or

(b) the date on which the worker completes a rehabilitation program, where the worker is engaged in a rehabilitation program on or after the date on which the Board determines the worker has a permanent impairment pursuant to Section 44.

(4) Where compensation is payable for permanent impairment, it must be computed and be payable from the date on which the Board determines the worker has a permanent impairment pursuant to Section 44. 1994-95, c. 10, s. 75.



**Effect of payment from employer**

**90 (1)** In fixing the amount of any compensation, the Board shall have regard to any payment, allowance or benefit that the worker receives from the worker's employer or any other person in anticipation of compensation being paid pursuant to this Part and may deduct that amount from any compensation payable.

**(2)** Any sum deducted from payments of compensation pursuant to subsection (1) may be paid to the employer or other person to reimburse the employer or other person for the payment, allowance or benefit. 1994-95, c. 10, s. 76.

**Exemptions from general law and set-offs**

**91 (1)** Except with the approval of the Board, no person shall assign, seize, charge, attach or otherwise encumber or transfer any compensation payable pursuant to this Part.

**(2)** No compensation payable pursuant to this Part may pass by operation of law, except to a personal representative of the person receiving compensation.

**(3)** Without limiting the Board's remedies for recovery, any amount owed to the Board pursuant to this Part, including any amount owed as a penalty pursuant to this Part, may be set off by the Board against any compensation that is or may become payable to any person indebted to the Board. 1994-95, c. 10, s. 77.

**Power to suspend, withhold or redirect**

**92 (1)** Where a worker entitled to compensation pursuant to this Part is confined to a psychiatric institution, prison or other institution, the Board may

- (a) suspend;
- (b) withhold; or
- (c) redirect to the worker's dependants or to a trustee for the dependants approved by the Board,

the whole or any part of any compensation payable to the worker.

**(2)** Where a worker entitled to compensation pursuant to this Part

- (a) is a minor;
- (b) is mentally incompetent; or
- (c) is not, in the opinion of the Board, capable of administering the payments of compensation for the worker's own benefit,

the Board may redirect to the person's dependants or to a trustee approved by the Board, the whole or any part of any compensation payable to the worker. 1994-95, c. 10, s. 78.

**Payment where worker dies**

**93** Where any worker

- (a) is entitled to compensation pursuant to this Part; and

- (b) dies before any compensation accrued payable at the time of the worker's death has been paid,

the Board may pay the compensation to any dependant of the worker or to any person who cared for the worker prior to the death of the worker. 1994-95, c. 10, s. 79.

#### **Withholding of compensation**

**94** The Board may withhold compensation payable to a parent with respect to the death of any child under the age of 14 years if the employment of the child was in violation of any enactment. 1994-95, c. 10, s. 80.

#### **Board may deny or reduce compensation**

**95** The Board may deny a claim for compensation or reduce the amount of compensation payable to a worker if

- (a) the worker previously made a claim for an injury of the same nature as the injury in respect of which the claim is made;
- (b) the worker has a medical condition that, in the opinion of the Board, requires the worker to be removed temporarily or permanently from working at a particular type of employment because the medical condition could result in an injury of the same nature as the injury in respect of which the claim is made;
- (c) the worker's claim is made after the Board requested the worker to discontinue working at the particular type of employment in order to avoid injuries of the same nature as the injury in respect of which the claim is made;
- (d) the Board has offered to provide the worker with the rehabilitation assistance the Board considers necessary to enable the worker to become employable in another class of employment; and
- (e) the worker continues or returns to employment at the particular type of employment without the approval of the Board. 1994-95, c. 10, s. 81.

### **DUTIES OF WORKERS**

#### **Filing of claim**

**96** Where a worker is eligible to apply for compensation pursuant to this Part, the worker shall forthwith file with the Board

- (a) a claim for compensation;
- (b) the attending physician's report; and
- (c) any further evidence of the claim as may be required from time to time by the Board. 1994-95, c. 10, s. 82.

#### **Notice of accident or injury**

**97 (1)** In the case of an injury that is not an occupational disease, the Board may not pay compensation except if

- (a) the worker has given the employer notice of the accident as soon as practicable after the happening of the accident and

before the worker has voluntarily left the employment where the worker was injured; and

(b) the worker's claim for compensation is made within 12 months of the happening of the accident.

(2) In the case of an occupational disease, the Board may not pay compensation except if

(a) the worker has given the employer notice of the injury as soon as practicable after the worker learns that the worker suffers from an occupational disease; and

(b) the worker's claim for compensation is made within 12 months after the worker learns that the worker suffers from the occupational disease for which the worker is claiming compensation.

(3) In the case of post-traumatic stress disorder as defined in Section 22, the Board may not pay compensation except if

(a) the worker has given the employer notice of the injury as soon as practicable after the worker is diagnosed with post-traumatic stress disorder; and

(b) the worker's claim for compensation is made within the period prescribed by the regulations after the worker is diagnosed with post-traumatic stress disorder in accordance with Section 22 and the regulations made under that Section.

(4) The Board may not pay compensation to any firefighter referred to in subsection 47(2) unless

(a) the firefighter has given the employer notice of the disease as soon as practicable; and

(b) the firefighter's claim for compensation is made within 12 months,

after the disease is prescribed for the purpose of subsection 46(2).

(5) The notice required pursuant to clause (1)(a) must

(a) give the name and address of the worker; and

(b) state the cause of the accident and the place the accident happened.

(6) The notice required pursuant to clause (2)(a) or (4)(a) must contain the particulars set out in subsection (5) and is to be given to the employer who last employed the worker in the employment causing the disease.

(7) The notice required pursuant to clause (3)(a) must contain the particulars set out in subsection (5) and is to be given to the employer who last employed the worker in the employment causing the post-traumatic stress disorder.

(8) Failure to give notice pursuant to this Section bars the right to compensation unless, upon the application of the worker, the Board determines that

(a) any right of the worker's employer pursuant to this Part; and

(b) the subrogated interest of the Board,

has not been prejudiced by the failure, in which case the Board may extend the time for filing a claim.

(9) Subsection (8) does not apply if five years or more have elapsed from

(a) the happening of the accident;

(b) the date when the worker learns that the worker suffers from an occupational disease;

(c) the date when a disease referred to in subsection (4) is prescribed for the purpose of subsection 46(2); or

(d) the date when the worker is diagnosed with post-traumatic stress disorder,

as the case may be.

(10) The Governor in Council may make regulations prescribing the period for the purpose of clause (3)(b).

(11) A regulation made under subsection (10) may be of general application or may apply in respect of a worker on the basis of when the worker is diagnosed with post-traumatic stress disorder in accordance with Section 22 and the regulations made under that Section, and there may be different regulations in respect of workers diagnosed at different times.

(12) The exercise by the Governor in Council of the authority contained in subsection (10) is a regulation within the meaning of the *Regulations Act*. 1994-95, c. 10, s. 83; 2017, c. 16, s. 6; 2019, c. 40, s. 4.

### **Duty to mitigate and co-operate**

98 (1) Every worker shall

(a) take all reasonable steps to reduce or eliminate any permanent impairment and loss of earnings resulting from an injury;

(b) seek out and co-operate in any medical aid or treatment that, in the opinion of the Board, promotes the worker's recovery;

(c) take all reasonable steps to provide to the Board full and accurate information on any matter relevant to a claim for compensation; and

(d) notify the Board immediately of any change in circumstances that affects or may affect the worker's initial or continuing entitlement to compensation.

(2) The Board may suspend, reduce or terminate any compensation otherwise payable to a worker pursuant to this Part if the worker fails to comply with subsection (1). 1994-95, c. 10, s. 84.

**Medical examination**

**99 (1)** Subject to subsections (2) and (3), any worker who claims compensation pursuant to this Part shall submit to a medical examination if requested to do so by

- (a) the worker's employer;
- (b) the Board;
- (c) the Appeals Tribunal; or
- (d) the Medical Review Commission pursuant to Section 223.

**(2)** Where a worker objects to a request pursuant to clause (1)(a), the Board may determine if the request is reasonable.

**(3)** Where the Board determines, pursuant to subsection (2), that the request is not reasonable, the worker is not required to submit to the medical examination.

**(4)** The Board may suspend, reduce or terminate any compensation otherwise payable to a worker pursuant to this Part if the worker fails to comply with subsection (1). 1994-95, c. 10, s. 85.

**DUTIES OF EMPLOYER****Notice to Board of accident and further reports**

**100 (1)** Where an accident occurs in such circumstances as may entitle a worker to compensation, the worker's employer shall notify the Board, within five business days of becoming aware of the occurrence of the accident, or any other period as the Governor in Council may prescribe by regulation, of

- (a) the occurrence and nature of the accident;
- (b) the time the accident occurred;
- (c) the name and address of the worker;
- (d) the place the accident happened;
- (e) the name and address of the physician or surgeon, if any, by whom the worker was or is attended for any injury;
- (f) the name and address of the hospital or other health-care institution, if any, where the worker was or is attended for any injury; and
- (g) any other information required by the Board.

**(2)** The employer shall make any further report regarding the injured worker required by the Board. 1994-95, c. 10, s. 86.

**No agreement to waive compensation**

**101 (1)** No worker shall agree to waive any compensation the worker may become entitled to pursuant to this Part.

c. 10, s. 87. (2) Any waiver made contrary to subsection (1) is void. 1994-95,

#### **Prohibitions on employer conduct**

**102** No employer shall, directly or indirectly,

(a) deduct from the earnings or employment benefits of any of the employer's workers any sum that the employer is or may become liable to pay into the Accident Fund;

(b) require or permit any of the employer's workers to contribute in any manner towards indemnifying the employer against any liability imposed on the employer pursuant to this Part;

(c) collect, receive or retain from any worker any contributions towards the expense of medical aid;

(d) deduct from any accumulated sick leave of an injured worker any amount respecting a period of time during which the worker is receiving an earnings-replacement benefit as a result of an injury;

(e) influence or attempt to influence a worker not to claim or receive compensation pursuant to this Part; or

(f) discipline or discriminate against a worker who reports an accident or makes a claim for or receives compensation pursuant to this Act. 1994-95, c. 10, s. 88.

### **RE-EMPLOYMENT**

#### **Application and interpretation of Sections 104 to 115**

**103** (1) Sections 104 to 115 do not apply to

(a) any employer that, in the opinion of the Board, regularly employs fewer than 20 workers or such other number of workers less than 20 as the Board may prescribe by regulation;

(b) any class or subclass of employers or workers exempted by the Board by regulation by reason of the nature of the industry; or

(c) the construction industry, unless included by the Board by regulation.

(2) Sections 104 to 115 apply only to injuries occurring on or after February 1, 1996.

(3) For the purpose of Sections 104 to 115,

“alternative employment” means employment that is comparable to the worker's pre-injury work in nature, earnings, qualifications, opportunities and other aspects;

“suitable work” means work that the worker has the necessary skills to perform and is medically able to perform and that does not pose a health or safety hazard to the worker or any co-workers. 1994-95, c. 10, s. 89; 2017, c. 16, s. 7.

**Duty to re-employ**

**104** The employer of a worker shall offer to re-employ a worker, in accordance with Sections 103 to 115, if the worker

- (a) has been unable to work as a result of the injury; and
- (b) had been employed by the employer, at the date of the injury, for at least 12 continuous months. 1994-95, c. 10, s. 90.

**Duty to accommodate**

**105 (1)** The employer shall, in order to fulfill the employer's obligations pursuant to Sections 103 to 115, accommodate the work or the workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.

**(2)** The Board may determine whether the employer has fulfilled the employer's obligations pursuant to subsection (1). 1994-95, c. 10, s. 91.

**Duration of duty**

**106 (1)** Subject to subsection (2), an employer is obligated pursuant to Sections 103 to 115 until the earlier of the day that

- (a) is two years after the date of the injury to the worker;
- and
- (b) the worker attains the age of 65 years.

**(2)** Where an employer re-employs a worker pursuant to Sections 103 to 115 less than six months before the time described in clause (1)(a), the employer is obligated, pursuant to Sections 103 to 115, for six months after the date of re-employment. 1994-95, c. 10, s. 92.

**Employer not bound where offer refused**

**107** Where

- (a) an employer has offered re-employment to a worker pursuant to Sections 103 to 115; and
- (b) the worker has refused the employer's offer,

the employer is no longer bound by the provisions of Sections 103 to 115 in relation to that worker. 1994-95, c. 10, s. 93.

**Presumption of non-compliance**

**108** An employer who

- (a) re-employs a worker pursuant to Section 104; and
- (b) terminates the worker's employment within six months of the day the re-employment commenced,

is presumed, unless the contrary is shown, not to have fulfilled the employer's obligations pursuant to Sections 103 to 115. 1994-95, c. 10, s. 94.

**Determination by Board**

**109 (1)** Any worker may apply to the Board for a determination as to whether the employer has fulfilled the employer's obligations pursuant to Sections 103 to 115.

**(2)** Where

(a) any worker has made an application pursuant to subsection (1); or

(b) the Board considers it advisable,

the Board may determine whether an employer has fulfilled the employer's obligations pursuant to Sections 103 to 115.

**(3)** The Board is not required to consider an application made pursuant to subsection (1) by a worker who has been re-employed and whose employment is terminated, if the application is made more than three months after the date of termination of employment.

**(4)** In making a determination pursuant to subsection (1), the Board may consider whether the employer has failed to reinstate the worker pursuant to Sections 103 to 115 for any reason that, in the opinion of the Board,

(a) was beyond the control of the employer and could not have been foreseen and avoided by the exercise of due diligence; or

(b) provides a reasonable justification for the failure. 1994-95, c. 10, s. 95.

**Determination by Board**

**110 (1)** The Board may determine, with respect to an injured worker who has not returned to work with the pre-injury employer, whether the worker is able to perform

(a) the essential duties of the worker's pre-injury employment; or

(b) suitable work.

**(2)** The Board may, from time to time, make a redetermination pursuant to subsection (1).

**(3)** The Board shall notify the worker's employer in writing when it has made a determination or a redetermination pursuant to subsection (1). 1994-95, c. 10, s. 96.

**Duty of employer on receiving notice**

**111 (1)** The employer, immediately upon receiving actual notice, or notice from the Board pursuant to Section 110, that a worker is able to perform the essential duties of the worker's pre-injury employment, shall offer to reinstate the worker in the position the worker held on the date of the injury.

**(2)** Where the Board is satisfied that the employer is unable to reinstate the worker pursuant to subsection (1), the employer shall offer to provide the worker with alternative employment with the employer.



(3) Where the Board is satisfied that the employer is unable to reinstate the worker pursuant to subsection (1) or provide the worker with alternative employment with the employer pursuant to subsection (2), the employer shall offer to provide the worker with suitable work. 1994-95, c. 10, s. 97.

**Duty of employer on receiving notice**

**112 (1)** The employer, immediately upon receiving actual notice, or notice from the Board pursuant to Section 110, that a worker is able to perform suitable work, shall offer to the worker the first opportunity to accept suitable work that may become available with the employer.

(2) Where

(a) an employer has provided a worker with suitable work pursuant to subsection (1) or 111(3);

(b) the worker is or becomes able to perform work that is more comparable to the worker's pre-injury work; and

(c) work that is more comparable to the worker's pre-injury work is available with the worker's employer,

the employer shall offer to the worker the work that is more comparable to the worker's pre-injury work. 1994-95, c. 10, s. 98.

**Reinstatement or penalty**

**113 (1)** Where the Board determines that an employer has not fulfilled the employer's obligations pursuant to Sections 103 to 115, the Board may

(a) by order, require the employer to

(i) reinstate the worker in the worker's pre-injury employment, if the worker is able to perform the essential duties of the worker's pre-injury employment,

(ii) offer the worker alternative employment, pursuant to subsection 111(2),

(iii) offer the worker suitable work; or

(b) levy a penalty on the employer not exceeding the greater of

(i) the full amount of any compensation payable to the worker and any expenditures made by the Board in respect of the worker, during the year after the injury, and

(ii) the amount of the worker's net average earnings for the year preceding the injury,

or both.

(2) The Board may collect any penalty levied pursuant to clause (1)(b) in the same manner as the collection of an assessment.

(3) A penalty levied pursuant to clause (1)(b) may, in the discretion of the Board, be reduced or withdrawn if the Board is satisfied that

(a) the employer has offered the worker suitable work;

(b) the employer has assisted the worker in finding suitable work with another employer; or

(c) the employer cannot, for any reason the Board considers satisfactory, re-employ the worker.

(4) The levying of a penalty pursuant to clause (1)(b) or any action taken by an employer to reduce the penalty pursuant to subsection (3) does not excuse the employer from the obligations on the employer contained in Sections 103 to 115. 1994-95, c. 10, s. 99.

#### **Effect of Sections 103 to 115**

##### **114 (1) Where**

(a) Sections 103 to 115 conflict with a collective agreement that is binding on the employer; and

(b) the obligations of the employer pursuant to this Section afford a worker better re-employment terms than the terms available to the worker pursuant to the collective agreement,

Sections 103 to 115 prevail over the collective agreement, with the exception of any seniority provisions.

(2) Sections 103 to 115 do not prevail over any established rule or practice respecting hiring and placement in the worker's trade or occupation if, in the opinion of the Board, the rule or practice is reasonable.

(3) Where there is a conflict between the provisions of Sections 103 to 115 and Section 119 of the *Labour Standards Code*, Section 119 of the *Labour Standards Code* prevails. 1994-95, c. 10, s. 100.

#### **Failure to re-employ not ground for compensation**

**115** No worker is entitled to any amount as compensation to which the worker would not otherwise have been entitled as a result of the failure of the worker's employer to fulfill the employer's obligations pursuant to Sections 103 to 114. 1994-95, c. 10, s. 101.

### **MEDICAL AID**

#### **Medical aid**

**116 (1)** The Board may provide for any worker entitled to compensation pursuant to this Part, or any worker who would have been entitled to compensation had the worker suffered a loss of earnings equivalent to the amount determined pursuant to subsection 50(4), any medical aid the Board considers necessary or expedient as a result of the injury.

(2) The medical aid provided pursuant to subsection (1) must be

(a) furnished or arranged for by the Board as it may direct or approve;

(b) subject to the supervision and control of the Board; and

(c) paid for out of the Accident Fund.

(3) The Board may include the costs of providing medical aid in any amount charged to the employer or to the employer's class or subclass. 1994-95, c. 10, s. 102.

**Personal care allowance**

117 Where an injury renders a worker incapable of performing necessary personal care, the Board may

- (a) provide a monthly allowance to the worker for the worker's necessary personal care; or
- (b) provide the necessary personal care. 1994-95, c. 10, s. 103.

**Exclusive jurisdiction of Board**

118 All questions as to the necessity, character and sufficiency of any medical aid furnished must be determined by the Board. 1994-95, c. 10, s. 104.

**Schedule of fees or charges**

119 (1) The Board may set a schedule of fees or charges payable for medical aid.

(2) No person shall bring an action to recover any amount in excess of any fee or charge set by the Board pursuant to subsection (1). 1994-95, c. 10, s. 105.

**Time limit for submitting account**

120 The Board shall not pay any account rendered against it for medical aid by a physician, surgeon, hospital or other healthcare professional or institution unless application for payment is made within six months after the medical aid has been rendered. 1994-95, c. 10, s. 106.

**Employer to furnish transportation**

121 (1) Every employer shall, at the employer's own expense, furnish to any worker in the employer's employment, who is in need of it as the result of a workplace injury, immediate and appropriate transportation to a hospital or a physician located within the area or within a reasonable distance of the place of injury.

(2) Where the employer fails to provide transportation pursuant to subsection (1), any person, or the Board, may obtain transportation for the injured worker.

(3) Any employer failing to comply with subsection (1) is, in addition to any other penalty that may be imposed by the Board, liable to pay for the transportation provided pursuant to subsection (2).

(4) The amount described in subsection (3) may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 107.

**Board to be charged for medical aid**

122 No person shall make any charge against any person, other than the Board, for medical aid rendered to a worker pursuant to this Part. 1994-95, c. 10, s. 108.

**Board to be provided with information**

**123 (1)** Every physician, surgeon, hospital official or other healthcare professional consulted regarding any worker claiming compensation pursuant to this Part shall

- (a) provide to the Board any information requested by the Board; and
- (b) provide all reasonable and necessary information or other assistance to any worker to enable the worker to establish a claim for compensation.

**(2)** Upon request of the Board, any person who acquires information pursuant to the *Health Services and Insurance Act* including, for greater certainty, Atlantic Blue Cross Care Inc., shall provide to the Board the information requested by the Board concerning any worker claiming compensation pursuant to this Part.

**(3)** The Board shall not make a request pursuant to subsection (2) unless the worker consents.

**(4)** The Board may establish a schedule of fees or charges payable for forms and reports. 1994-95, c. 10, s. 109.

**Hospital to report death of worker**

**124** Where the death of a worker occurs while the worker is confined to a hospital, the hospital authority shall report the death to the Board immediately after it has occurred. 1994-95, c. 10, s. 110.

**Board may pay for surgical procedure**

**125 (1)** The Board may provide a worker with any surgical procedure or medical treatment that will, in the Board's opinion, reduce the amount of compensation payable to the worker in the future.

**(2)** The expense of any surgical procedure or medical treatment provided pursuant to subsection (1) may be paid out of the Accident Fund. 1994-95, c. 10, s. 111.

**REHABILITATION****Board may take measures to assist worker**

**126 (1)** The Board may make any expenditures and take any measures that, in the Board's opinion, will

- (a) aid injured workers in returning to work; and
- (b) reduce the effects of workers' injuries.

**(2)** The Board may pay any expenditures made pursuant to subsection (1) out of the Accident Fund. 1994-95, c. 10, s. 112.

**Duty of worker to co-operate**

**127 (1)** Every worker shall, where rehabilitation is offered by the Board, co-operate with the Board in the development and implementation of a rehabilitation program.

**(2)** The Board may suspend, reduce or terminate any compensation made to a worker pursuant to this Part if the worker fails to co-operate in the development or implementation of a rehabilitation program. 1994-95, c. 10, s. 113.

**ACCIDENT FUND AND ASSESSMENTS****Accident Fund established**

**128** The compensation and other expenditures provided for in this Part must be paid out of a fund to be called the Accident Fund. 1994-95, c. 10, s. 114.

**Annual assessment on employers**

**129 (1)** For the purpose of creating and maintaining an adequate Accident Fund, the Board shall in every year make an assessment on and collect from the employers, subject to this Part, sufficient funds to

- (a) meet the cost of all claims payable during the year;
- (b) subject to Section 130, meet the future cost of all claims for injuries occurring during the year;
- (c) pay the expenses incurred in administering this Act;
- and
- (d) pay all other amounts payable from the Accident Fund.

**(2)** In addition to the amounts levied and collected pursuant to subsection (1), the Board may assess and collect from employers in any industry, class or subclass or from any employer any amount required in order to create a reserve fund for the purpose of providing

- (a) a contingent fund to aid any class, subclass or employer;
- (b) a special fund to pay any increase in the capitalization or periodic compensation payments due in future years that could not otherwise be paid without placing an undue burden on the employers in any class or subclass;
- (c) a special fund to retire any liability of the Board outstanding before February 1, 1996, including an amount that may be assessed and collected from all employers levied assessment rates under this Act, to retire any liability for which reimbursement from the former Consolidated Fund of the Province was provided before April 1, 2002;
- (d) a reserve fund for equalizing assessments between classes, subclasses or employers;
- (e) a special fund to be used to meet any loss arising from disaster or any other circumstances that, in the opinion of the Board, would unduly burden any employer or the employers in any class or subclass.

(3) The Board may add any surplus credited to any class, subclass or employer to any fund established pursuant to subsection (2).

(4) Notwithstanding anything contained in this Section, the amount paid out of the Accident Fund each year with respect to the costs of administering the *Occupational Health and Safety Act* must be that proportion of the total costs of administering that Act that the number of employees employed by employers assessed pursuant to this Act bears to the total number of employees in the Province covered by the *Occupational Health and Safety Act*. 1994-95, c. 10, s. 115; 1999, c. 1, s. 11; 2002, c. 5, s. 57.

#### **Sufficiency of Accident Fund**

**130 (1)** In this Section and Section 131, "annual operating deficit" means a negative difference after subtracting the capitalized costs of compensation and related expenses payable out of the Accident Fund from the revenue from assessments for the fiscal year.

(2) It is the duty of the Board at all times to maintain the Accident Fund so that with the reserves, exclusive of any special reserve, it will be sufficient to meet all the payments to be made out of the Accident Fund in respect of compensation as they become payable and so as not to unduly or unfairly burden the employers in any class in future years with payments that are to be made in those years in respect of injuries that have happened previously.

(3) Subject to subsection (4), it is not mandatory for the Board to provide and maintain a reserve fund at all times equal to the capitalized value of the payments of compensation that will become due in future years unless the Board is of the opinion that it is necessary to do so in order to comply with subsection (2).

(4) Where in any year there is an annual operating deficit in respect of that year, it is the duty of the Board to ensure that, by the end of the third year following the year in which the annual operating deficit occurred, the deficit is eliminated. 1994-95, c. 10, s. 116.

#### **Application of Section 130**

**131** Section 130 does not apply to any annual operating deficit or unfunded liability incurred prior to February 1, 1996. 1994-95, c. 10, s. 117.

#### **No rights for former employer**

**132** No employer who has ceased to be an employer for the purpose of this Part

- (a) has any interest in or right to the Accident Fund; or
- (b) may bring any action or make any claim against the Board in respect of the Accident Fund. 1994-95, c. 10, s. 118.

#### **Separate accounts**

- 133 (1)** Separate accounts must be kept for
- (a) all amounts collected and expended for every class, subclass or employer; and

(b) every fund established by the Board.

(2) Notwithstanding subsection (1), the Accident Fund is one indivisible fund for the purpose of paying compensation. 1994-95, c. 10, s. 119.

#### **Employers divided into classes**

**134 (1)** For purpose of assessment, the Board may

- (a) divide employers into classes and subclasses;
- (b) rearrange or make new classes or subclasses of employers;
- (c) transfer any employer to any other class or subclass.

(2) Where an employer engages in more than one industry, the Board may assign the employer to more than one class or subclass.

(3) Where an employer's industry covers more than one class or subclass, the Board may assign the employer to

- (a) the class or subclass of its primary business or undertaking, determined in any manner the Board considers appropriate; or
- (b) more than one class or subclass.

(4) The Board may levy different assessment rates on employers in the same class or subclass. 1994-95, c. 10, s. 120.

#### **Amounts of assessment**

**135 (1)** The Board may establish rates of assessment among any class or subclass and where, in the opinion of the Board, the record, risk, cost or experience in any class or subclass over a period of time determined by the Board differs from the average in other classes or subclasses, the Board may

- (a) confer or impose a special rate, differential or assessment to correspond with the relative hazard of the class or subclass; and
- (b) adopt a system of rating to take into account the relative costs of claims of the class or subclass.

(2) Where, in the opinion of the Board, the record, risk, cost or experience of injuries among the workers of an employer is better than the average among the workers of other employers in the same class or subclass over a period of time determined by the Board, the Board may

- (a) reduce the amount of any assessment made upon that employer; or
- (b) refund a portion of any assessment paid by that employer.

(3) Where, in the opinion of the Board, the record, risk, cost or experience of injuries among the workers of an employer is worse than the average among the workers of other employers in the same class or subclass over a period of time determined by the Board, the Board may

(a) increase the amount of any assessment made upon that employer; or

(b) make a special additional assessment upon that employer.

(4) In determining the record, risk, cost and experience of an employer, the Board may deem the cost of any compensation payable as the result of a worker's death to be the average cost of fatal injury claims in the previous year.

(5) Where, in the opinion of the Board, sufficient precautions have been taken for the prevention of injuries to an employer's workers, the Board may reduce the amount of any assessment for which the employer is liable.

(6) Where, in the opinion of the Board, sufficient precautions have not been taken for the prevention of injuries to an employer's workers, the Board may increase the amount of any assessment for which the employer is liable.

(7) The Board shall, on or before January 1, 1996, establish and implement an experience rating program for the purpose of subsections (1) to (4) that relates an employer's assessment to the factors described in those subsections. 1994-95, c. 10, s. 121.

#### **Adjustment of funds, reserves and accounts**

**136 (1)** Where the Board exercises any power pursuant to Section 134, the Board may adjust the funds, reserves and accounts of any class or subclass of employer affected.

(2) Where the Board reclassifies an employer in order to correct a mistake of law or fact, a refund of any amount over-assessed or the collection of any amount under-assessed is limited to one year preceding the year in which the correction is made.

(3) The limitation on collection of an under-assessment in subsection (2) does not apply if the mistake was due to a misrepresentation by or on behalf of the employer. 1994-95, c. 10, s. 122.

#### **Notice of assessment**

**137 (1)** The Board shall provide notice of an assessment to every employer assessed, in any manner the Board considers necessary or expedient.

(2) Any notice provided pursuant to subsection (1) must indicate the amount owing by the employer and the time the assessment is payable. 1994-95, c. 10, s. 123.

#### **Method of calculating assessments**

**138 (1)** Assessments may be rated upon the employer's payroll, or may be calculated in any other manner the Board considers necessary or expedient.

(2) Where the Board computes or adjusts the amount of payroll of any employer in any industry, the Board shall exclude that portion of the remuneration of any worker that is in excess of the amount referred to in Section 54.



(3) Where the Board computes or adjusts the amount of any employer's payroll, the Board shall base the computation or adjustment only on the payroll of those workers of the employer who are subject to this Part.

(4) Where the Board calculates any assessment other than rateably on the employer's payroll, Sections 141, 142 and 144 apply with the necessary changes. 1994-95, c. 10, s. 124; 2017, c. 16, s. 8.

#### **Procedure for collection of assessments**

**139** (1) Assessments may be made and collected in any manner and form, and at any time, and by any procedure that, in the opinion of the Board, is adequate and expedient.

(2) The Board may, by regulation, prescribe the manner, form, time and procedure for assessments applicable to any industry, class or subclass.

(3) Notwithstanding anything contained in this Section, the Board shall, on or before January 1, 2000, implement a procedure for collecting assessments on a periodic basis based on actual rather than estimated payroll for the year.

(4) Notwithstanding anything contained in this Section, a notice indicating the rate of assessment for an employer for a year must be sent to the employer no later than September 1st of the preceding year. 1994-95, c. 10, s. 125; 1999, c. 1, s. 12.

#### **General or special assessments**

**140** (1) The Board may make general or special assessments.

(2) A special assessment made pursuant to subsection (1) may be applicable to any industry, class, subclass or employer, or any industry carried on by an employer.

(3) Where any estimated assessment for any class, subclass or employer is insufficient for the purpose for which it is collected, the Board may

(a) make any further assessment necessary; or

(b) advance the amount of the insufficiency out of any reserve and add the insufficiency to any subsequent assessment.

(4) Where the funds for any class, subclass or employer are sufficient for the time being, the Board may defer the collection of any assessment or instalment. 1994-95, c. 10, s. 126.

#### **Employer to provide information**

**141** Every employer shall, within 10 days of becoming an employer and at any other time as required by the Board, provide the Board with an estimate of the employer's payroll for the remainder of the current year and for the following year, together with any other information the Board may require for the purpose of

(a) assigning the employer to a class or subclass; and

(b) making any assessment pursuant to this Part. 1994-95, c. 10, s. 127.

**Adjustment of assessment**

**142 (1)** Where the necessary information is obtained, the Board may adjust any assessment for the preceding calendar year for any employer to reflect the employer's actual payroll.

**(2)** Where an estimate of probable payroll by an employer, or by the Board pursuant to Section 144, is less than the actual amount of the payroll determined at the end of the calendar year, the employer is liable to pay to the Board an amount equal to the difference between

- (a) the amount that the employer was assessed; and
- (b) the amount that the employer is assessed on the basis of actual payroll,

together with interest at a rate and on terms prescribed by the Board by regulation.

**(3)** The payment of the amounts described in subsection (1) may be enforced in the same manner as the payment of an assessment.

**(4)** Where an estimate of probable payroll by an employer, or by the Board pursuant to Section 144, is more than the actual amount of the payroll determined at the end of the calendar year, the Board shall refund or, in its discretion, credit the employer with an amount equal to the difference between

- (a) the amount that the employer was assessed; and
- (b) the amount that the employer is assessed on the basis of actual payroll,

together with interest at a rate and on terms prescribed by the Board by regulation. 1994-95, c. 10, s. 128.

**Records required to be kept by employer**

**143 (1)** Every employer shall keep a record of

- (a) the name of every worker employed;
- (b) the dates and times worked by the worker;
- (c) the earnings and the rate of earnings of the worker;
- (d) the amount of any bonus or other remuneration paid to the worker or to which the worker is entitled;
- (e) any allowance made to a worker for the use of the worker's motor vehicle; and
- (f) any other information the Board may by regulation require.

**(2)** The employer shall provide the records referred to in subsection (1) to the Board as required by the Board.

**(3)** A regulation made pursuant to clause (1)(f) may be general, or may be applicable to any industry, class, subclass or employer, or any industry carried on by an employer. 1994-95, c. 10, s. 129.

**Board may deem amount of payroll**

- 144** (1) Where an employer
- (a) fails to keep records pursuant to Section 143 that in the Board's opinion are adequate;
  - (b) fails to produce the records kept pursuant to Section 143 when required by the Board;
  - (c) fails to provide the Board with an estimate of payroll pursuant to Section 141; or
  - (d) provides the Board with an estimate of payroll the Board considers too low,

the Board may, in addition to any other penalty that may be imposed, deem the amount of the employer's payroll for the purpose of making an assessment on the employer.

- (2) Where
- (a) any employee of an incorporated company is a shareholder in the incorporated company;
  - (b) the employee is remunerated, in whole or in part, with a share of the company's profits; and
  - (c) the employer does not make an accurate estimate of payroll for the employee,

the Board may, in addition to any other penalty that may be imposed, deem the amount of the employer's payroll for the purpose of making an assessment on the employer. 1994-95, c. 10, s. 130.

**Person to provide information to Board**

**145** Where required by the Board, every person shall provide the Board with

- (a) information regarding the workers the person employs or may employ;
- (b) the industry the person is engaged in; and
- (c) any other information required by the Board to enable the Board to determine if the person is engaging in an industry subject to this Part. 1994-95, c. 10, s. 131.

**Assessor to provide information**

**146** Every assessor appointed pursuant to the *Assessment Act* shall provide to the Board, at the Board's request,

- (a) the name and address;
- (b) the nature of any business;
- (c) the number of employees; and
- (d) any other information required by the Board,

for all the employers in every industry, except the farming industry, within the assessor's district. 1994-95, c. 10, s. 132.

**Municipality to provide information**

**147** Every municipality shall provide to the Board, at the Board's request, the records of building permits granted in the municipality. 1994-95, c. 10, s. 133.

**Self-insured employers**

**148 (1)** The Board may, by regulation, establish a schedule of self-insured employers.

**(2)** The Board may, by regulation, transfer a self-insured employer to another class or to a new class, in which case the Board shall make any adjustments and disposition of funds, reserves and accounts, and require payment of any funds, as it considers necessary to ensure that no class is adversely affected.

**(3)** Employers included in the schedule of self-insured employers are liable individually to pay an amount based on the cost of claims in respect of the workers of the self-insured employer plus the administrative costs incurred by the Board with respect to those claims plus the cost of any statutory obligations that apply to the self-insured employer.

**(4)** The Board may, in the manner and at times it considers appropriate, levy and collect money in the same manner as an assessment

**(a)** from employers included in the schedule of self-insured employers; and

**(b)** required to pay for increases in compensation for past injuries from employers who are or have been included in the schedule of self-insured employers.

**(5)** The Board may require a self-insured employer to provide financial security with respect to the cost of future obligations incurred by the self-insured employer. 1994-95, c. 10, s. 134; 1999, c. 1, s. 13.

**Rating Review Commission**

**149 (1)** A Rating Review Commission is established, composed of one person representing the Board and such number of persons, representing equally employer and employee groups, as the Minister determines.

**(2)** The members of the Rating Review Commission shall be appointed by the Minister for such terms and on such conditions as are determined by the Minister.

**(3)** The Minister shall designate one of the members of the Rating Review Commission to be the chair of the Commission.

**(4)** The Governor in Council shall prescribe the remuneration to be paid to members of the Rating Review Commission. 1999, c. 1, s. 14.

**Functions of Commission**

**150** The Rating Review Commission shall review the system used to classify employers for assessment purposes and make recommendations to the Board of Directors with respect to the classification system. 1999, c. 1, s. 14.

## LIABILITY FOR ASSESSMENTS

**Employer required to pay assessment**

**151 (1)** Every employer is liable for and shall pay to the Board, without demand, any assessment levied on the employer by the Board.

**(2)** The Board has a right of action against any employer in respect of any assessment. 1994-95, c. 10, s. 135.

**Liability of corporate directors**

**152 (1)** Where

- (a) an employer is a corporation; and
- (b) the corporation defaults on the payment of an assessment levied pursuant to this Part,

every person who is a director of the corporation at the time of the default is jointly and severally liable with the corporation for the amount of assessment unpaid.

**(2)** A director who satisfies a claim made pursuant to subsection (1) is entitled to contribution from

- (a) the other directors; and
- (b) the corporation,

liable for the claim. 1994-95, c. 10, s. 136.

**Liability of assessable employer**

**153 (1)** Where, for any reason, an employer liable to assessment is not assessed in any year, the employer is nevertheless liable to pay to the Board the amount for which the employer should have been assessed.

**(2)** Any amount described in subsection (1) may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 137.

**Liability of successor employer**

**154 (1)** Subject to subsection (2), where

- (a) any employer has any amount of assessment unpaid;  
and
- (b) the business or any part of the business of the employer
  - (i) has been sold, leased, transferred or disposed of, whether by operation of law or otherwise,
  - (ii) has changed ownership, reincorporated or restructured in any other way, or
  - (iii) has been contracted out to avoid obligations pursuant to this Act,

the Board may

- (c) deem any person to be the successor of the employer;  
and

(d) levy and collect from the successor any amount of any assessment outstanding before the event described in clause (b).

(2) No person is deemed the successor of an employer pursuant to clause (1)(c) unless the person has, in the opinion of the Board, a real and substantial connection to the employer after the event described in clause (1)(b).

(3) Any amount required to be paid pursuant to clause (1)(d) may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 138.

#### **Payment of assessment by temporary employer**

**155 (1)** Where the Board determines

(a) that an employer is engaging temporarily in an industry to which this Part applies; or

(b) that for any other reason it may be difficult to collect an assessment from an employer to which this Part applies,

the Board may require the employer to pay, or give security for payment of, an amount sufficient to pay all the assessments the Board may make with respect to the employer.

(2) Any amount required to be paid pursuant to subsection (1) may be collected by the Board in the same manner as the collection of an assessment.

(3) Where an employer fails to comply with a requirement of the Board pursuant to subsection (1), the Supreme Court of Nova Scotia may, upon application of the Board, issue an order to restrain the employer from carrying on business in an industry to which this Part applies until the employer complies with the requirement. 1994-95, c. 10, s. 139.

#### **Contractor and principal liable for assessment**

**156 (1)** Where a contractor undertakes any work for a principal in an industry to which this Part applies, both the contractor and the principal are liable for any assessment the Board may levy in respect of any work performed for the principal by the contractor.

(2) The Board may collect any amount required to be paid pursuant to subsection (1) from the principal or the contractor, or partly from one and partly from the other.

(3) Where a principal has paid an assessment levied pursuant to subsection (1), the principal may recover the amount of the assessment from the contractor. 1994-95, c. 10, s. 140.

#### **Liability of subcontractor**

**157 (1)** Where a subcontractor undertakes any work for a contractor in any industry to which this Part applies,

(a) the subcontractor;

- (b) the contractor; and
- (c) the principal who is employing the contractor,

are liable for any assessment the Board may levy in respect of any work performed for the contractor by the subcontractor.

(2) The Board may collect any amount required to be paid pursuant to subsection (1) from the principal, the contractor or the subcontractor, or partly from any one and partly from any other.

(3) Where a principal has paid an assessment pursuant to subsection (1), the principal may recover the amount of the assessment from the contractor or the subcontractor.

(4) Where a contractor has paid an assessment pursuant to subsection (1), the contractor may recover the amount of the assessment from the subcontractor. 1994-95, c. 10, s. 141.

#### **Board may deem workers**

**158 (1)** Where a contractor or subcontractor has not been assessed for any work carried on by the contractor or subcontractor, the Board may deem

- (a) any worker of the contractor or subcontractor to be a worker of the principal; or
- (b) any worker of the subcontractor to be a worker of the contractor.

(2) In the absence of any term to the contrary in the contract or subcontract,

- (a) the principal may recover from the contractor the amount or proportionate part of the assessment paid by the principal with respect to the contractor or the contractor's workers or with respect to the subcontractor or the subcontractor's workers; and
- (b) the contractor may recover from the subcontractor the amount or proportionate part of the assessment paid by the contractor with respect to the subcontractor or the subcontractor's workers. 1994-95, c. 10, s. 142.

#### **Holdbacks and set-offs**

**159 (1)** Where a principal is or may become liable for an assessment levied against any contractor carrying out work for the principal, the principal may withhold from any amount owed to the contractor an amount estimated by the Board to be equal to the amount of the assessment.

(2) Where a contractor is or may become liable for an assessment levied against any subcontractor carrying out work for the contractor, the contractor may withhold from any amount owed to the subcontractor an amount estimated by the Board to be equal to the amount of the assessment.

- (3) In any action that
  - (a) a contractor may bring against the principal; or

(b) a subcontractor may bring against a contractor, the defendant may set off the amount of an assessment paid pursuant to subsection (2) against the plaintiff's claim.

(4) Where, pursuant to subsection (3), a defendant has set off the amount of the assessment,

(a) the Board shall determine and collect the amount of assessment due to it; and

(b) the plaintiff is entitled to the remaining amount of the set-off.

(5) The amount of any holdback made pursuant to subsection (1) or (2) is deemed to be held in trust for the Board. 1994-95, c. 10, s. 143; 2017, c. 16, s. 9.

#### **Assessment paid by municipality or commission**

**160** Where any work in an industry to which this Part applies is performed under contract for any municipality or public service commission, any assessment in respect of the work may be paid by the municipality or commission, and the amount of the assessment may be deducted from any amount owed to the contractor. 1994-95, c. 10, s. 144.

#### **Unpaid assessment bears compound interest**

**161** Notwithstanding any other Act, any assessment due pursuant to this Part bears compound interest on the amount unpaid at the rate and in the manner prescribed by the Board by regulation, notwithstanding the taking of judgment, and the interest may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 145.

### **COLLECTION OF ASSESSMENTS**

#### **Certificate**

**162** (1) Where default is made in the payment of any assessment, the Board may issue a certificate stating

(a) that an assessment was made, or the nature of the matter with respect to which the amount is due or payable;

(b) the amount remaining unpaid; and

(c) the name of the person who has defaulted in payment.

(2) A certificate issued by the Board may be filed with any prothonotary of the Supreme Court of Nova Scotia.

(3) Notwithstanding any other Act, the Supreme Court has jurisdiction over any amount stated in the certificate.

(4) A certificate filed with the Supreme Court pursuant to subsection (2) shall, when sealed with the seal of the Supreme Court, become an order of the Supreme Court, and judgment in the amount specified in the certificate, together with any fees allowed by the Supreme Court in the case of a default judgment, may be entered against the person named in the certificate.



(5) A judgment issued pursuant to subsection (4) may be enforced by execution or otherwise in the same manner as any other judgment of the Supreme Court.

(6) The Board may enter judgment pursuant to this Section against any executor or administrator of a deceased person without obtaining the leave of the Supreme Court. 1994-95, c. 10, s. 146.

### **Lien on real or personal property**

**163 (1)** In this Section, "industry" includes any establishment, undertaking, work, operation, trade or business included within the scope of this Part.

(2) Notwithstanding any other Act, any assessment, or judgment entered pursuant to that assessment, constitutes a first lien upon all personal or real property that is

- (a) used in or in connection with; or
- (b) produced in or by,

the industry for which the employer has been assessed, whether or not the property is owned by the employer.

(3) Subject to subsection (5), the lien created by subsection (2) is payable in priority to any other claim or encumbrance of any kind, held by any person, including the Crown in right of the Province.

(4) Without restricting the generality of subsection (3), the lien created by subsection (2) is payable in priority to any writ, judgment, debt, lien, charge, security interest created pursuant to an enactment, right of distress, assignment or assignment of book debts, and regardless of whether the claim or encumbrance is legal or equitable, absolute or not absolute, specific or floating, crystallized or otherwise perfected, or created or yet to be created.

(5) The first lien created by subsection (2) is subject only to any lien created by or pursuant to an enactment that is intended to secure workers' wages.

(6) The first lien created by subsection (2)

- (a) attaches immediately upon the making of the assessment;
- (b) attaches to all property subsequently coming within the class of property described in subsection (2) until the assessment and any judgment with respect to the assessment has been fully paid; and
- (c) follows any property on which it attaches into whosoever's hands the property comes.

(7) Where any property to which a lien has attached pursuant to subsection (2) is sold or otherwise disposed of, the amount of any assessment and any judgment with respect to the assessment is a first charge on the proceeds of the sale or other disposition of the property.

(8) The Board may file a certified copy of any assessment in any registry of deeds or, where the real property is registered pursuant to the *Land Registration Act*, may record a certified copy of any assessment in a parcel register or the judgment roll pursuant to the *Land Registration Act*, and any real property of the employer that is not already bound by the lien created by this Section is bound by the lien to the same extent as a registered judgment or mortgage from the date the certificate is registered.

(9) Any judgment entered with respect to an assessment filed in accordance with subsection (8) binds the employer's property from the date the assessment was filed.

(10) Where a person other than the employer has an interest in any real or personal property to which a lien has attached pursuant to this Section, the property is, for the purpose of enforcing the lien, deemed the property of the employer only. 1994-95, c. 10, s. 147; 2001, c. 6, s. 127.

#### **Liability for amount of lien and recovery**

**164** (1) Any person who

(a) takes possession of any property to which a lien created pursuant to Section 163 attaches; and

(b) disposes of the property in any manner,

is liable to the Board for any amount payable pursuant to the lien, up to the value of the property disposed of by the person.

(2) Where any person owes the Board an amount pursuant to this Section, the Board may collect the amount as if the amount was an assessment and as if the person was an employer.

(3) Where any person has disposed of property to which a lien attached and paid an amount to the Board pursuant to subsection (1), that person may recover the amount paid to the Board from the person from which the property to which the lien attached was obtained.

(4) Subsection (1) does not apply to a good faith purchaser for value without notice of the lien where the vendor sells the property to the purchaser in the ordinary course of trade. 1994-95, c. 10, s. 148.

#### **Injunction where employer in default**

**165** The Supreme Court of Nova Scotia may, upon the application of the Board, issue an order to restrain any employer from carrying on business if

(a) the employer is in default in the payment of an assessment;

(b) a judgment entered in respect of the assessment is returned with a certificate of the sheriff or the sheriff's deputy that the judgment could not be satisfied; and

(c) the employer continues to carry on business in the industry to which this Part applies. 1994-95, c. 10, s. 149.

**Priority under other Acts**

**166** The amount of any assessment the liability for which accrued before the date of assignment, death or commencement of winding up, must be paid in priority to all other debts in the distribution of an employer's property pursuant to the *Assignments and Preferences Act*, the *Trustee Act* and the *Companies Winding Up Act*. 1994-95, c. 10, s. 150.

## GOVERNANCE

**Workers' Compensation Board**

**167 (1)** This Part shall be administered by the body corporate known as the Workers' Compensation Board of Nova Scotia, which is continued.

**(2)** There is a Board of Directors of the Board, consisting of not more than 10 persons appointed by the Governor in Council.

**(3)** In appointing members of the Board of Directors, the Governor in Council

- (a) shall appoint one member to serve as Chair;
- (b) shall appoint one member to serve as Deputy Chair;
- (c) shall endeavour to appoint equal numbers of members representing employers and workers; and
- (d) may appoint alternative members to the Board of Directors and in so doing shall endeavour to appoint equal numbers of alternate members representing employers and workers.

**(4)** The Deputy Chair appointed pursuant to clause (3)(b) sits as a non-voting member of the Board of Directors unless required to act for the Chair pursuant to Section 171.

**(5)** Every member of the Board of Directors serves part time unless the Governor in Council, by order, determines otherwise.

**(6)** No person presiding at a meeting of the Board of Directors is entitled to vote at the meeting, except in the case of a tie vote.

**(7)** Where a member of the Board of Directors

- (a) is absent from the Province;
  - (b) is unable to act as a member of the Board of Directors;
- or
- (c) leaves the position of member of the Board of Directors vacant,

the Governor in Council may appoint a person to act temporarily for the member.

**(8)** Where

- (a) the term of office of a member of the Board of Directors expires; or
- (b) a member of the Board of Directors resigns,

the member may, at the discretion of the Chair, act as a non-voting member of the Board of Directors in order to complete any duty or matter that arose before the effective date of the resignation or the expiry of the term of office.

(9) A vacancy on the Board of Directors does not impair the ability of the Board of Directors to act. 1994-95, c. 10, s. 151; 2005, c. 31, s. 1.

#### **Terms of office**

**168 (1)** The Chair and the Deputy Chair are appointed for a term of not more than five years and may be reappointed.

(2) Members of the Board of Directors, except for the Chair and the Deputy Chair, are appointed for a term of not more than four years and may be reappointed. 1994-95, c. 10, s. 152.

#### **Remuneration and expenses**

**169 (1)** The remuneration of all members of the Board of Directors shall be determined by the Governor in Council and paid out of the Accident Fund.

(2) Members of the Board of Directors must be reimbursed for reasonable travelling and other expenses incurred by them in connection with the work of the Board of Directors. 1994-95, c. 10, s. 153.

#### **Procedure**

**170** The Board of Directors shall sit and conduct its proceedings in the manner it considers most convenient. 1994-95, c. 10, s. 154.

#### **Quorum and duties of person in chair**

**171 (1)** The quorum of the Board of Directors is

- (a) the Chair or Deputy Chair; and
- (b) one half of the voting members of the Board of Directors.

(2) Subject to subsection (3), the Chair

- (a) shall call all meetings of the Board of Directors;
- (b) shall preside at all meetings of the Board of Directors;

and

- (c) may, in the event of a tie vote, cast the deciding vote.

(3) Where

- (a) the Chair is absent from the Province;
- (b) the Chair is unable to act as Chair; or
- (c) there is a vacancy in the office of Chair,

the Deputy Chair shall exercise the powers and discharge the duties of the Chair.

(4) Where

(a) the Chair is absent from the Province or unable to act as Chair or there is a vacancy in the office of the Chair; and

(b) the Deputy Chair is absent from the Province or unable to act as Chair or there is a vacancy in the office of the Deputy Chair,

the Chair may designate a Director to serve as Acting Chair or, where the Chair is unable to make the designation, the Minister may designate a member of the Board of Directors to serve as Acting Chair.

(5) The Acting Chair shall exercise the powers and discharge the duties of the Chair.

(6) Whenever the Deputy Chair or an Acting Chair appears to have acted for or instead of the Chair pursuant to this Section, the Deputy Chair or Acting Chair, as the case may be, is presumed to have acted in accordance with and pursuant to the authority of subsection (3) or (5), respectively. 1994-95, c. 10, s. 155.

#### **Delegation of authority by Chair**

**172 (1)** The Chair may delegate any power or duty conferred on the Chair by this Act or the regulations to the Deputy Chair.

(2) Where the Deputy Chair appears to have acted for or instead of the Chair pursuant to this Section, the Deputy Chair is presumed to have acted in accordance with and pursuant to the authority of subsection (1). 1994-95, c. 10, s. 156.

#### **Delegation of authority by Board of Directors**

**173 (1)** The Board of Directors may delegate to any persons or class of persons any power or duty conferred upon it pursuant to this Part.

(2) Any person may sub-delegate any power or duty conferred on the person by the Board of Directors pursuant to subsection (1), where the person is permitted to do so by the Board of Directors.

(3) Any decision, order or ruling of a person to whom power has been

(a) delegated pursuant to subsection (1); or

(b) sub-delegated pursuant to subsection (2),

is a decision, order or ruling of the Board of Directors.

(4) Where a person appears to have acted for or instead of the Board of Directors pursuant to this Section, that person is presumed to have acted in accordance with and pursuant to the authority of subsection (1) or (2), respectively.

(5) The Chair may establish committees of the Board of Directors and shall designate members of the Board of Directors to sit on the committees. 1994-95, c. 10, s. 157.

#### **Functions of Board of Directors and Chief Executive Officer**

**174 (1)** The Board of Directors may

(a) appoint; and

(b) fix the duties and remuneration of,  
a Chief Executive Officer of the Board.

- (2) The Chief Executive Officer is responsible
- (a) to the Board of Directors through the Chair;
  - (b) for the day-to-day management of the business of the Board;
  - (c) for advising the Board of Directors on all matters of policy;
  - (d) for overseeing the administration and implementation of the policies and budgets of the Board of Directors; and
  - (e) for carrying out any other function or duty assigned by the Board of Directors. 1994-95, c. 10, s. 158.

#### **Appointment and remuneration of employees**

- 175 (1) The Board may
- (a) appoint; and
  - (b) fix the duties and remuneration of,

the officers and employees the Board considers necessary to carry out this Act.

(2) The remuneration fixed pursuant to subsection (1) must be paid out of the Accident Fund. 1994-95, c. 10, s. 159.

#### **Annual report**

176 (1) The Board shall, as soon as possible after the close of each calendar year, and not later than the next following June 30th, make a report to the Minister respecting its operations and transactions during the year.

- (2) The report must contain
- (a) a statement of the Board's accounts;
  - (b) a five-year plan respecting the operations of the Board, the particulars of which are as prescribed by the Governor in Council; and
  - (c) any further particulars prescribed by the Governor in Council.
- (3) The report must be laid before the House of Assembly
- (a) immediately, if the Assembly is then sitting; or
  - (b) within 15 days of the beginning of the next sitting of the Assembly, if the Assembly is not then sitting. 1994-95, c. 10, s. 160; 1999, c. 1, s. 15; 2017, c. 16, s. 10.

**Report to Minister**

**177 (1)** The Board shall, within 90 days after the end of each quarter, make a report to the Minister respecting its operations and transactions during the period covered by the report.

**(2)** The quarterly reports referred to in subsection (1) must contain a statement of the Board's accounts and such other information and particulars as are prescribed by the Minister or the Governor in Council.

**(3)** The quarterly reports referred to in subsection (1) must be laid before the House of Assembly

(a) immediately, if the House of Assembly is then sitting;  
or

(b) within 15 days of the beginning of the next sitting of the House of Assembly, if the House of Assembly is not then sitting.  
1999, c. 1, s. 16.

**Funding for research and safety programs**

**178 (1)** The Board may conduct or provide funding for research and safety programs on

(a) injury prevention, safety in the workplace and treatment of workplace injuries; and

(b) scientific, medical or other issues relating to workers' compensation.

**(2)** The Board may make any expenditure from the Accident Fund required to conduct or provide funding for a research or safety program pursuant to subsection (1).

**(3)** The Board may

(a) charge any expenditure made pursuant to subsection (2) against any industry, class of employer, subclass of employer or employer to which, in the opinion of the Board, the research or safety program relates; and

(b) collect the expenditure in the same manner as the collection of an assessment. 1994-95, c. 10, s. 162.

**Agreement respecting payment of medical costs**

**179** The Board may enter into an agreement with the Nova Scotia Health Services and Insurance Commission respecting methods of payment of the costs of medical aid provided pursuant to this Part. 1994-95, c. 10, s. 163.

**Administration of Federal laws**

**180** The Board may administer any Act of the Parliament of Canada or order of the Governor General in Council respecting

(a) the payment of compensation to any person named in the Act;

(b) employment safety. 1994-95, c. 10, s. 164.

### **Co-operation with Department of Labour, Skills and Immigration**

**181 (1)** The Board and the Occupational Health and Safety Division of the Department of Labour, Skills and Immigration may co-operate in any way, including the sharing of information otherwise privileged or confidential, in order to promote occupational health and safety and achieve their goals.

**(2)** Without limiting the generality of subsection (1), the Board and the Occupational Health and Safety Division of the Department of Labour, Skills and Immigration may exchange

- (a) any information regarding compliance with any enactment respecting occupational health and safety; and
- (b) any information or statistics regarding workplace injuries or occupational diseases required by the Board in order to properly carry out the provisions of Section 135. 1994-95, c. 10, s. 165; 2023, c. 23, s. 6.

### **Interjurisdictional agreements**

**182 (1)** The Board may, with the approval of the Board of Directors, enter into agreements with the Government of Canada or a workers' compensation board or similar body in any other jurisdiction that provide for

- (a) co-operation in matters relating to compensation for or rehabilitation of workers injured in the course of employment;
- (b) the payment of compensation for injuries to workers employed partly within the Province and partly within another jurisdiction;
- (c) the avoidance of duplicate assessments, and the adjustment of assessments an employer is or might be liable to on the earnings of workers employed partly within the Province and partly in another jurisdiction;
- (d) the sharing of the cost of claims in proportion to the estimated amount of a worker's exposure to the probable cause of the injury in each jurisdiction.

**(2)** The Board may make payments out of and receive payments into the Accident Fund to carry out the terms of an agreement made pursuant to subsection (1). 1994-95, c. 10, s. 166.

### **Immunity from suit**

**183** No person may bring an action or other proceeding for damages in any court of law against

- (a) the Board;
  - (b) any member of the Board of Directors;
  - (c) any officer or employee of the Board;
  - (d) the Appeals Tribunal or any member of the Appeals Tribunal;
- or
- (e) any member of the Medical Review Commission established pursuant to Section 221,



for any action or omission within the jurisdiction conferred by this Part, or beyond the jurisdiction conferred by this Part, if the person responsible for the action or omission acted in good faith. 1994-95, c. 10, s. 167.

**Non-compellability**

**184** No person who is

- (a) a member of the Board of Directors;
- (b) an officer or employee of the Board;
- (c) a member of the Appeals Tribunal; or
- (d) a member of a Medical Review Commission panel,

is required to give evidence in any action or proceeding to which the Board is not a party with regard to information obtained in the discharge of any power or duty undertaken in connection with the Board. 1994-95, c. 10, s. 168.

**Board may prescribe forms**

**185** Subject to Section 186, the Board may prescribe the form and use of any payroll, record, report, certificate, declaration or other document required to properly carry out the provisions of this Part. 1994-95, c. 10, s. 169; 2023, c. 3, Sch. C, s. 1.

**Regulations**

**186 (1)** The Governor in Council may make regulations prescribing

- (a) the form and use of any document or form used pursuant to this Act;
- (b) the person or class of persons authorized to complete any document or form prescribed pursuant to this Act.

**(2)** In the event of a conflict, a regulation made under clause (1)(a) takes precedence over any provision of this Act.

**(3)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2023, c. 3, Sch. C, s. 2.

**Head office and branch offices**

**187 (1)** The offices of the Board must be situated in the former City of Halifax.

**(2)** The Board may establish and maintain a branch office at any place in the Province.

**(3)** The Board shall

- (a) establish and maintain a branch office at or near Sydney; and
- (b) include a medical officer on the staff of the Sydney office. 1994-95, c. 10, s. 170.

**Real property of Board**

**188 (1)** With the approval of the Governor in Council, the Board may acquire, deal with and dispose of real property.

**(2)** The approval of the Governor in Council is not required if the Board acquires, disposes of or deals with real property as an investment.

**(3)** Real property acquired by the Board pursuant to subsection (1) is not subject to municipal taxation.

**(4)** The Board shall pay a grant in lieu in respect of any real property exempt from taxation under this Section in accordance with the formula currently in use in the Department of Municipal Affairs and Housing for payment on like property. 1994-95, c. 10, s. 171; 2023, c. 23, s. 7.

**Investment and borrowing powers**

**189 (1)** The Board may

(a) invest any funds arising under this Part or under the Board's control according to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments to avoid undue risk of loss and obtain a reasonable return; and

(b) borrow from any chartered bank, by way of overdraft or otherwise, any sums the Board considers necessary to properly carry out the provisions of this Part.

**(2)** The funds, investments and income of the Board are free from every form of taxation. 1994-95, c. 10, s. 172.

**Deemed public service**

**190 (1)** For all purpose of the *Public Service Superannuation Act*, the Chief Executive Officer of the Board and every person employed by the Board pursuant to Section 175 is deemed to be a person employed in the public service of the Province and service in employment of the Board is deemed to be public service.

**(2)** The Governor in Council may, when appointing members of the Board of Directors, determine that the *Public Service Superannuation Act* applies to a particular member or members.

**(3)** The Board shall deduct monthly from the salary of every member of the Board of Directors designated pursuant to subsection (1), the Chief Executive Officer of the Board and every employee thereof such amount as is directed by the Governor in Council to be deducted from the salary of every employee in the public service of the Province and shall pay over the same to the Minister of Finance and Treasury Board, which amounts when so received must be paid into and form part of the Superannuation Fund under the *Public Service Superannuation Act*.

**(4)** Where by the *Public Service Superannuation Act* any payment is directed to be made into the Superannuation Fund by the Government or by the Minister of Finance and Treasury Board, or where by such Act any superannuation

allowance or other sum is directed to be paid out of the General Revenue Fund, in respect of any member or employee designated pursuant to subsection (1), the Chief Executive Officer of the Board or any employee of the Board, such payment, superannuation allowance or other sum must be paid by the Board out of the Accident Fund. 1994-95, c. 10, s. 173.

#### **Proof of document**

**191** A copy of any document or record of the Board or the Appeals Tribunal appearing to be certified by an authorized officer or employee of the Board or the Appeals Tribunal to be a true copy of the document or record is proof that the document or record is a true copy, and must be admitted in evidence as prima facie proof of the facts stated in it without proof of the signature or official character of the person signing it. 1994-95, c. 10, s. 174.

#### **Auditor**

**192 (1)** The Board of Directors shall appoint a public accountant licensed pursuant to the *Chartered Professional Accountants Act* to audit the Board's accounts.

**(2)** The remuneration of the auditor appointed pursuant to subsection (1) must be fixed and paid by the Board. 1994-95, c. 10, s. 175.

#### **Certain court actions**

**193 (1)** Where, in a court in the Province, a question arises with respect to anything in this Part, the court shall not judge the question until after notice is served on the Board and the Minister in accordance with this Section.

**(2)** Subject to subsection (3), the notice referred to in subsection (1) must be served at least 30 days before the day of argument.

**(3)** The court may, on an *ex parte* application made for the purpose, order an abridgement of the time for service of the notice referred to in subsection (2).

**(4)** The notice referred to in subsection (1) must state

- (a)** the action, cause, matter or proceeding in which the question arises or application is made;
- (b)** the provision in question;
- (c)** the day and place for the hearing of the question; and
- (d)** the particulars of the issue being argued.

**(5)** The Minister and the Board may appear and be heard in any action, cause, matter or proceeding to which subsection (1) applies.

**(6)** Where the Minister or the Board appear in an action, cause, matter or proceeding to which subsection (1) applies, the Minister or the Board are parties for the purpose of appeal from an adjudication in the action, cause, matter or proceeding. 1994-95, c. 10, s. 176.

**Expenses paid from Accident Fund**

**194 (1)** All expenses incurred in the administration of this Part must be paid out of

- (a) the Accident Fund; and
- (b) any grants from the General Revenue Fund the Governor in Council may approve.

**(2)** Where, at the request of the Board or the Governor in Council, the Auditor General performs an audit with respect to any matter relating to Part I or Part II, the expenses incurred by the Auditor General in conducting the audit must be paid out of the Accident Fund. 1994-95, c. 10, s. 177; 1999, c. 1, s. 18.

**POWERS OF THE BOARD****Power of inquiry**

**195 (1)** Any member of the Board of Directors and any officer or employee of the Board who exercises any power of inquiry on behalf of the Board, and any member of the Appeals Tribunal, has the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* and, without limiting the generality of the foregoing, may

- (a) summon witnesses and require them to give oral or written evidence on oath or affirmation;
- (b) require the production of any document or thing the Board or the Appeals Tribunal considers necessary for the full investigation and consideration of any matter;
- (c) accept oral or written evidence, except evidence inadmissible by any statute or that would be inadmissible in a court by reason of any privilege under the law of evidence; and
- (d) punish persons guilty of contempt.

**(2)** Nothing in this Section overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used as evidence in any proceedings. 1994-95, c. 10, s. 178.

**Witness expenses**

**196** The Board or the Appeals Tribunal may provide reasonable travelling and living expenses to any person summoned as a witness pursuant to Section 195. 1994-95, c. 10, s. 179.

**Examination of documents**

**197 (1)** The Board may examine any document or other record of any person in order to determine

- (a) the accuracy of any statement furnished to the Board by an employer;
- (b) the amount of an employer's payroll; and
- (c) whether the person is subject to this Part.

(2) The Board may, at any reasonable time, enter any office or other premises connected with an employer's business in order to

- (a) carry out the provisions of subsection (1);
- (b) inspect any material, machinery, appliance or article;
- (c) inspect the site of, or interview witnesses to, an accident; or
- (d) interview any person respecting any matter related to this Part.

(3) Any authorized person who enters an employer's office or other premises pursuant to subsection (1) may remove any document or other record from the employer's office or premises for the purpose of making a copy of the document or other record.

(4) Where an authorized person removes a document or record from an employer's office or other premises pursuant to subsection (3), the person shall

- (a) provide the employer or other person in possession of the document or record with a receipt for the document or other record taken; and
- (b) return the document or other record to the employer or other person in possession of the document or record as soon as the copying is completed.

(5) Where an employer or other person in possession of the document or record

- (a) refuses to allow a book or account to be examined pursuant to subsection (1);
- (b) refuses entry to the employer's or other person's office or other premises pursuant to subsection (2); or
- (c) refuses to allow the removal of a document or record for the purpose of making a copy pursuant to subsection (3),

the Board may apply to the Supreme Court of Nova Scotia without notice to the employer or other person in possession of the document or record for an order requiring the employer to comply with this Section.

(6) The Board may authorize any officer or employee of the Board, or any compliance officer, to enforce this Section. 1994-95, c. 10, s. 180.

#### **Compliance officers**

**198 (1)** For the purpose of Section 197 and this Section, "compliance officer" means any officer or employee of the Board authorized to enforce this Part, and includes

- (a) a member of the Royal Canadian Mounted Police; and
- (b) a member of a municipal police force within the meaning of any regulation made pursuant to the *Police Act*.

(2) The Board shall issue a card or other form of identification to any compliance officer.

(3) A card or other form of identification issued pursuant to subsection (2) is proof, unless the contrary is shown, that the person identified by the card or other identification is a compliance officer.

(4) A compliance officer has the powers, privileges and immunities of a peace officer. 1994-95, c. 10, s. 181.

#### **Board documents as evidence**

**199** A copy of a document or record made pursuant to Section 197

(a) is admissible as evidence in any court; and

(b) has the same evidentiary value as the original document or record. 1994-95, c. 10, s. 182.

#### **Policies**

**200** (1) For the purpose of this Act, "policy" means a written statement of policy adopted by the Board of Directors and designated by the Board of Directors in writing as a statement of policy.

(2) The Board of Directors may adopt policies consistent with this Part and the regulations to be followed in the application of this Part or the regulations.

(3) The Board of Directors may invite submissions from interested parties before adopting a policy pursuant to this Section.

(4) Every policy adopted by the Board of Directors pursuant to subsection (2) must be available to the public.

(5) Until a different policy is adopted, every policy adopted by the Board of Directors pursuant to subsection (2) is binding on the Board itself, the Chair, every officer and employee of the Board and on the Appeals Tribunal.

(6) Notwithstanding subsection (5), a policy adopted by the Board is binding on the Appeals Tribunal only if the policy is consistent with this Part or the regulations.

(7) Any policy adopted by the Board of Directors may be retrospective or prospective in application and may be made retroactive to any date designated by the Board of Directors.

(8) Notwithstanding subsection (7), a policy of the Board of Directors may be made retroactive only if the policy benefits a worker.

(9) The Chair, every officer and employee of the Board and the Appeals Tribunal may, in the performance of functions under this Part, interpret the policies, but it is not within the jurisdiction of the Chair or an officer or employee of the Board to refuse to apply a policy on the ground that it is inconsistent with this Act or the regulations.

(10) Any participant may appeal a final order of a hearing officer made pursuant to Section 215 to the Nova Scotia Court of Appeal on the ground that a policy upon which the decision of the hearing officer depends is not consistent with this Act or the regulations but there is not an appeal on any other question of law or fact.

(11) Subsections 265(2) to (6) apply with necessary changes to appeals under subsection (9), but, it is not necessary to provide notice to the Chief Appeal Commissioner. 1994-95, c. 10, s. 183; 1999, c. 1, s. 19.

### Regulations

**201** (1) The Board may, with the approval of the Governor in Council, make any regulation

- (a) authorized pursuant to this Part; and
- (b) that, in the opinion of the Board, is required to properly carry out the provisions of this Part.

(2) Without restricting the generality of subsection (1), the Board, with the approval of the Governor in Council, may make regulations

- (a) prescribing any time limit not prescribed in this Part that the Board considers necessary for the efficient operation of the Board;
- (b) defining or further defining any word or expression not otherwise defined in this Part.

(3) Notwithstanding subsection (1), the Governor in Council may make any regulation that may be made by the Board.

(4) The exercise by the Board or the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. 1994-95, c. 10, s. 184; 1999, c. 1, s. 20.

### Retroactive regulation

**202** Notwithstanding the *Regulations Act* or anything contained in this Part, a regulation made pursuant to this Part may be made retroactive to any date if the regulation benefits a worker. 1999, c. 1, s. 21.

## DECISION-MAKING

### Jurisdiction and powers of Board

**203** (1) Subject to the rights of appeal provided in this Act, the Board has exclusive jurisdiction to inquire into, hear and determine all questions of fact and law arising pursuant to this Part, and any decision, order or ruling of the Board on the question is final and conclusive and is not subject to appeal, review or challenge in any court.

(2) Notwithstanding subsection (1) but subject to Sections 84 to 86, the Board may

- (a) reconsider any decision, order or ruling made by it;  
and
  - (b) confirm, vary or reverse the decision, order or ruling.
- 1994-95, c. 10, s. 185.

**Basis for decisions of Board**

**204** The decisions, orders and rulings of the Board must always be based upon the real merits and justice of the case and in accordance with this Act, the regulations and the policies of the Board. 1994-95, c. 10, s. 186.

**Applicant entitled to benefit of doubt**

**205** Notwithstanding anything contained in this Act, on any application for compensation an applicant is entitled to the benefit of the doubt which means that, where there is doubt on an issue respecting the application and the disputed possibilities are evenly balanced, the issue must be resolved in the worker's favour. 1994-95, c. 10, s. 187.

**Participants in decision-making**

**206** Both the worker and the worker's employer may participate in any adjudication made pursuant to Section 203. 1994-95, c. 10, s. 188; 1999, c. 1, s. 22.

**Service of documents**

**207 (1)** For the purpose of this Part, any notice or other communication sent through the mail is deemed to have been received by the addressee five business days after the day it was mailed.

**(2)** Subject to subsection (3), any notice or other document that must be served in a proceeding pursuant to this Part may be served personally or by express post.

**(3)** The Board may authorize any other form of service it considers appropriate in the circumstances. 1994-95, c. 10, s. 189.

**Extension of time limits**

**208** Subject to Section 97, the Board may, at any time, extend any time limit prescribed by this Part or the regulations if, in the opinion of the Board, an injustice would otherwise result. 1994-95, c. 10, s. 190.

**Admissibility of record**

**209** Any copy of a document or other record may be admitted as evidence pursuant to this Part if the Board is satisfied as to its authenticity. 1994-95, c. 10, s. 191.

**Release of information by Board**

**210** No person who is

- (a) a member of the Board of Directors;
- (b) an officer or employee of the Board;
- (c) a member or employee of the Appeals Tribunal; or



- (d) a member of a Medical Review Commission panel, shall release any information obtained by virtue of the person's office or employment except in accordance with the *Freedom of Information and Protection of Privacy Act*, unless the information is released
- (e) in the performance of the person's office or employment;
- (f) with the approval of the Board of Directors or the Chief Appeal Commissioner; or
- (g) pursuant to this Part. 1994-95, c. 10, s. 192.

**Worker entitled to copy of documents**

**211 (1)** Any worker may receive a copy of any document or record in the Board's possession respecting the claim of the worker.

**(2)** Where the Board has determined that a document or record contains medical information that would be harmful to the worker if released to the worker, the Board may

- (a) release the document or record to the worker's physician; and
- (b) inform the worker that it has released the document or record to the worker's physician.

**(3)** An employer, who is a participant in an appeal to a hearing officer, may, subject to any procedure that may be adopted by the Board, receive a copy of any document or record in the Board's possession that the Board considers relevant to the appeal.

**(4)** No decision, order or ruling of the Board on an issue in which the employer has a direct interest may be based on any document or record to which the employer has been denied access pursuant to this Section.

**(5)** Subject to subsection (6), the Board may charge a fee for providing any copy of a document or record pursuant to this Section.

**(6)** A worker is entitled to one copy of any document or record requested pursuant to subsection (1) without charge if the worker's claim has been denied by the Board. 1994-95, c. 10, s. 193; 1999, c. 1, s. 23.

**Agreements**

**212** The Board may, in order to properly carry out the provisions and achieve the objectives of this Part, enter into agreements with

- (a) any agency of the Government of Canada;
- (b) any agency of the Province; or
- (c) a workers' compensation board or similar body in any other jurisdiction,

for the exchange of information otherwise confidential or privileged. 1994-95, c. 10, s. 194.

**Agreements with Canada**

**213** The Board may enter into any agreement with the Government of Canada or its agencies that, in the opinion of the Board, is necessary to carry out effectively the intent and purpose of this Act. 1999, c. 1, s. 24.

**Medical records privileged**

**214** Every report submitted to the Board or the Appeals Tribunal by a physician, surgeon, hospital official or other healthcare professional

(a) is a privileged communication of the person submitting the report; and

(b) is not admissible as evidence in any action against the physician, surgeon, hospital official or healthcare professional. 1994-95, c. 10, s. 195.

**APPEALS****Appeal to hearing officer**

**215 (1)** Any worker or the worker's employer may request that an appeal from a decision made pursuant to Section 203 be heard by a hearing officer.

**(2)** An appeal pursuant to this Section must be commenced by filing a written notice of appeal within 30 days of the participants being notified of the decision of the Board pursuant to Section 203.

**(3)** Subject to Section 217, an appeal pursuant to this Section must be heard by a hearing officer.

**(4)** The participants in an appeal pursuant to this Section are

(a) in the case of a decision respecting compensation, the worker and the worker's employer;

(b) in the case of a decision respecting an assessment, the employer; and

(c) any other person who, in the opinion of the hearing officer, has a direct and immediate interest in the matter.

**(5)** A hearing officer to whom an appeal pursuant to this Section has been referred may hold an oral hearing where requested, in writing, by any participant in the appeal.

**(6)** The participants to an appeal pursuant to this Section may present evidence and make submissions on their own behalf or with assistance.

**(7)** A hearing officer may adjourn the hearing of an appeal in order to make a reference pursuant to Section 217.

**(8)** Subject to subsection (7), a hearing officer shall render a decision on an appeal within 60 days of the completion of the hearing. 1994-95, c. 10, s. 197; 1999, c. 1, s. 26.

**Decision by hearing officer**

**216 (1)** A hearing officer shall decide the appeal according to this Part, the regulations and the policies of the Board, and

- (a) documentary evidence previously submitted to or collected by the Board;
- (b) any additional evidence the participants present;
- (c) the decision under appeal;
- (d) the submissions of the participants; and
- (e) any other evidence the hearing officer may request or obtain.

**(2)** A decision of a hearing officer that disposes of an appeal must be communicated to the participants in writing. 1994-95, c. 10, s. 198.

**Referral to Chair**

**217 (1)** Where a hearing officer is of the opinion

- (a) that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 200; or
- (b) that an appeal raises important or novel questions or issues of general significance that should be decided by the Appeals Tribunal pursuant to Part II,

the hearing officer shall postpone or adjourn the appeal and refer the appeal to the Chair.

**(2)** The Chair may direct that an appeal referred to the Chair pursuant to subsection (1) be

- (a) reviewed by the Board of Directors pursuant to Section 200;
- (b) heard and decided by the Appeals Tribunal pursuant to Part II; or
- (c) returned to the hearing officer.

**(3)** All appeals that, in the opinion of the Chair, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

**(4)** Notwithstanding subsection (1), a hearing officer may make an interim award in an amount and for a period of time as determined by the hearing officer while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 199.

**Postponement by Chair**

**218 (1)** Where an appeal is brought pursuant to Section 215, the Chair may postpone or adjourn the appeal and direct that the appeal be

(a) reviewed by the Board of Directors, if the Chair is of the opinion that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 200; or

(b) heard and decided by the Appeals Tribunal, if the Chair is of the opinion that the appeal raises important or novel questions or issues of general significance that should be decided by the Appeals Tribunal pursuant to Part II.

(2) All appeals that, in the opinion of the Chair, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

(3) Subject to Section 220, where the Chair postpones or adjourns a hearing pursuant to clause (1)(a), the Chair shall ensure that the final disposition of the appeal is left solely to the independent judgement of the hearing officer.

(4) Notwithstanding subsection (1), the hearing officer may make an interim award in an amount and for a period of time as determined by the hearing officer while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 200.

#### **Adoption of policy by Board**

**219** (1) The Board of Directors may adopt and issue a policy pursuant to Section 200 in consequence of any determination made pursuant to Section 217 or 218.

(2) A policy adopted pursuant to subsection (1) is

(a) effective immediately; and

(b) applicable to appeals that have already been commenced including any appeal adjourned pursuant to Section 217 or 218. 1994-95, c. 10, s. 201.

#### **Duration of postponement or adjournment**

**220** Where an appeal has been postponed or adjourned pursuant to Section 215, 217 or 218, the postponement or adjournment may not last longer than the earliest of

(a) three months or, where the Board determines that exceptional circumstances exist, not longer than 12 months;

(b) the day the Board issues a policy pursuant to Section 219; or

(c) the day the Board of Directors notifies the hearing officer that the Board will not be issuing a policy pursuant to Section 219. 1994-95, c. 10, s. 202.

#### **Medical Review Commission**

**221** (1) For the purpose of Sections 222 and 223,

“Commission” means the Medical Review Commission established by this Section;

“Coordinator” means the Coordinator of the Commission;

“medical opinion” means a written statement of a medical conclusion and the facts and reasons on which the conclusion is based in respect of an individual worker.

(2) A Medical Review Commission is established.

(3) The Minister shall

(a) appoint duly qualified medical practitioners to the Commission; and

(b) endeavour to ensure representation on the Commission of all specialities relevant to the work of the Board.

(4) The Minister shall designate one of the members of the Commission as the Coordinator of the Commission.

(5) The Coordinator shall serve on terms and conditions agreed to by the Minister and the Coordinator.

(6) The Governor in Council shall prescribe the remuneration to be paid to members of the Commission.

(7) The deliberations of the Commission and the opinions issued pursuant to this Section are not subject to appeal, review or challenge in any court. 1994-95, c. 10, s. 203.

#### Reference to Commission

**222 (1)** Where the Board or the Appeals Tribunal requires a medical opinion in the course of

(a) any claim for compensation; or

(b) any appeal provided for in this Act,

the Board or the Appeals Tribunal may refer the matter to the Commission.

(2) Subject to subsection (6), where a matter is referred to the Commission pursuant to subsection (1), the Coordinator shall

(a) assign the matter to a panel of not more than three members of the Commission; and

(b) where the panel has more than one member, designate a chair of the panel.

(3) Every panel to which a matter is assigned by the Coordinator shall give an opinion that is

(a) the opinion shared by the majority of the Commissioners on the panel; or

(b) where no opinion is shared among the Commissioners, the opinion of the chair of the panel.

(4) The opinion of the panel as determined pursuant to subsection (3), together with any dissenting opinions, must be communicated to the Board or the Appeals Tribunal for the Board's or the Tribunal's consideration.

(5) Subject to subsection (6), the Coordinator may appoint duly qualified medical practitioners who are not members of the Commission to sit on a panel of the Commission.

(6) Without the written consent of the participants in the matter referred to the Commission by the Board or the Appeals Tribunal, no medical practitioner shall serve as a member of a panel of the Commission if the medical practitioner has

- (a) examined or treated the worker in connection with the injury that is the subject of the claim;
- (b) regularly treated the worker as the worker's doctor;
- (c) acted as a consultant in the treatment of the worker's injuries; or
- (d) is a partner of a medical practitioner referred to in clause (a), (b) or (c). 1994-95, c. 10, s. 204.

#### **Powers of panel**

**223 (1)** A panel of the Commission may

- (a) interview, hold a meeting or correspond with any person, including the worker and any medical practitioner who has provided reports to or given evidence before the Board or the Appeals Tribunal; and
- (b) require the worker to undergo an examination by a member of the Commission or a duly qualified medical practitioner specified by the Commission.

**(2)** A panel of the Commission is not required to

- (a) hold a hearing; or
- (b) receive evidence or any other submissions.

**(3)** The Commission shall inform the Board or the Appeals Tribunal if a worker refuses to undergo a medical examination required by a panel of the Commission. 1994-95, c. 10, s. 205.

#### **Stated case to Court of Appeal**

**224 (1)** The Board or the Appeals Tribunal may state a case in writing for the Nova Scotia Court of Appeal on any question of law.

**(2)** The Nova Scotia Court of Appeal shall

- (a) hear and determine the question or questions referred pursuant to subsection (1); and
- (b) provide its opinion on the question to the Board or the Appeals Tribunal, as the case may be.

(3) The Nova Scotia Court of Appeal may not award costs in a case stated pursuant to this Section. 1994-95, c. 10, s. 206.

#### PENALTIES AND RECOVERY OF OVERPAYMENTS

##### Violation of certain provisions

**225** Every person who contravenes Section 100, 101, 121, 122, 123, 124, 146 or 147 is guilty of an offence and, in addition to any other penalty that may be levied pursuant to this or any other Act, liable to a penalty of not more than

- (a) \$500 for a first offence;
- (b) \$2,000 for a second offence; and
- (c) \$10,000 for a third or subsequent offence. 1994-95, c. 10, s. 207.

##### Violation of certain provisions

**226** Every person who contravenes Section 27, 98, 99, 102, 141, 143, 144, 145, 151 or 197 is guilty of an offence and, in addition to any other penalty that may be levied pursuant to this or any other Act, liable to a penalty of not more than

- (a) \$2,000 for a first offence; and
- (b) \$10,000 for a second or subsequent offence. 1994-95, c. 10, s. 208.

##### Violation of Part

**227** Every person who contravenes this Part or any regulations made pursuant to this Part for which a penalty has not been provided in this Part, is guilty of an offence and liable to a penalty of not more than

- (a) \$2,000 for a first offence; and
- (b) \$10,000 for a second or subsequent offence. 1994-95, c. 10, s. 209.

##### False statement or failure to inform

**228 (1)** Every person who

- (a) knowingly makes a false statement to the Board affecting any person's entitlement to compensation or liability for assessment; or
- (b) deliberately fails to inform the Board of a material change in circumstances affecting the person's entitlement to compensation or liability for assessment, within 10 days of the commencement of the change,

is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than three months, or to both fine and imprisonment.

(2) Where a person is guilty of an offence pursuant to subsection (1), the court may, in addition to any other penalty imposed by this or any other Act, order the person to repay to the Board any money obtained by that person by reason of the commission of the offence.

(3) Where money is ordered to be paid pursuant to subsection (2), the Board may file a certified copy of the order in the Supreme Court of Nova Scotia and, upon filing, the order is deemed to be a judgment of the court in favour of the Board, and may be enforced in the same manner as any other order of the court.

(4) Nothing in this Section limits the right of the Board to take proceedings to obtain a civil remedy, including proceedings pursuant to Section 238. 1994-95, c. 10, s. 210.

#### **Interference or refusal to comply**

**229** Every person who, without reasonable cause,

(a) impedes or attempts to impede any inquiry, any examination or any hearing pursuant to this Part; or

(b) refuses to comply with an order or decision of the Board,

is guilty of an offence and liable to a penalty of not more than \$10,000. 1994-95, c. 10, s. 211.

#### **Assisting in offence**

**230** Every person who knowingly, by an act or omission,

(a) aids;

(b) advises;

(c) incites; or

(d) attempts to aid, advise or incite,

another person to commit an offence pursuant to this Part, is party to the offence and liable to the same penalty as that provided for the person who committed the offence, whether or not that other person has been penalized, prosecuted or convicted. 1994-95, c. 10, s. 212.

#### **Liability of corporate directors**

**231** Where an offence is committed by a corporation, any officer, director, representative or agent of the corporation who ordered, authorized or consented to the performance of the act or omission that constitutes the offence is party to the offence and liable to the same penalty as that provided for the corporation, whether or not the corporation has been penalized, prosecuted or convicted. 1994-95, c. 10, s. 213.

#### **Collection of penalties**

**232 (1)** Any penalty imposed on a worker by the Board pursuant to this Part may be collected by deducting the amount of the penalty from any amount of compensation payable, or that becomes payable, to the worker.

(2) Where the employer of a worker is a corporation of which the worker or member of the family of the worker is an officer, director or principal shareholder, any penalty imposed on the employer pursuant to this Part may be collected by deducting the amount of the penalty from any amount of compensation payable, or that becomes payable, to the worker.



(3) Any penalty imposed on an employer pursuant to this Part may be collected in the same manner as the collection of an assessment. 1994-95, c. 10, s. 214.

**Procedure for collection of penalties**

233 Any penalty imposed by this Part may be levied and collected by the Board or by an action brought by the Board in any court of competent jurisdiction. 1994-95, c. 10, s. 215.

**Additional penalties**

234 The Board may, in addition to any other penalty that may be imposed by this Part,

(a) in the case of a worker who is in default of the worker's duties pursuant to this Part or who refuses consent pursuant to subsection 123(2), suspend, reduce or terminate or withhold the worker's compensation during the period of default or refusal; and

(b) in the case of an employer who is in default of the employer's duties pursuant to this Part, impose a penalty not exceeding the total of

(i) the full amount or capitalized value, as determined by the Board, of any compensation payable to a worker of the employer, and

(ii) any other expenditures made by the Board,

in respect of injuries that occurred to the employer's workers during the period of default. 1994-95, c. 10, s. 216.

**Interest and percentage penalties**

235 The Board may, in addition to any other penalty that may be imposed by this Part, charge against any employer who neglects or refuses to pay any assessment any interest and percentage penalties as the Board prescribes by regulation. 1994-95, c. 10, s. 217.

**Penalties form part of Accident Fund**

236 Any penalty imposed pursuant to this Part must be paid over to the Board and forms part of the Accident Fund. 1994-95, c. 10, s. 218.

**No prosecution without leave of Board**

237 No prosecution for any contravention of this Part or the regulations may be taken without leave of the Board. 1994-95, c. 10, s. 219.

**Recovery of overpayment**

238 Where any person receives any amount of compensation that the Board determines is in excess of that to which the person is entitled pursuant to this Part, the Board may recover the amount from the person, or from the executors or administrators of the person, as a debt due to the Board. 1994-95, c. 10, s. 220.

LIABILITY OF EMPLOYERS IN INDUSTRIES  
NOT WITHIN THE SCOPE OF THIS ACT

**Application of Sections 240 and 241**

**239** Sections 240 and 241 apply only to the industries to which this Part does not apply and to the workers employed in those industries. 1994-95, c. 10, s. 221.

**Action against employer**

**240 (1)** Where personal injury is caused to a worker by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the worker's employer or by reason of the negligence of the worker's employer or any person in the service of the worker's employer, acting within the scope of their employment, the worker or, where the injury results in death, the personal representative of the worker, and any person entitled in case of death has an action against the employer.

**(2)** Where the action is brought by the worker, the worker may recover from the employer the damages sustained by the worker by or in consequence of the injury and, where the action is brought by the personal representative of the worker or by or on behalf of persons entitled to damages under the *Fatal Injuries Act*, they are entitled to recover the damages as they are entitled to pursuant to that Act.

**(3)** Where

(a) the execution of any work is being carried into effect under any contract;

(b) the person for whom the work is done owns or supplies any ways, works, machinery, plant, building or premises;

(c) by reason of any defect in the condition or arrangement of them, personal injury is caused to a worker employed by the contractor, or by any subcontractor; and

(d) the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in their service and acting within the scope of their employment,

the person for whom the work or that part of the work is done is liable to the action as if the worker had been employed by that person, and for that purpose is deemed to be the employer of the worker within the meaning of this Part, but the contractor or subcontractor is liable to the action as if this subsection had not been enacted, but not so that double damages are recoverable for the same injury.

**(4)** Nothing in subsection (3) affects any right or liability of the person for whom the work is done and the contractor or subcontractor, as between themselves.

**(5)** A worker is not deemed to have voluntarily incurred the risk of the injury by reason only of the worker continuing in the employment of the employer with knowledge of the defect or negligence that caused the worker's injury. 1994-95, c. 10, s. 222.

**Worker deemed not to have undertaken risks**

**241 (1)** A worker is, on or after July 1, 1968, deemed not to have undertaken the risks due to the negligence of the worker's fellow workers, and contributory negligence on the part of a worker is not, on or after that date, a bar to recovery by the worker or by any person entitled to damages under the *Fatal Injuries Act*, in an action for the recovery of damages for an injury sustained by, or causing the death of the worker while in the service of the worker's employer, for which the employer would otherwise have been liable.

**(2)** Contributory negligence on the part of the worker must be taken into account in assessing the damages in any action referred to in subsection (1). 1994-95, c. 10, s. 223.

**FORMER PART III****Compensation payable under former Act**

**242 (1)** The amount of compensation payable to any person entitled to compensation pursuant to Part III of Chapter 343 of the Revised Statutes, 1967, is calculated and payable as if the compensation was payable pursuant to Section 33, 37, 38, 43 or 45 of Chapter 508 of the Revised Statutes, 1989, as the case may be, and this Part is to be interpreted and construed accordingly.

**(2)** Subsection (1) does not authorize the payment of compensation for any period before February 1, 1996. 1994-95, c. 10, s. 224.

**TRANSITIONAL PROVISIONS****"former Act" defined**

**243** In Sections 244 to 294, "former Act" means Chapter 508 of the Revised Statutes, 1989, as it read prior to February 1, 1996. 1994-95, c. 10, s. 225.

**Compensation under former Act confirmed**

**244** Where, before February 1, 1996, the Board awarded compensation for permanent partial disability or permanent total disability pursuant to the former Act with respect to an injury occurring before March 23, 1990,

(a) the compensation awarded is deemed to be and always to have been awarded in accordance with the former Act; and

(b) for greater certainty, the amount of compensation is deemed to be and always to have been 75% of the gross average weekly earnings of the worker before the accident multiplied by the permanent-impairment rating determined by the Board. 1994-95, c. 10, s. 226.

**Compensation for permanent partial disability**

**245 (1)** Subject to subsection (3), where a worker

(a) was injured before March 23, 1990; and

(b) on February 1, 1996, was receiving or was entitled to receive compensation for permanent partial disability or permanent total disability as a result of the injury,

the Board shall pay the compensation for the lifetime of the worker.

(2) The amount of compensation payable to a worker referred to in subsection (1) is deemed always to have been 75% of the gross average weekly earnings of the worker before the accident multiplied by the permanent-impairment rating determined by the Board.

(3) Section 84 applies to an award made or continued pursuant to subsection (1).

(4) Notwithstanding anything contained in this Section, where a worker

(a) was injured before March 23, 1990, and is receiving or is entitled to receive periodic compensation for either permanent partial disability or permanent total disability or is entitled to receive the amended interim earnings loss benefit pursuant to Section 14 as a result of the injury; or

(b) dies before February 1, 1996, and the worker's dependent spouse or invalid child is receiving or is entitled to receive periodic compensation in connection with the worker's death,

and the worker or dependent spouse or invalid child

(c) has a personal income below one half the average industrial wage for Nova Scotia as prescribed by regulation; and

(d) meets the conditions the Board prescribes by regulation,

the Board shall pay to the worker or dependent spouse or invalid child the supplement the Board prescribes by regulation in an amount not to exceed one half of the average industrial wage for Nova Scotia as prescribed by regulation. 1994-95, c. 10, s. 227; 1999, c. 1, s. 27; 2002, c. 41, s. 1.

#### **Compensation for permanent partial disability**

**246 (1)** Subject to subsection (2), where a worker

(a) was injured on or after March 23, 1990, and before February 1, 1996;

(b) suffered a permanent impairment as a result of the injury; and

(c) on February 1, 1996, was receiving or was entitled to receive compensation for permanent partial disability or permanent total disability as a result of the injury,

the compensation awarded between March 23, 1990, and February 1, 1996, is deemed to be and always to have been awarded in accordance with the former Act.

(2) The Board shall recalculate the amount of compensation payable to the worker in accordance with Sections 44 to 70.

(3) Where a recalculation made pursuant to subsection (2) entitles the worker to a greater award than the award the worker was receiving on February 1, 1996, the Board shall commence payment of the recalculated amount of compensation as of the latest of

(a) the date on which the Board determines the worker has a permanent impairment, whether pursuant to Section 44 or the former Act;

(b) the date on which the worker completes a rehabilitation program pursuant to Sections 126 and 127, where the worker is engaged in a rehabilitation program on or after the date the Board determines the worker has a permanent impairment pursuant to Section 44; or

(c) November 26, 1992.

(4) Where a recalculation made pursuant to subsection (2) entitles the worker to a smaller award than the award the worker was receiving on February 1, 1996, the Board

(a) shall commence payment of the recalculated amount of compensation as of the date of recalculation; and

(b) shall not collect any amount as an overpayment from the worker in respect of the difference between the two awards.

(5) For the purpose of clause (4)(a), the date of recalculation is deemed to be and always to have been February 1, 1996, regardless of when the recalculation is made.

(6) For greater certainty, nothing in this Section entitles any person to compensation for a period prior to November 26, 1992. 1994-95, c. 10, s. 228; 1999, c. 1, s. 28.

#### **Compensation for temporary disability**

**247 (1)** Subject to subsections (2) and (3), where a worker

(a) suffered an injury before February 1, 1996; and

(b) on February 1, 1996, was receiving or was entitled to receive compensation for

(i) temporary total disability pursuant to Section 37 of the former Act, or

(ii) temporary partial disability pursuant to Section 38 of the former Act,

as a result of the injury, the amount of compensation payable to the worker shall continue to be calculated in accordance with Section 37 or 38 of the former Act, respectively, as amended by this Act.

(2) The Board shall recalculate the amount of compensation payable to a worker referred to in subsection (1) in accordance with Sections 50 to 61 of this Act. 1994-95, c. 10, s. 229.

#### **Payments under Section 33 of former Act**

248 Subject to Section 83, where, on February 1, 1996, a person was receiving or was entitled to receive compensation pursuant to Section 33 of the former Act, the amount of compensation payable to the person shall continue to be calculated in accordance with the former Act. 1994-95, c. 10, s. 230.

#### **Payments from General Revenue Fund to Accident Fund**

249 In addition to the costs that may be payable out of the General Revenue Fund by the Province as a self-insurer of the Province's employees for the purpose of Part I, the Governor in Council may order that amounts be taken out of the General Revenue Fund and paid into the Accident Fund. 2002, c. 5, s. 58; 2010, c. 2, s. 84.

#### **Rules applicable to appeals**

250 Where an appeal from a decision of the Board is filed after February 1, 1996, the appeal shall be heard and decided pursuant to this Part. 1994-95, c. 10, s. 232.

#### **Auditor**

251 (1) The Governor in Council may appoint an auditor for the purpose of Sections 252 and 253.

(2) At least one auditor appointed pursuant to subsection (1) must be legally trained.

(3) The remuneration of the auditor must be determined by the Governor in Council and paid out of the Accident Fund.

(4) The duties of the auditor shall be prescribed by the Governor in Council by regulation. 1994-95, c. 10, s. 233.

#### **Remitting of appeal under former Act**

252 (1) Where

(a) an appeal has been filed pursuant to Section 174 of the former Act;

(b) the Appeal Board file contains evidence not available to the Board at the time of the decision under appeal; and

(c) in the opinion of the auditor, the evidence referred to in clause (b) might reasonably be expected to cause the Board to reverse or vary the decision under appeal,

the auditor shall remit the matter to the Board for reconsideration.

(2) Where the Board

(a) reconsiders a claim pursuant to subsection (1); and

(b) does not reverse or vary the decision under appeal,

the Board shall remit the matter to the Appeals Tribunal.

(3) A matter remitted to the Appeals Tribunal pursuant to subsection (2) does not require leave to appeal. 1994-95, c. 10, s. 234.

#### **Remitting of appeal under former Act**

**253 (1)** Where

(a) an appeal has been filed pursuant to Section 174 of the former Act; and

(b) the appellant had not, at the time the appeal was filed, exhausted the internal remedies of the Board available to the appellant,

the auditor shall remit the matter to the Board for reconsideration.

(2) Where the Board reconsiders a claim pursuant to subsection (1), any appeal from the reconsideration shall be made in accordance with this Part. 1994-95, c. 10, s. 235.

#### **Decision on appeal under former Act**

**254 (1)** Where an appeal has been filed pursuant to Section 174 of the former Act and, on February 1, 1996, a decision had not been rendered with respect to the appeal, the appeal shall be decided by the person and in the manner prescribed by the Governor in Council.

(2) Where the person referred to in subsection (1) is a person other than the former Appeal Board, the person may make a decision based on the evidence presented to the former Appeal Board without the necessity of a further hearing.

(3) Where the person referred to in subsection (1) is a member of the Appeals Tribunal, leave to appeal pursuant to Section 262 is not required. 1994-95, c. 10, s. 236.

#### **Application of former Act**

**255** Subject to Sections 243 to 248, the Board or the Appeals Tribunal shall, when making a decision, order or ruling pursuant to Sections 252 to 254

- (a) on or after February 1, 1996; and
- (b) in respect of compensation for any period before February 1, 1996,

calculate the amount of any compensation payable for the period before February 1, 1996, in accordance with the former Act. 1994-95, c. 10, s. 237.

## PART II

### WORKERS' COMPENSATION APPEALS TRIBUNAL

#### Appeals Tribunal

**256 (1)** An appeal board to be known as the Nova Scotia Workers' Compensation Appeals Tribunal is established.

**(2)** The members of the Appeals Tribunal shall be appointed by the Governor in Council.

**(3)** In appointing members of the Appeals Tribunal, the Governor in Council shall appoint

(a) one member to serve as Chief Appeal Commissioner; and

(b) at least two additional members to serve as appeal commissioners.

**(4)** The Chief Appeal Commissioner must be appointed for a term of not more than five years and may be reappointed.

**(5)** The Chief Appeal Commissioner appointed pursuant to this Section must be a practising member of the Nova Scotia Barristers' Society or, where not a practising member of the Society, must become a practising member of the Society within one year of appointment.

**(6)** The appeal commissioners, other than the Chief Appeal Commissioner, must be appointed for a term of not more than four years and may be reappointed. 1994-95, c. 10, s. 238.

#### Supervision of Part

**257** The Minister of Justice is responsible for the supervision and management of this Part. 1999, c. 1, s. 29.

#### Remuneration and expenses

**258 (1)** The remuneration of the appeal commissioners must be determined by the Governor in Council.

**(2)** Appeal commissioners must be reimbursed for reasonable travelling and other expenses incurred by them in connection with their work as appeal commissioners. 1994-95, c. 10, s. 239.



**Procedure**

**259 (1)** The Appeals Tribunal shall determine its own procedures and may make rules governing the making and hearing of appeals.

**(2)** The Appeals Tribunal may, at any time, extend any time limit prescribed by this Part or the regulations where, in the opinion of the Appeals Tribunal, an injustice would otherwise result. 1994-95, c. 10, s. 240.

**Chief Appeal Commissioner and personnel**

**260 (1)** The Chief Appeal Commissioner is the Chief Executive Officer of the Appeals Tribunal.

**(2)** The Chief Appeal Commissioner may

- (a) appoint; and
- (b) fix the duties of,

the officers and employees the Chief Appeal Commissioner considers necessary to carry out the duties of the Appeals Tribunal.

**(3)** The officers and employees appointed pursuant to subsection (2) must be appointed in accordance with the *Civil Service Act*.

**(4)** For all purpose of the *Public Service Superannuation Act*, every full-time member of the Appeals Tribunal and every full-time employee of the Appeals Tribunal is deemed to be a person employed in the public service of the Province and full-time service in the employment of the Appeals Tribunal is deemed to be public service. 1994-95, c. 10, s. 241.

**Temporary Chief Appeal Commissioner**

**261** Where the Chief Appeal Commissioner

- (a) is absent from the Province;
- (b) is unable to act as Chief Appeal Commissioner; or
- (c) leaves the position of Chief Appeal Commissioner vacant,

the Governor in Council may appoint a person to act temporarily for the Chief Appeal Commissioner. 1994-95, c. 10, s. 242.

**Appeal to Appeals Tribunal**

**262 (1)** Any person entitled to be a participant before a hearing officer may, within 30 days of the participant being notified of the decision of the hearing officer, appeal to the Appeals Tribunal.

**(2)** The Appeals Tribunal shall

- (a) notify the Board that an appeal has been filed; and
- (b) provide the Board with a list of the issues raised by the appeal. 1999, c. 1, s. 30.

**Composition of hearing panel**

**263** Subject to Section 254, an appeal before the Appeals Tribunal must be heard

- (a) by an appeal commissioner sitting alone; or
- (b) in the discretion of the Chief Appeal Commissioner, by a panel of three appeal commissioners. 1994-95, c. 10, s. 244.

**Participants in appeal and procedure**

**264 (1)** The participants in an appeal made pursuant to this Section are

- (a) in the case of a decision respecting compensation, the worker and the worker's employer;
- (b) in the case of a decision respecting an assessment, the employer;
- (c) the Board; and
- (d) any other person who, in the opinion of the presiding appeal commissioner, has a direct and immediate interest in the matter.

**(2)** The presiding appeal commissioner may hold an oral hearing where requested, in writing, by any participant in the appeal.

**(3)** The participants to an appeal pursuant to this Section may participate on their own behalf or with assistance.

**(4)** The presiding appeal commissioner shall adjourn the hearing of an appeal if the appeal commissioner makes a reference pursuant to Section 254 or 255. 1994-95, c. 10, s. 245.

**Decision on appeal**

**265 (1)** The Appeals Tribunal shall decide an appeal according to this Act, the regulations and the policies of the Board, and

- (a) documentary evidence previously submitted to or collected by the Board;
- (b) subject to Section 258, any additional evidence the participants present;
- (c) the decision under appeal;
- (d) the submissions of the participants; and
- (e) any other evidence the Appeals Tribunal may request or obtain.

**(2)** A decision of the Appeals Tribunal must be communicated to the participants in writing.

**(3)** Subject to Sections 254 and 258, the Appeals Tribunal shall decide an appeal within 60 days of the completion of the oral hearing or, where no oral hearing is held, the date on which all submissions, in accordance with subsec-

tion (1), have been received by the Appeals Tribunal. 1994-95, c. 10, s. 246; 1999, c. 1, s. 31.

#### **Referral of appeal to Chair of Board**

**266 (1)** Where the Chief Appeal Commissioner or the presiding appeal commissioner is of the opinion that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 200, the Chief Appeal Commissioner or the presiding appeal commissioner shall postpone or adjourn the appeal and refer the appeal to the Chair.

**(2)** The Chair may direct that any appeal referred to the Chair pursuant to subsection (1) be

- (a) reviewed by the Board of Directors pursuant to Section 200; or
- (b) returned to the Appeals Tribunal.

**(3)** All appeals that, in the opinion of the Chief Appeal Commissioner, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

**(4)** Notwithstanding subsection (1), the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, may make an interim award in an amount and for a period of time as determined by the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 247.

#### **Postponement of adjournment by Chair**

**267 (1)** Where an appeal is brought pursuant to Section 250, the Chair may postpone or adjourn the appeal at any time before a decision is rendered by the Appeals Tribunal, and direct that the appeal be reviewed by the Board of Directors, if the Chair is of the opinion that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 200.

**(2)** All appeals that, in the opinion of the Chair, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

**(3)** Subject to Section 256, where the Chair postpones or adjourns a hearing pursuant to subsection (1), the Chief Appeal Commissioner shall ensure that the final disposition of the appeal is left solely to the independent judgement of the Appeals Tribunal.

**(4)** Notwithstanding subsection (1), the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, may make an interim award in an amount and for a period of time as determined by the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 248.

**Policies**

**268 (1)** The Board of Directors may adopt and issue a policy pursuant to Section 200 in consequence of any determination made pursuant to Section 254 or 255.

- (2)** A policy adopted pursuant to subsection (1) is
- (a) effective immediately; and
  - (b) applicable to appeals that have already been commenced, including any appeal adjourned pursuant to Section 254 or 255. 1994-95, c. 10, s. 249.

**Postponement or adjournment**

**269** Where an appeal has been postponed or adjourned pursuant to Section 252, 254 or 255, the postponement or adjournment may not last longer than the earliest of

- (a) three months or, where the Board determines that exceptional circumstances exist, not longer than 12 months;
- (b) the day the Board issues a policy pursuant to Section 256; and
- (c) the day the Board of Directors notifies the Appeals Tribunal that the Board will not be issuing a policy pursuant to Section 256. 1994-95, c. 10, s. 250.

**Referral to hearing officer**

**270 (1)** The Appeals Tribunal may, at any point in the hearing of an appeal, refer any matter connected with the appeal to

- (a) the hearing officer who decided the matter on appeal to the Appeals Tribunal; or
- (b) where the hearing officer who decided the matter on appeal to the Appeals Tribunal cannot for any reason hear the appeal, another hearing officer,

for reconsideration where, in the opinion of the presiding appeal commissioner, the quantity or nature of new or additional evidence or the disposition of the appeal merits the referral.

**(2)** Where a matter is referred to a hearing officer pursuant to subsection (1), any subsequent appeal made pursuant to this Section from the decision of the hearing officer must be heard in priority to any appeal commenced after the date of the referral of the first appeal back to a hearing officer. 1994-95, c. 10, s. 251; 1999, c. 1, s. 32.

**Powers of Appeals Tribunal**

**271 (1)** The Appeals Tribunal may confirm, vary or reverse the decision of a hearing officer.

- (2)** The Appeals Tribunal shall not
- (a) reconsider;
  - (b) rescind, alter or amend; or

(c) make any further or supplementary order in regard to, any decision already made by the Appeals Tribunal.

(3) Notwithstanding subsection (2), the Appeals Tribunal may correct a typographical or clerical error in a decision made by the Appeals Tribunal. 1994-95, c. 10, s. 252; 1999, c. 1, s. 33.

#### **Contents of decision**

272 The Appeals Tribunal shall issue a decision clearly stating the determination of the Appeals Tribunal on the appeal and shall state the reasons for the decision as briefly as possible without undue elaboration. 1999, c. 1, s. 34.

#### **Recorded evidence**

273 (1) The oral evidence given before the Appeals Tribunal at a hearing must be recorded.

(2) Recordings made pursuant to subsection (1) must be kept by the Appeals Tribunal for a period of two years after the expiration of the relevant appeal period prescribed by this Act.

(3) Every participant to an appeal in which a recording is made pursuant to this Section is entitled, at their own expense, to a transcript of the record. 1994-95, c. 10, s. 253.

#### **Independent expert advice**

274 The Appeals Tribunal may obtain independent expert advice on any matter coming before it. 1994-95, c. 10, s. 254.

#### **Appeals Tribunal may make regulations**

275 The Appeals Tribunal may, with the approval of the Governor in Council, make any regulation required to properly carry out the duties prescribed by this Part. 1994-95, c. 10, s. 255.

#### **Further regulation-making power**

276 (1) Notwithstanding Section 101, the Appeals Tribunal may, with the approval of the Governor in Council, make any regulations required to establish and implement an alternative dispute-resolution procedure to deal with appeals.

(2) The exercise by the Appeals Tribunal of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1999, c. 1, s. 35.

#### **Appeal to Court of Appeal**

277 (1) Any participant in a final order, ruling or decision of the Appeals Tribunal may appeal to the Nova Scotia Court of Appeal on any question as to the jurisdiction of the Appeals Tribunal or on any question of law but on no question of fact.

(2) No appeal may be made pursuant to subsection (1) without leave of the Court of Appeal.

(3) The Court of Appeal may not grant leave to appeal pursuant to this Section unless

(a) leave is applied for in accordance with the *Civil Procedure Rules* within 30 days of the receipt of written communication of the decision of the Appeals Tribunal; and

(b) all other avenues of appeal provided for in this Act have been exhausted.

(4) Any participant applying for leave to appeal pursuant to subsection (1) shall ensure that notice of the hearing of the application is given to

(a) the Board;

(b) the Appeals Tribunal; and

(c) all participants of record in the matter being appealed, at least four clear days before the application is heard.

(5) Where leave to appeal has been granted, the participant to whom the leave has been granted shall commence the appeal by serving a notice of appeal on

(a) the Board;

(b) the Appeals Tribunal; and

(c) any other party to the appeal, within 10 days after the leave to appeal is granted.

(6) The notice of appeal served pursuant to subsection (5) must contain

(a) the names of the parties to the appeal;

(b) the date of the decision appealed from; and

(c) any other particular the judge granting leave to appeal may require. 1994-95, c. 10, s. 256; 1999, c. 1, s. 36.

#### Annual report

**278 (1)** The Chief Appeal Commissioner shall make an annual report to the Minister of Justice within 90 days of the fiscal year end of the Appeals Tribunal respecting the operations and transactions of the Appeals Tribunal during the year.

(2) The report made pursuant to subsection (1) may be included in the report made by the Board pursuant to Section 176.

(3) The report made pursuant to subsection (1) must be laid before the House of Assembly

(a) immediately, if the House is then sitting; or

(b) by tabling the report with the Clerk of the House if the House is not then sitting. 1994-95, c. 10, s. 257; 1999, c. 1, s. 37.

**Payment of expenses of Appeals Tribunal**

**279 (1)** All expenses incurred in the administration of the Appeals Tribunal must be paid out of the General Revenue Fund.

**(2)** The Governor in Council may direct that any amount paid out of the General Revenue Fund to meet the expenses of the Appeals Tribunal be reimbursed from the Accident Fund. 1994-95, c. 10, s. 258.

**PART III****WORKERS' ADVISERS****Interpretation of Part**

**280** In this Part,

“adviser” means a lawyer or a person who by formal education or professional experience is qualified to prepare and present claims for compensation pursuant to this Part and to advise on routine matters of evidence and law;

“Chief Worker Adviser” means the officer appointed pursuant to this Part to administer the Workers' Advisers Program;

“lawyer” means a person who is authorized to practise law in the Province;

“Program” means the Workers' Advisers Program established by this Part;

“worker” includes a dependant of a worker. 1994-95, c. 10, s. 259.

**Workers' Advisers Program**

**281** The Workers' Advisers Program is established. 1994-95, c. 10, s. 260.

**Purpose of Program**

**282** The purpose of the Program is to

(a) provide assistance, advice and representation in accordance with prescribed eligibility criteria to workers seeking compensation pursuant to Part I; and

(b) discharge any other function

(i) prescribed by the Governor in Council, or

(ii) authorized by the Minister. 1994-95, c. 10, s. 261.

**Chief Worker Adviser**

**283 (1)** The Governor in Council shall appoint a person recommended by the Minister to be the Chief Worker Adviser.

**(2)** The person appointed pursuant to subsection (1) must be a practising member of the Nova Scotia Barristers' Society or, where not a practising member of the Society, must become a practising member of the Society within one year of appointment.

(3) The Chief Worker Adviser appointed pursuant to subsection (1) is responsible for

- (a) administering the budget and work of the Program;
- (b) recruiting and hiring advisers, in accordance with the *Civil Service Act*;
- (c) subject to the regulations, fixing the respective duties of lawyers and advisers engaged pursuant to clause (b);
- (d) in accordance with the *Civil Service Act*, recruiting and hiring staff, other than advisers, necessary for the operation of the Program and determining their duties and remuneration; and
- (e) the development and implementation of policies for the administration of the work of the Program and the allocation of its resources. 1994-95, c. 10, s. 262.

#### Head office

**284** The Chief Worker Adviser

- (a) shall establish a head office for the Program in the former City of Halifax; and
- (b) shall establish other offices in other parts of the Province where the number of appeals before the Board or the Appeals Tribunal by workers who reside in a part of the Province warrant the establishment of another office. 1994-95, c. 10, s. 263; 1999, c. 1, s. 39.

#### Supervision of staff

**285** The Chief Worker Adviser shall supervise and direct the advisers and other staff of the Program. 1994-95, c. 10, s. 264.

#### Staff are members of public service

**286** The persons hired by the Chief Worker Adviser pursuant to Section 271 are, with the exception of temporary employees, members of the public service and the *Public Service Superannuation Act* applies to those persons. 1994-95, c. 10, s. 265.

#### Temporary advisers

**287 (1)** The Chief Worker Adviser may engage any member of the Nova Scotia Barristers' Society to act as a temporary adviser

- (a) for a particular worker; or
- (b) for a defined category of workers or for workers in a particular geographic area.

**(2)** No person engaged pursuant to this Section is, by reason of this Section only, a member of the public service entitled to public service benefits pursuant to the *Public Service Superannuation Act*, or any other Act. 1994-95, c. 10, s. 266.



**Powers of advisers**

**288 (1)** Notwithstanding the *Legal Profession Act*, persons who are engaged as advisers pursuant to this Part or persons who are engaged as worker advisers by an organization designated by the Minister, may

- (a) appear before the Board or the Appeals Tribunal on behalf of workers; and
- (b) advise workers on their entitlement to compensation.

**(2)** Nothing in this Section authorizes advisers who are not lawyers to appear as counsel in any court. 1994-95, c. 10, s. 267.

**Annual report**

**289** The Chief Worker Adviser shall make an annual report on the finances and operation of the Program to the Minister. 1994-95, c. 10, s. 268.

**Budget**

**290 (1)** The budget of the Program, as approved by the Governor in Council, must be paid out of the Accident Fund.

**(2)** The cost of medical opinions and consultations must be paid from the budget of the Program according to the schedule of fees provided for in an agreement between the Board and Doctors Nova Scotia. 1994-95, c. 10, s. 269; 2000, c. 4, s. 93.

**No right to representation**

**291 (1)** Nothing in this Part gives any person the right to legal advice or representation under the Program.

**(2)** No person shall be provided with advice or representation in connection with a claim for compensation pursuant to Part I at the expense of the Program until a claim has been denied. 1994-95, c. 10, s. 270; 1999, c. 1, s. 40.

**Counsel and advisers**

**292 (1)** Nothing in this Part

(a) limits the right of any person to retain counsel of the person's choice and at the person's expense in respect of a matter arising under Part I or Part II; or

(b) prohibits any person or organization not funded through the Program from advising or representing workers in respect of claims for compensation or appeals pursuant to Part I or Part II.

**(2)** For greater certainty,

(a) the sole client of every adviser, and of the Program, in respect of each matter on which assistance, advice and representation are given, is the worker or workers concerned; and

(b) assistance, advice and representation given to any worker or workers by advisers engaged pursuant to Section 271 are

the sole responsibility of those advisers and of the Chief Worker Adviser. 1994-95, c. 10, s. 271.

**Designation and funding of worker association**

**293** The Minister may, on such terms and conditions as the Minister considers appropriate or the Governor in Council prescribes,

(a) designate any trade union, association of trade unions or other worker association as an organization authorized to provide advice, assistance and representation to workers as part of the Program under the general supervision and direction of the Chief Worker Adviser; and

(b) provide funding to any organization designated pursuant to clause (a) from the budget of the Program. 1994-95, c. 10, s. 272.

**Regulations**

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

(a) prescribing the matters that may be assigned to advisers who are not lawyers;

(b) defining any term used but not defined in this Part;

(c) prescribing the terms and conditions under which funding may be provided to worker organizations, including the form of any agreement;

(d) defining the criteria to be applied in determining eligibility for assistance, advice and representation pursuant to the Program;

(e) prescribing the procedure to be followed in applying for assistance under the Program, including the forms to be used and the information to be provided;

(f) providing or dealing with any other matter necessary for the effective operation of the Program and the achievement of the purpose of this Part.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 1994-95, c. 10, s. 274.