

Utility and Review Board Act

CHAPTER 11 OF THE ACTS OF 1992

as amended by

1995, c. 7; 1998, c. 18, s. 582; 2007, c. 23;
2008, c. 68; 2018, c. 1, Sch. A, s. 153



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CHAPTER 11 OF THE ACTS OF 1992
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**An Act to Combine
the Board of Commissioners of Public Utilities,
the Expropriations Compensation Board,
the Nova Scotia Municipal Board and
the Nova Scotia Tax Review Board**

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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 *Utility and Review Board Act*. 1992, c. 11, s. 1.

Interpretation

- 2** In this Act, unless the context otherwise requires,
- (a) “Board” means the Nova Scotia Utility and Review Board;
 - (b) “Chair” means the Chair of the Board;
 - (c) “Clerk” means the Clerk of the Board;
 - (d) “member” means a member of the Board;
 - (e) “municipality” means a city, an incorporated town or a municipality of a county or district;
 - (f) “predecessor board” means the Board of Commissioners of Public Utilities, the Expropriations Compensation Board, the Nova Scotia Municipal Board or the Nova Scotia Tax Review Board;
 - (g) “public utility” means a public utility within the meaning of the *Public Utilities Act*;
 - (h) “Vice-chair” means the Vice-chair of the Board. 1992, c. 11, s. 2.

Nova Scotia Utility and Review Board

3 The Board of Commissioners of Public Utilities, the Expropriations Compensation Board, the Nova Scotia Municipal Board and the Nova Scotia Tax Review Board are continued as the Nova Scotia Utility and Review Board. 1992, c. 11, s. 3.

Functions, powers and duties

4 (1) The Board has those functions, powers and duties that are, from time to time, conferred or imposed on it by

- (a) this Act, the *Assessment Act*, the *Expropriation Act*, the *Gasoline and Diesel Oil Tax Act*, the *Health Services Tax Act*, the *Heritage Property Act*, the *Insurance Act*, the *Motor Carrier Act*, the *Municipal Government Act*, the *Public Utilities Act*, the *Education Act*, the *Shopping Centre Development Act*, the *Tobacco Tax Act* or any enactment; and

(b) the Governor in Council.

(2) The Governor in Council may assign to the Board the powers, functions and duties of any board, commission or agency and while the assignment is in effect, that board, commission or agency is discontinued and Sections 49 and 50 apply *mutatis mutandis* with respect to that board, commission or agency. 1992, c. 11, s. 4; 1998, c. 18, s. 582; 2018, c. 1, Sch. A, s. 153.

Composition, oath of office and term of office

5 (1) The Board consists of such number, not less than eight and not exceeding ten, of full-time members appointed by the Governor in Council and such number, not exceeding eight, of part-time members appointed by the Governor in Council as the Governor in Council determines.

(2) Each member of the Board shall be sworn to the faithful performance of that member's duties before entering office.

(3) Each full-time member holds office on good behaviour until the member reaches the age of seventy years.

(4) Each part-time member holds office for such term as the Governor in Council determines.

(5) Notwithstanding subsections (1) to (4) and notwithstanding any cross-appointments of members of a predecessor board to other predecessor boards, a member of the Board, who, immediately before the coming into force of this Section, is a member of a predecessor board, is a member of the Board and holds office as a member thereof on the same full-time or part-time basis as the case may be, for the same term and upon the same conditions as for the predecessor board to which the member was first appointed and of which the member is, immediately before the coming into force of this Section, still a member.

(6) Where a member of the Board resigns or retires from the Board, the member shall, during such period of time as the Governor in Council determines, in respect of any application, appeal, proceeding, matter or thing heard before the member or commenced by the member as a member, have and exercise the jurisdiction of a member, including the power to complete any unfinished matter and give a decision therein as if the member had not so resigned or retired.

(7) A determination by the Governor in Council pursuant to subsection (6) may be made before or after such resignation or retirement and may be retroactive in effect. 1992, c. 11, s. 5; 1995, c. 7, s. 1; 2007, c. 23, s. 1; 2008, c. 68, s. 1.

Chair and Vice-chair

6 (1) The Governor in Council shall designate one of the full-time members to be the Chair of the Board and another full-time member to be the Vice-chair.

(2) The Chair has the general supervision and direction over the conduct of the affairs of the Board.

(3) In case of the absence of the Chair or the Chair's inability to act, the Vice-chair shall perform the duties and exercise the powers of the Chair. 1992, c. 11, s. 6.

Remuneration and expenses

7 Notwithstanding subsection (5) of Section 5, a member shall be paid such remuneration as the Governor in Council determines and, subject to the regulations, shall be reimbursed for reasonable travelling and other expenses necessarily incurred by the member in connection with the work of the Board. 1992, c. 11, s. 7.

Conflict of interest

8 (1) No member who acts in a matter affecting a public utility shall be directly or indirectly employed by or interested in a public utility or interested in a share, stock, bond, mortgage, security or contract of the public utility and, if a member voluntarily becomes so interested, the member's office becomes vacant or, if the member becomes so interested otherwise than voluntarily, the member shall, within a reasonable time, dispose of the interest.

(2) Where a member fails to dispose of an interest as required by subsection (1), the Governor in Council may declare the office of the member vacant.

(3) No member is disqualified from acting in a matter affecting a public utility by reason only of being a purchaser of power, water or electric current or service from the public utility.

(4) No member is disqualified from acting in a matter affecting a municipality by reason only of being a resident or ratepayer of the municipality. 1992, c. 11, s. 8.

Clerk, personnel and experts

9 (1) The Chair shall appoint a Clerk, who shall keep a record of the proceedings of the Board, have the custody and care of all records and documents belonging to or pertaining to the Board and perform such duties as the Board requires.

(2) Such officers and employees as are required for the administration of this Act shall be appointed by the Chair in accordance with the *Civil Service Act*.

(3) The Chair may engage the services of professional persons, technical persons and experts to advise the Board, upon such terms and conditions as the Board deems fit.

(4) The Board may avail itself of the services of an officer or other employee of a board, commission or department of the Province, subject to the approval of the minister or other person in charge of the administration of the service in which the officer or employee is employed.

(5) For greater certainty and notwithstanding subsection (3), the persons who, immediately before the coming into force of this Section, are officers and employees of the predecessor boards are officers and employees, respectively, of the Board. 1992, c. 11, s. 9.

Public Service Superannuation Act

10 (1) For all purposes of the *Public Service Superannuation Act*, each full-time member and each full-time employee of the Board is and is deemed to be a person employed in the public service of the Province and full-time service in employment of the Board is and is deemed to be public service.

(2) The Board shall deduct from the salary of each full-time member and each full-time employee of the Board such amount as is directed by the Governor in Council to be deducted from the salary of employees in the public service of the Province, and shall pay the same to the Minister of Finance, and such amounts when so received shall be paid into and form part of the Superannuation Fund pursuant to the *Public Service Superannuation Act*.

(3) Where, by the *Public Service Superannuation Act*, a payment is directed to be made into the Superannuation Fund by the Government or by the Minister of Finance, or where by such Act a superannuation allowance or other sum is directed to be paid out of the Consolidated Fund of the Province, then, in respect of a full-time member of the Board or of a full-time employee of the Board, the payment, superannuation allowance or other sum shall be defrayed by the Board and shall form part of the annual expenses of the Board. 1992, c. 11, s. 10.

Payment of expenses and fiscal year

11 (1) The expenses of the Board shall be paid out of the levies made by the Board and out of money appropriated by the Legislature therefor and, until an appropriation is granted, out of the Consolidated Fund of the Province on the direction of the Minister of Finance.

(2) The fiscal year of the Board is the same as the fiscal year of the Province. 1992, c. 11, s. 11.

Rules of practice and procedure

12 The Board may make rules respecting practice and procedure in relation to matters coming before it. 1992, c. 11, s. 12.

Administration of Board

13 (1) The Chair has the responsibility for the administration of the Board and the members thereof and, without limiting the generality of the forego-

ing, shall, from time to time, assign the members of the Board to its various sittings and may change an assignment at any time.

(2) The Chair may, from time to time, direct an officer or employee of the Board to attend a sitting of the Board and may prescribe that person's duties.

(3) The Chair shall

(a) prescribe the number of members to attend the hearing of an application, appeal or other matter before the Board; and

(b) prescribe the quorum with respect to the application, appeal or other matter.

(4) The Chair, when present, shall preside at all sittings of the Board, and in the Chair's absence, the member designated by the Chair to preside shall preside. 1992, c. 11, s. 13.

Separate sittings and effect of vacancy

14 (1) The members may sit separately at the same time to hear and determine matters before the Board if there is a quorum in each case.

(2) A vacancy in the Board does not impair the right of the remaining members to act. 1992, c. 11, s. 14.

Inquiry

15 (1) The Chair may authorize a member of the Board to inquire into and report to the Board upon a matter within the jurisdiction of the Board or pending before it, and when so authorized that member has, for the purpose of taking evidence or obtaining information for the report, all the powers of the Board.

(2) The Board may appoint or direct a person to make an inquiry and report to the Board upon a matter within the jurisdiction of the Board. 1992, c. 11, s. 15.

Public Inquiries Act

16 In a matter over which the Board has jurisdiction, the Board and each member has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 1992, c. 11, s. 16.

Powers of member

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

(2) Where a person fails to comply with an order of the Board or a subpoena or where a witness refuses to testify to a matter regarding which the wit-

ness may be interrogated before the Board or a member, a judge of the Trial Division of the Supreme Court shall, on application of the Board or a member, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the Court or a refusal to testify therein. 1992, c. 11, s. 17.

Manner of taking evidence

18 The Board may, in an investigation, cause the evidence of witnesses residing within or without the Province to be taken in the manner prescribed by law for like depositions and civil actions in the Supreme Court. 1992, c. 11, s. 18.

Admissibility of evidence

19 The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law. 1992, c. 11, s. 19; revision corrected.

Adjournment of hearing

20 A hearing may be adjourned from time to time by the Board on reasonable grounds on its own motion or on the request of a party to the proceedings. 1992, c. 11, s. 20.

Rights of a party

21 (1) A party may be represented before the Board by counsel.

(2) In a hearing before the Board, a party may call and examine witnesses, cross-examine opposing witnesses and present arguments and submissions. 1992, c. 11, s. 21.

Jurisdiction

22 (1) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it.

(2) The Board, as to all matters within its jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact. 1992, c. 11, s. 22.

Effect of judgment of court or pending matter

23 (1) In determining a question of fact, the Board is not bound by the finding or judgment of a court in a proceeding involved in the determination of the fact, but such finding or judgment is, in proceedings before the Board, *prima facie* evidence only.

(2) The Board has jurisdiction to hear and determine a question of fact notwithstanding that a proceeding involving the same question of fact is pending in a court. 1992, c. 11, s. 23.

Order

24 In any matter before the Board, it shall grant an order, either as specified in the application or notice of appeal or as the Board decides. 1992, c. 11, s. 24.

Form of order

25 It is not necessary that an order of the Board show upon its face that any proceedings or notice were had or given or circumstances existed necessary to give it jurisdiction to make the order. 1992, c. 11, s. 25.

Effect of finding

26 The finding or determination of the Board upon a question of fact within its jurisdiction is binding and conclusive. 1992, c. 11, s. 26.

Written decision with reasons

27 (1) A final decision of the Board shall be in writing and shall set forth reasons for the decision.

(2) The reasons for the final decision shall include

- (a) any agreed findings of facts;
- (b) the findings of fact on the evidence; and
- (c) the conclusions of law based on the findings referred to in clauses (a) and (b).

(3) A copy of a final decision shall be certified by the Clerk and sent to each party to the proceeding. 1992, c. 11, s. 27.

Costs and witness fees

28 (1) Except in respect of a proceeding pursuant to the *Planning Act*, costs of and incidental to a proceeding before the Board are in the discretion of the Board and may be fixed at a sum certain or may be taxed.

(2) The Board may order by whom costs are to be taxed and may prescribe the scale under which costs are to be taxed.

(3) Where the Board so orders, witnesses summoned to give evidence before the Board are entitled to fees as determined by the Board. 1992, c. 11, s. 28.

Enforcement of order

29 (1) An order made by the Board may be made a rule or order of the Supreme Court, and shall thereupon be enforced in like manner as a rule, order, decree or judgment of that Court.

(2) To make an order of the Board a rule or order of the Supreme Court, the Clerk may make a certified copy of the order upon which shall be endorsed:

Make the within a rule or order of the Supreme Court of Nova Scotia.

Dated this day of, 19.

.
Chair
Nova Scotia Utility and Review Board

(3) The endorsement shall be signed by the Chair and sealed with the seal of the Board.

(4) The Clerk shall forward the certified copy so endorsed to a prothonotary of the Supreme Court, who shall, upon receipt thereof, enter the same as of record, and it thereupon becomes and is an order of the Supreme Court and is enforceable as a rule, order, decree or judgment of the Court.

(5) Where a decision or order of the Board has been made a rule or order of the Supreme Court, a decision or order of the Board rescinding or varying the same shall and shall be deemed to rescind or vary the rule or order, and may in like manner be made a rule or order of the Supreme Court. 1992, c. 11, s. 29.

Appeal

30 (1) An appeal lies to the Appeal Division of the Supreme Court from an order of the Board upon any question as to its jurisdiction or upon any question of law, upon filing with the Court a notice of appeal within thirty days after the issuance of the order.

(2) A notice of appeal shall contain the names of the parties and the date of the order appealed from.

(3) A copy of the notice of appeal shall be served upon the other parties within ten days of filing the notice of appeal with the Supreme Court.

(4) Where there is a conflict between this Section and another enactment, that enactment prevails. 1992, c. 11, s. 30.

Stated case

31 (1) The Board may, upon its own motion with leave of the Attorney General or the Appeal Division of the Supreme Court or upon the request of the Governor in Council, state a case in writing for the opinion of the Appeal Division of the Supreme Court upon a question that, in the opinion of the Board, is a question of law.

(2) The Appeal Division of the Supreme Court shall hear and determine the question of law arising thereon and remit the matter to the Board with the opinion of the Court thereon. 1992, c. 11, s. 31.

Evidence

32 (1) A document purporting to be certified by a member or by the Clerk to be a true copy of a document deposited with the Board or of any portion thereof is, without proof of signature or office of the person who purported to have signed the document, *prima facie* evidence

- (a) of the original document;
- (b) that the original is so deposited and is signed, certified, attested or executed as shown on or appearing from the certified copy; and
- (c) if the certificate states the time when the original was so deposited, that it was deposited at the time so stated.

(2) A copy of a regulation, order, plan or document in the custody of the Clerk or on record with the Board, purporting to be certified by a member of the Board or by the Clerk to be a true copy and purporting to be sealed with the seal of the Board, is *prima facie* evidence of the regulation, order, plan or document without proof of the signature of the person purporting to certify it.

(3) Upon application and upon payment of the fee prescribed by the Board, the Clerk shall provide a certified copy of a regulation, rule, decision or order of the Board or of a map, plan or document deposited with the Board. 1992, c. 11, s. 32.

Annual report

33 (1) The Board shall, in each year, make a report to the Governor in Council on its activities during the fiscal year ending in that year, and the report shall contain such particulars as the Governor in Council may prescribe.

(2) Each report shall be laid before the House of Assembly by the Attorney General or, if it is not sitting, within fifteen sitting days after it next sits.

(3) The Board shall, from time to time, publish and distribute such information in respect of its activities as in its judgement may be useful. 1992, c. 11, s. 33.

Regulations

- 34** (1) The Governor in Council may make regulations
- (a) prescribing the terms and conditions, including remuneration, for the Board engaging the services of professional persons, technical persons and experts to advise the Board;
 - (b) respecting the location of hearings of the Board;

(c) requiring public notice of hearings of the Board, with power to prescribe the manner in which and by whom the notice shall be given;

(d) prescribing the necessary parties to applications, appeals or other matters or proceedings before the Board;

(e) permitting persons who are not parties to an application, appeal or other matter or proceeding before the Board to participate in an application, appeal or other matter or proceeding, with power to prescribe the extent of the participation;

(f) respecting the keeping of a record of proceedings before the Board;

(g) respecting the release of information by the Board;

(h) respecting the publication of orders of the Board;

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

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

(2) A regulation made pursuant to subsection (1) may be of general application or may apply to such class or classes of hearings, applications, appeals or other matters or proceedings and to such class or classes of orders and information as the Governor in Council determines and there may be different regulations with respect to different classes.

(3) For greater certainty, where a regulation made pursuant to subsection (1) conflicts with any Act of the Legislature, that Act prevails.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. 1992, c. 11, s. 34.

Assessment Act amended

35 *amendments*

Expropriation Act amended

36 *amendments*

Gasoline and Diesel Oil Tax Act amended

37 *amendment*

Health Services Tax Act amended

38 *amendments*

Municipal Board Act repealed

39 Chapter 297 of the Revised Statutes, 1989, the *Municipal Board Act*, is repealed. 1992, c. 11, s. 39.

Municipal Boundaries & Representation Act amended

40 *amendments*

Planning Act amended

41 *amendment*

Public Service Superannuation Act amended

42 *amendment*

Public Utilities Act amended

43 *amendments*

School Boards Act amended

44 *amendments*

Shopping Centre Development Act amended

45 *amendment*

Tobacco Tax Act amended

46 *amendments*

Substituted references

47 A reference in any Act of the Legislature or in any rule, order, regulation, by-law, ordinance or proceeding or in any document whatsoever to the Board of Commissioners of Public Utilities, the Expropriations Compensation Board, the Nova Scotia Municipal Board or the Nova Scotia Tax Review Board shall, as regards any subsequent transaction, matter or thing, be held and construed to be a reference to the Board. 1992, c. 11, s. 47.

Periodic report

48 Where the Board of Commissioners of Public Utilities, the Expropriations Compensation Board, the Nova Scotia Municipal Board or the Nova Scotia Tax Review Board is, immediately before the coming into force of this Act, required by an enactment to make a periodic report, the enactment, to the extent that it requires a periodic report, continues to apply to that Board except that the enactment shall be read and construed as requiring that compliance with the requirement be completed as soon as practical after the coming into force of this Act. 1992, c. 11, s. 48.

Continuation of existing matter

49 For greater certainty, every matter before a predecessor board immediately before the coming into force of this Act shall be continued before the Board and, where any such matter has been heard, in whole or in part, by any members of a predecessor board, it shall be heard by such of those members as are members of the Board. 1992, c. 11, s. 49.

Proclamation

50 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1992, c. 11, s. 50.

Proclaimed - December 10, 1992
In force - December 14, 1992
