

Credit Union Act

CHAPTER 4 OF THE ACTS OF 1994

as amended by

2001, c. 6, s. 102; 2004, c. 11; 2007, c. 36;
2010, c. 8, s. 114; 2010, c. 49; 2015, c. 30, ss. 147-149



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**An Act to Encourage Thrift and
to Provide for Co-operative Credit
Through the Operation of Credit Unions**

Table of Contents

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

| | Section |
|--|---------|
| Short title..... | 1 |
| PART I | |
| Interpretation and Application | |
| Purpose of credit unions generally..... | 2 |
| Interpretation..... | 3 |
| Application of Act..... | 4 |
| PART II | |
| Incorporation of Credit Unions | |
| Application for incorporation..... | 5 |
| Articles of incorporation..... | 6 |
| Filing of articles and charter by-laws..... | 7 |
| Certificate of incorporation..... | 8 |
| Effect of certificate..... | 9 |
| Name of credit union..... | 10 |
| Reservation of name..... | 11 |
| Prohibited name..... | 12 |
| Personal liability on contract..... | 13 |
| PART III | |
| Capacity and Powers | |
| Capacity of a credit union..... | 14 |
| Extra-territorial capacity..... | 15 |
| Capacity..... | 16 |
| Insurance..... | 17 |
| Powers of a credit union..... | 19 |
| No constructive notice..... | 20 |
| Reliance of persons dealing with credit union..... | 21 |
| PART IV | |
| Registered Office and Records | |
| Registered Office..... | 22 |
| Records..... | 23 |
| Examination of records..... | 24 |
| Form of records..... | 25 |
| Corporate seal..... | 26 |

PART V

Capitalization and Operating Standards

| | |
|--|-----|
| Common shares | 27 |
| Transitional | 28 |
| Shares other than common shares | 29 |
| No share certificates | 30 |
| Consideration for share | 31 |
| Patronage refund | 32 |
| Use of patronage refund or dividend | 33 |
| Redemption or repayment | 34 |
| Dividends on common or surplus shares | 35 |
| Restriction | 36 |
| Limitation on holding of shares | 37 |
| Application of Securities Act | 38 |
| Application of Securities Transfer Act | 38A |
| Non-voting shares | 39 |
| Limit of liability | 40 |
| Remedy preserved | 41 |
| Unclaimed balances | 42 |
| Members right to withdraw deposits | 43 |
| Trust funds | 44 |
| Loans | 45 |
| Material deposits | 46 |
| Lien on deposits and shares | 47 |
| Restrictions on overdrafts | 48 |
| Liquidity reserves and investments | 49 |
| Investments generally | 50 |
| Allowance for doubtful accounts | 51 |
| Equity | 52 |
| Matching | 53 |
| Insurance | 54 |
| Adjustments | 55 |

PART VI

Membership

| | |
|--|----|
| Members | 56 |
| Common bond | 57 |
| Associates | 58 |
| Termination of membership, appeals and re-admittance | 59 |
| Withdrawal | 60 |
| Remedy preserved | 61 |
| Power to enact by-laws | 62 |
| Members bound by articles and by-laws | 63 |
| Place of meetings | 64 |
| Calling meetings | 65 |
| Record date | 66 |
| Notice of meeting | 67 |
| Waiver of notice | 68 |
| Member proposal | 69 |
| Quorum | 70 |
| Voting eligibility | 71 |
| Representatives of corporations | 72 |
| Proxy | 73 |
| Joint membership | 74 |
| Mail or other forms of voting | 75 |
| Executors and administrators | 76 |
| Method of voting | 77 |
| Members calling meetings | 78 |
| Meeting called by Superintendent and quorum | 79 |

PART VII

Directors and Officers

| | |
|--|-----|
| Numbers and duties of directors | 80 |
| Chair, vice-chair and secretary | 81 |
| Qualifications of directors | 82 |
| Term of office of first directors and election | 83 |
| Ceasing to hold office | 84 |
| Removal of director | 85 |
| Statement of director | 86 |
| Filling vacancy | 87 |
| Notice of change of directors | 88 |
| Meeting of directors | 89 |
| Delegation to committee | 90 |
| Audit committee and credit committee | 91 |
| Validity of act of directors and officers | 92 |
| Resolution in lieu of meeting | 93 |
| Liability of directors and others | 94 |
| Duty of directors to report | 95 |
| Interest in "material contract" | 96 |
| Report of breach by auditor | 97 |
| Officers | 98 |
| Remuneration | 99 |
| Duty of care of directors and officers | 100 |
| Dissent | 101 |
| Indemnification | 102 |

PART VIII

Returns and Financial Disclosure

| | |
|--|-----|
| Fiscal year | 103 |
| Returns | 104 |
| Annual financial statements | 105 |
| Copies of documents | 106 |
| Condition precedent to issue | 107 |
| Request for documents | 108 |
| Auditor | 109 |
| Ceasing to hold office | 110 |
| Removal of auditor | 111 |
| Filling vacancy | 112 |
| Court appointed auditor | 113 |
| Right to attend meetings | 114 |
| Statement of auditor | 115 |
| Examination and report by auditor | 116 |
| Scope of audit and payment of costs | 117 |
| Right to information | 118 |
| Duty of auditor | 119 |
| Duty of auditor to manager and directors | 121 |
| Working papers made available | 122 |
| Qualified privilege | 123 |
| No civil liability | 124 |

PART IX

Fundamental Changes

| | |
|---|-----|
| Amendment of articles | 125 |
| Articles sent to Superintendent | 126 |
| Certificate of amendment | 127 |
| Effect of certificate and existing rights | 128 |
| Restated articles and certificate | 129 |
| Amalgamation | 130 |
| Amalgamation agreement | 131 |
| Approval of amalgamation agreement | 132 |
| Articles of amalgamation | 133 |

| | |
|---|-----|
| Compulsory amalgamation..... | 134 |
| Certificate of amalgamation | 135 |
| Extraordinary sale, lease or exchange | 136 |
| Approval of Superintendent..... | 137 |
| Right to dissent | 138 |
| Reorganization of credit union | 139 |
| Extra-provincial credit unions | 140 |
| Extra-provincial registration..... | 141 |

PART X

Dissolution, Liquidation
and Revival

| | |
|---|-----|
| Dissolution of credit unions..... | 142 |
| Proposing liquidation and dissolution | 143 |
| Articles of dissolution and certificate | 144 |
| Dissolution by Superintendent..... | 145 |
| Application to court to liquidate | 146 |
| Custody of records | 147 |
| Continuation of actions after dissolution..... | 148 |
| Unknown claimants | 149 |
| Revival by Superintendent or court | 150 |
| Certificate of revival and preservation of rights | 151 |
| Return of property on revival | 152 |
| Non-application of Part..... | 153 |

PART XI

Nova Scotia Credit Union
Deposit Insurance Corporation

| | |
|---|-----|
| Application of Part..... | 154 |
| Stabilization Fund continued | 155 |
| Purposes of Corporation | 156 |
| Powers..... | 157 |
| Board..... | 158 |
| Chair | 159 |
| Qualification of board members and resignation..... | 160 |
| Term of office | 161 |
| Vacancy..... | 162 |
| Ceasing to hold office | 163 |
| Duties of board | 164 |
| Quorum | 165 |
| By-laws | 166 |
| By-laws filed with Superintendent | 167 |
| Insured deposits | 168 |
| Superintendent entitled to financial statements | 169 |
| Permitted advertising and offence | 170 |
| Deposit insurance fund | 171 |
| Levy on credit unions | 172 |
| Collection of levy by Corporation | 173 |
| Loans or advances to Corporation | 174 |
| Records | 175 |
| Fiscal year | 176 |
| Audit | 177 |
| Procedure | 178 |
| Levies..... | 179 |
| Annual report..... | 180 |

PART XII

The Credit Union Central of Nova Scotia

| | |
|-------------------------------------|------|
| Interpretation of Part..... | 180A |
| Application of Part..... | 181 |
| Credit Union Central continued..... | 182 |

| | |
|---|------|
| Amendment of articles | 184 |
| Articles sent to Superintendent..... | 184A |
| Certificate of amendment..... | 184B |
| Effect of certificate and existing rights | 184C |
| Restated articles and certificate..... | 184D |
| Section 139 applies..... | 184E |
| Purposes of Central | 185 |
| Capacity of Central..... | 186 |
| Powers of Central | 187 |
| Powers | 188 |
| Duties..... | 189 |
| Information to be provided..... | 190 |
| Levy for dues..... | 191 |
| Registered office and records | 192 |
| Common shares | 193 |
| Shares other than common shares | 194 |
| Patronage refunds | 195 |
| Use of patronage refund | 196 |
| Dividends and redemption of shares | 197 |
| Securities | 198 |
| Voting rights | 199 |
| Financial matters | 200 |
| Membership in Central..... | 201 |
| Associate members..... | 202 |
| Establishment of delegate system..... | 203 |
| Limit of liability | 204 |
| Amendment of charter by-laws | 205 |
| Superintendent's approval | 206 |
| Charter by-laws | 207 |
| Members bound by charter by-laws | 208 |
| Number of directors..... | 209 |
| Qualification of directors..... | 210 |
| Application of other Parts of Act | 211 |
| Auditor..... | 212 |
| Credit committee | 214 |

PART XIII

Remedies, Offences
and Penalties

| | |
|---|-----|
| Interpretation | 215 |
| Commencing derivative action..... | 216 |
| Powers of court..... | 217 |
| Application to court by complainant..... | 218 |
| Evidence of member approval not decisive | 219 |
| Application to court to rectify records | 220 |
| Compliance or restraining order..... | 221 |
| Application for directions | 222 |
| Appeal of Superintendent's decision | 223 |
| Questions of fact or law | 224 |
| Review by Superintendent..... | 225 |
| Submission to Superintendent..... | 226 |
| Program of voluntary compliance | 227 |
| Notice of order and hearings | 228 |
| Appeal of decision to Minister | 229 |
| Minister may impose terms and conditions..... | 230 |
| Superintendent entitled to appear | 231 |
| Hearing in private or in public | 232 |
| Offence respecting reports..... | 233 |
| Offence | 234 |
| Order to comply..... | 235 |
| Suit brought by Superintendent or Corporation | 236 |
| No action for damages..... | 237 |

PART XIV

Supervision

| | |
|-------------------------------------|-----|
| Supervision of credit union | 238 |
| Supervision of Central | 239 |
| Supervisor of credit union | 240 |
| Supervisor of Central | 241 |
| Term of supervision | 242 |
| Powers and duty of supervisor | 243 |
| Court direction | 244 |
| Accounting to Superintendent | 245 |
| Discharge | 246 |
| Temporary supervision | 247 |

PART XV

General

| | |
|---|-----|
| Notice to directors and members | 248 |
| Notice to and service upon a credit union | 249 |
| Waiver of notice | 250 |
| Certificate of Superintendent | 251 |
| Certificate of credit union or Central | 252 |
| Copies | 253 |
| Proof required by Superintendent | 254 |
| Minister has supervision of Act | 255 |
| Appointment of Superintendent and Deputy | 256 |
| Regulations, forms and statements | 257 |
| Filings | 258 |
| Alteration | 259 |
| Corrections | 260 |
| Inspection | 261 |
| Form of records of Superintendent | 262 |

PART XVI

Transitional, Consequential Amendments,
Repeal and Commencement

| | |
|---|-----|
| Continuation of former incorporations | 263 |
| Credit Union Act repealed | 264 |
| Proclamation | 265 |

Short title

- 1** This Act may be cited as the *Credit Union Act*. 1994, c. 4, s. 1.

PART I

INTERPRETATION AND APPLICATION

Purpose of credit unions generally

- 2** The purposes of credit unions are, on a co-operative basis, to provide a comprehensive range of financial services that meet the needs of their members and to provide for the direction and democratic control of such services by residents of the Province. 1994, c. 4, s. 2.

Interpretation

3 In this Act,

(a) “affairs” means the relationship among a credit union or the Central, their subsidiaries and their respective members, directors and officers, but does not include the business carried on by the credit union, the Central or subsidiary;

(b) “articles” means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of reorganization, articles of dissolution, articles of revival and any amendments thereto, and includes any enactment or ordinance by or under which a body corporate has been incorporated, and any letters patent, supplementary letters patent, certificate of incorporation, memorandum of association and any other document evidencing corporate existence;

(c) “associate” means a person, other than a member, who has rights as set out in the charter by-laws or this Act, in a credit union or the Central;

(d) “auditor” includes a partnership of auditors;

(e) “body corporate” includes a credit union or other body corporate wheresoever or howsoever incorporated;

(f) “bond of association” includes groups having a common bond of occupation or association, the residents within a well-defined neighbourhood, community or rural or urban district, including a rural trading area, employees of a common employer or members of *bona fide* fraternal, religious, co-operative, labour, rural, educational and similar organizations, and members of the immediate family of such persons;

(g) “capital account” means the full amount of the consideration received by a credit union or the Central for any shares issued;

(h) “Central” means the Atlantic Central continued by this Act;

(i) “charter by-law” means a by-law of a credit union or the Central that requires the approval of the Superintendent;

(j) “Corporation” means the Nova Scotia Credit Union Deposit Insurance Corporation established pursuant to Section 155;

(k) “court” means the Supreme Court of Nova Scotia;

(l) “credit union” includes, as the context may require, a “caisse populaire”;

(la) “credit union regulator” means the superintendent or chief officer of the government department, ministry or office that regulates credit unions in any jurisdiction in which members of the Central operate;

(m) “creditor” means a person, other than a depositor, to whom a credit union or the Central owes money and includes, as the context requires, the creditor’s heirs, executors, administrators and assigns;

(n) “debt obligation” means a bond, debenture, note or other evidence of indebtedness or guarantee of a body corporate, whether secured or unsecured;

(o) “delegate” means an individual elected, in accordance with the charter by-laws, to represent a group of members at meetings of a credit union or the Central;

(p) “deposit” means money placed in an account in a credit union or the Central;

(pa) “deposit insurer” means any stabilization fund, stabilization board, deposit insurance corporation, or deposit guarantee corporation that monitors and regulates the performance of or protects the deposits in any member of the Central, and includes, as the context requires, the Corporation;

(q) “director” means a person occupying the position of director of a credit union or the Central;

(r) “immediate family” means the spouse, son, daughter, brother, sister, parent or grandparent of an individual;

(s) “incorporator” means a person who signs articles of incorporation;

(t) “individual” means a natural person;

(u) “member” means a person having rights through a membership interest in a credit union or the Central in accordance with the provisions of this Act and the articles or charter by-laws of the credit union or the Central and includes, as the context may require, a member’s legal representative, an associate of a credit union and an associate member of the Central;

(v) “Minister” means the member of the Executive Council assigned responsibility for this Act;

(w) “officer” includes the chair, vice-chair and secretary of a credit union, the Central or the Corporation;

(x) *repealed 2004, c. 11, s. 1.*

(y) “ordinary resolution” means a resolution passed by a majority of the votes cast by members or delegates who voted in respect of that resolution;

(z) “patronage refund” means an amount that, pursuant to this Act, is allocated among and credited or paid by a credit union or the Central to its members or associates, based upon the business done by each of them with or through the credit union or the Central;

(aa) “person” includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;

(ab) “prescribed” means prescribed by the regulations;

(ac) “security” means a share or a debt obligation or a certificate evidencing a share or debt obligation;

(ad) “security interest” means an interest in or charge upon property of a credit union, the Central or the Corporation taken by a creditor to secure payment of a debt or performance of any obligation of the credit union, the Central or the Corporation, and includes a certificate evidencing a share or debt obligation;

(ae) “send” includes deliver;

(af) “special resolution”, in relation to a credit union, means a resolution passed by a majority of not less than two thirds of the votes cast by the persons who voted in respect of that resolution, or signed by all the persons entitled to vote on that resolution;

(ag) “subsidiary” means a body corporate in which a credit union or the Central controls a majority of the voting shares;

(ah) “Superintendent” means the Superintendent appointed pursuant to Section 256. 1994, c. 4, s. 3; 2004, c. 11, s. 1; 2010, c. 49, s. 1.

Application of Act

4 (1) This Act, except where it is otherwise expressly provided, applies to

(a) every credit union incorporated pursuant to this Act;

(b) every credit union incorporated pursuant to similar legislation of the Province in force before the coming into force of this Act;

(c) the Central continued pursuant to this Act; and

(d) the Corporation established pursuant to this Act.

(2) Where a provision of Part XI or XII is inconsistent with any other provision of this Act, the provision of that Part prevails. 1994, c. 4, s. 4.

PART II

INCORPORATION OF CREDIT UNIONS

Application for incorporation

5 (1) Any ten or more individuals, no one of whom

(a) is less than nineteen years of age; or

(b) has the status of an undischarged bankrupt,

may apply for incorporation as a credit union by sending to

(c) the Superintendent, in duplicate, articles of incorporation, a notice of registered office in the prescribed form and the proposed charter by-laws; and

(d) the Corporation, a proposed business plan.

(2) Upon receipt of a proposed business plan pursuant to clause (1)(d), the Corporation shall review the proposed business plan and make a recommendation to the Superintendent with respect to the proposed incorporation.

(3) The recommendation referred to in subsection (2) is not binding on the Superintendent. 2004, c. 11, s. 2.

Articles of incorporation

6 (1) Articles of incorporation shall follow the prescribed form and shall set out, in respect of the proposed credit union,

(a) the name of the credit union;

(b) the location in the Province where the registered office is to be situated;

(c) the name in full and the residence address, giving the street and number, if any, of each first director;

(d) a statement of the proposed bond of association of the credit union, if any;

(e) the classes and any maximum number of shares that the credit union is authorized to issue other than common shares, if any, and if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;

(f) if the right to transfer shares of the credit union is to be restricted, a statement that the right to transfer shares is restricted and the nature of the restrictions;

(g) any restrictions on the business that the credit union may carry on;

(h) a statement indicating whether associate status is permitted; and

(i) all other matters which, by this Act, are required to be dealt with in the articles.

(2) The articles may, in addition, set out any provisions permitted by this Act to be set out in the charter by-laws.

(3) The articles shall have attached thereto, in the prescribed form, the consent of a first director who is not an incorporator.

(4) The charter by-laws shall provide for such of the following matters as are applicable but are not set out in the articles:

(a) qualifications, conditions and method of applying for and terminating membership and associate status;

(b) the location of meetings of members, the mode of holding meetings and the quorum at meetings, the rights of voting and making, repealing or amending by-laws, the right of members to vote by ballot or mail, or both, and the manner, form and effect of votes at meetings;

(c) the election, term of office, removal of and filling of vacancies among directors, committee members and officers, their powers, duties and remuneration and the procedure and quorum at meetings of the board of directors;

(d) the division of the territory in which the credit union carries on its business into districts for the purpose of holding district meetings, the business that may be conducted and the procedures to be followed at the meetings;

(e) the establishment of the fiscal year end of the credit union;

(f) the incorporation and ownership of subsidiary companies by the credit union;

(g) the holding of a referendum on any matter of general concern to the members; and

(h) all other matters which, by this Act, are required to be dealt with in the charter by-laws. 1994, c. 4, s. 6.

Filing of articles and charter by-laws

7 The Superintendent may accept for filing and approval any articles and charter by-laws sent pursuant to Section 5 with respect to a proposed incorporation if

(a) the Superintendent is satisfied that the incorporation provides a public benefit and, without limiting the generality of the foregoing,

(i) the subscribers and proposed directors are residents of the Province and are qualified pursuant to this Act to establish and operate a credit union,

(ii) the proposed credit union will be organized and operated for the convenience and advantage of its members,

(iii) the proposed credit union will be organized and operated in a manner whereby the investments and deposits of members will be safeguarded without likelihood of claim upon the Corporation, and

- (iv) the proposed bond of association, if any, is not objectionable;
 - (b) the articles are in compliance with the provisions of this Act;
- and
- (c) the Superintendent approves the charter by-laws. 1994, c. 4, s. 7.

Certificate of incorporation

8 Upon acceptance for filing and approval of the articles and charter by-laws, the Superintendent shall issue a certificate of incorporation in accordance with Section 258. 1994, c. 4, s. 8.

Effect of certificate

9 A credit union comes into existence on the date shown in the certificate of incorporation. 1994, c. 4, s. 9.

Name of credit union

10 (1) Every credit union shall include the words “credit union” or “caisse populaire” as part of its name and the word “Limited” or “Limitée” or the abbreviation “Ltd” or “Ltée” shall be the last word of the name.

(2) A credit union shall clearly identify itself and set out its name in legible characters in all contracts, invoices, negotiable instruments, orders for goods and services, advertising and all other representations to the public.

(3) Subject to Section 12 and the *Partnerships and Business Names Registration Act*, a credit union may carry on business under or identify itself by a name other than its full legal name.

(4) No person other than a credit union shall use the words “credit union” or “caisse populaire” or any derivative or abbreviation thereof as part of its name, or shall hold itself out as, or use part of its name or otherwise any word or abbreviation suggesting, indicating or implying that it is, or is carrying on business as, a credit union.

(5) Subsection (4) does not apply to

(a) a body corporate incorporated by or under the authority of an Act of the Parliament of Canada;

(b) a credit union incorporated pursuant to the laws of any other province and which is authorized pursuant to this Act to carry on business in the Province;

(c) the Central or the Corporation;

(d) a body corporate with the written authorization of the Superintendent. 1994, c. 4, s. 10; 2004, c. 11, s. 3.

Reservation of name

11 The Superintendent may, upon the request in writing of any person and upon payment of the prescribed fee, reserve a name for the use and benefit of the persons desiring to form a credit union for a period of ninety days if the name is not contrary to Section 12. 1994, c. 4, s. 11.

Prohibited name

12 (1) A credit union shall not have a name that

(a) is known to the Superintendent to be identical with the name of an existing or a dissolved credit union except as prescribed;

(b) subject to subsection (2), is known to the Superintendent to be the same as the name of a business or association or other body corporate;

(c) suggests or implies a connection with the Crown or any member of the Royal Family, or the Government of Canada, of the government of any province in Canada or any department, branch, bureau, service, agency or activity of that government, without the consent in writing of the appropriate authority;

(d) includes the word "Trust"; or

(e) the Superintendent, for any good and valid reason disapproves.

(2) A credit union shall not have a name that is similar to the name of any other business, association or body corporate if the use of that name by the credit union would, in the opinion of the Superintendent, be likely to confuse or mislead, unless the business, association or body corporate consents in writing to its name being given in whole or in part to the credit union and, if required by the Superintendent, the business, association or body corporate undertakes to dissolve or to change its name within six months after the incorporation of the credit union.

(3) Where a credit union is granted a name subject to an undertaking given pursuant to subsection (2) and the undertaking is not carried out within the specified time, the Superintendent may direct the credit union to which the name is granted to change its name to a name that complies with this Act and, if the credit union fails to comply with the directive within sixty days of the service thereof, the Superintendent may revoke the name of the credit union and assign to it a number and, until changed in accordance with Section 135, the name of the credit union is the number so assigned.

(4) Where a credit union

(a) comes into existence or is continued with a name; or

(b) upon an application to change its name, is granted a name,

that contravenes this Section, the Superintendent may direct that credit union to change its name.

(5) Where a credit union is directed pursuant to subsection (4) to change its name and fails within sixty days from the service of the directive to change its name to a name that complies with this Act, the Superintendent may revoke the name of the credit union and assign to it a number and, until changed in accordance with Section 125, the name of the credit union is the number so assigned.

(6) Where a credit union has had its name revoked and a number assigned to it pursuant to subsection (3) or (5), the Superintendent shall issue a certificate of amendment showing the new name of the credit union and shall forthwith give notice of such change of name in the Royal Gazette. 1994, c. 4, s. 12; 2004, c. 11, s. 4.

Personal liability on contract

13 (1) Except as provided in this Section, a person who enters into a written contract in the name of or on behalf of a credit union before it comes into existence is personally bound by the contract and is entitled to the benefits thereof.

(2) A credit union may, within a reasonable time after it comes into existence by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf and, upon the adoption,

(a) the credit union is bound by the contract and is entitled to the benefits thereof as if the credit union had been in existence at the date of the contract and had been a party thereto; and

(b) the person who purported to act in the name of or on behalf of the credit union ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

(3) Except as provided in subsection (4), whether or not a written contract made before the coming into existence of a credit union is adopted by the credit union, a party to the contract may apply to the court for an order fixing obligations under the contract as joint and several or apportioning liability between or among the credit union and any person who purported to act in the name of or on behalf of the credit union, and upon the application the court may make any order it thinks fit.

(4) Where expressly so provided in the written contract, a person, who purported to act in the name of or on behalf of the credit union before it came into existence, is not in any event bound by the contract or entitled to the benefits thereof. 1994, c. 4, s. 13.

PART III

CAPACITY AND POWERS

Capacity of a credit union

14 A credit union has the capacity and, subject to this Act, the rights, powers and privileges of a natural person. 1994, c. 4, s. 14.

Extra-territorial capacity

15 Subject to this Act, a credit union may, with the approval of the Superintendent, carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside the Province to the extent that the laws of that jurisdiction permit. 1994, c. 4, s. 15.

Capacity

16 (1) Subject to this Act, a credit union may carry on any business appertaining to the business of credit unions and may, without limiting the generality of the foregoing,

- (a) receive deposits from and operate chequing services for its members; and
- (b) make loans to its members.

(2) A credit union shall not provide any service referred to in clauses 1(a) and (b) to another credit union.

(3) A credit union shall not carry on any business other than that appertaining to the business of credit unions and, without limiting the generality of the foregoing, a credit union shall not

- (a) engage in the provision of real estate brokerage services;
- (b) except as authorized pursuant to the *Cemetery and Funeral Services Act*, execute the office of executor, administrator, guardian of a minor's estate or committee of a mentally incompetent person or provide services of a fiduciary nature commonly provided by a trust company;
- (c) subject to subsection 38(1), act as a dealer, underwriter or adviser as defined in the *Securities Act*;
- (d) undertake the business of insurance, except to the extent permitted by this Act or the regulations; or
- (e) act as agent for any person in the placing of insurance and shall not lease or provide space in any branch of the credit union to any person engaged in the placing of insurance, except to the extent permitted by this Act or the regulations.

(4) Notwithstanding subsections (1) and (3), but subject to the regulations, a credit union may, in accordance with the regulations, enter into an arrangement with a financial institution or any other body corporate of a prescribed type for the provision of any service or services offered by that financial institution or other body corporate. 1994, c. 4, s. 16.

Insurance

17 (1) A credit union shall not exercise pressure on a borrower to place insurance for the security of a credit union with any particular insurance agent, broker or company, but a credit union may require that an insurance company chosen by a borrower meet with its approval, which approval shall not be unreasonably withheld.

(2) Nothing in subsection (1) precludes a credit union from

(a) requiring that insurance be placed by a member for the security of a credit union; or

(b) entering into such group plans of insurance as may be prescribed with an insurance company, agent or broker for the security of a credit union or for the benefit of its employees. 1994, c. 4, s. 17.

18 *repealed 2004, c. 11, s.5.*

Powers of a credit union

19 (1) Subject to this Act, it is not necessary for a by-law to be passed in order to confer any particular power on a credit union or its directors.

(2) A credit union shall not carry on any business or exercise any power if it is restricted by its articles or this Act from carrying on that business or exercising that power and shall not exercise any of its powers in a manner contrary to its articles or this Act.

(3) No act of a credit union, including any transfer of property to or by a credit union, is invalid by reason only that the act or transfer is contrary to its articles or this Act. 1994, c. 4, s. 19.

No constructive notice

20 No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a credit union by reason only that the document has been filed with the Superintendent or is available for inspection at an office of the credit union. 1994, c. 4, s. 20.

Reliance of persons dealing with credit union

21 A credit union or a guarantor of an obligation of the credit union may not assert against a person dealing with the credit union or with any person who has acquired rights from the credit union that

(a) this Act or the regulations or the articles or by-laws of the credit union have not been complied with;

(b) the persons named as directors in the most recent notice sent to the Superintendent pursuant to this Act are not the directors of the credit union;

(c) the place named in the most recent notice sent to the Superintendent pursuant to this Act is not the registered office of the credit union;

(d) a person held out by the credit union as a director, an officer or agent of the credit union has not been duly appointed or has no authority to exercise the powers or perform the duties that are customary in the business of the credit union or usual for that director, officer or agent;

(e) a document issued by a director, officer or agent of the credit union with actual or usual authority to issue the document is not valid or not genuine; or

(f) any financial assistance to members or directors or any sale, lease or exchange of all or substantially all of the property of the credit union was not authorized,

except where the person has or, by virtue of that person's position with or relationship to the credit union, ought to have knowledge of that fact. 1994, c. 4, s. 21.

PART IV

REGISTERED OFFICE AND RECORDS

Registered office

22 (1) A credit union shall at all times have a registered office which shall be the principal place of business of the credit union in the location within the Province specified in its articles.

(2) The directors of a credit union shall establish and may change the address of the registered office in the location specified in the articles.

(3) A credit union shall send to the Superintendent, within fifteen days of any change, a notice in prescribed form of any change of address of its registered office.

(4) Where the location of the registered office of a credit union is changed by reason only of the annexation or amalgamation of the location in which the registered office is situate to or with another municipality, that change does not constitute and is not deemed to constitute a change within the meaning of subsection 125(1).

(5) A credit union may establish or relocate branch offices of the credit union as may be prescribed. 1994, c. 4, s. 22.

Records

23 (1) A credit union shall prepare and maintain, at its registered office or subject to subsection (2) at any other place in the Province designated by the directors, records including

(a) the articles and the by-laws and all amendments thereto;

(b) the duly executed minutes of meetings and resolutions of members;

(c) a register of directors, officers and committee members setting out the names, addresses and other occupations, if any, of all persons who are or have been directors, officers of committee members of the credit union with the several dates on which each became or ceased to be a director, officer or committee member;

(d) a members register, and if applicable, an associates register, setting out the names and the latest known addresses of all members and associates;

(e) a shareholders register of holders of shares of a class other than common or surplus shares, setting out the names and the latest known addresses of the shareholders and the number of shares and other securities, if any, held by each;

(f) the accounting records and the duly executed minutes of meetings and resolutions of the directors and any committee thereof.

(2) Where a credit union, to the satisfaction of the Superintendent,

(a) shows the necessity of keeping any of the minutes, documents, registers, books of account and accounting records mentioned in subsection (1) at a place other than the registered office of the credit union; and

(b) gives assurance that those minutes, documents, registers, books of account and accounting records will, at all reasonable times, be open for inspection at the registered office of the credit union or some other place in the Province approved by the Superintendent by any person who is entitled to inspect them and who applies to the credit union for an inspection thereof,

the Superintendent may, by order, which may be subject to terms, permit the credit union to keep them at a place designated in the order other than the registered office.

(3) The Superintendent for any good and valid reason may, by order which may be subject to terms, vary or rescind an order made pursuant to subsection (2). 1994, c. 4, s. 23.

Examination of records

24 (1) Members and creditors of a credit union, their agents and legal representatives, may examine the records referred to in clauses 23(1)(a), (b) and (c) during the usual business hours of the credit union, and may take extracts therefrom upon payment of a reasonable fee.

(2) Where the affidavit referred to in subsection (4) is sent to the credit union, members of a credit union, their agents and legal representatives may examine the records referred to in clause 23(1)(d) during the usual business hours of the credit union and may, upon payment of a reasonable fee, receive from the credit union a copy of the members register.

(3) Where the affidavit referred to in subsection (4) is sent to the credit union, holders of shares of a class other than common or surplus shares, their agents and legal representatives may examine the records referred to in clause 23(1)(e) during the usual business hours of the credit union and may, upon payment of a reasonable fee, receive from the credit union a copy of the shareholders register.

- (4)** The affidavit required pursuant to subsection (2) or (3) shall
- (a)** state the name and address of the applicant;
 - (b)** be made by a director or officer of the body corporate if the applicant is a body corporate; and
 - (c)** state that the register will not be used by any person except in connection with matters relating to the affairs of the credit union.

(5) A person who uses a register for purposes not related to the affairs of the credit union is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(6) A credit union shall make available, and a member may examine, the members register at any meeting of members.

(7) The directors of a credit union or the duly authorized representative of the board of directors may examine the records referred to in clause 23(1)(f) at all reasonable times at no charge.

(8) The Superintendent shall have the right to inspect the records referred to in subsection 23(1) at all reasonable times. 1994, c. 4, s. 24.

Form of records

25 (1) All registers and other records required by this Act to be prepared and maintained may be in a bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) A credit union and its agents shall take reasonable precautions to

- (a) prevent loss or destruction of;
- (b) prevent falsification of entries in;
- (c) facilitate detection and correction of inaccuracies in,

the registers and other records required by this Act to be prepared and maintained.
1994, c. 4, s. 25.

Corporate seal

26 An instrument or agreement executed on behalf of a credit union by a director, an officer or an agent of the credit union is not invalid merely because a corporate seal is not affixed thereto. 1994, c. 4, s. 26.

PART V

CAPITALIZATION AND OPERATING STANDARDS

Common shares

27 (1) Common shares in a credit union shall have an issue price fixed by the articles, but the issue price shall not, in any event, be less than five dollars each.

(2) A credit union is not limited as to the number of common shares it may issue.

(3) A member of a credit union shall purchase and hold only one fully-paid common share, unless the charter by-laws of the credit union permit or require members to purchase and hold more than one fully-paid common share.
1994, c. 4, s. 27.

Transitional

28 Where a credit union is incorporated prior to the commencement of this Act, an issued share of the credit union is deemed, for the purpose of this Act, to be a common share. 1994, c. 4, s. 28.

Shares other than common shares

29 (1) In addition to common shares, the articles of a credit union may provide for the issuance of more than one class of shares, including surplus shares, and if the articles so provide, there shall be set out therein the maximum number of shares in each class other than common and surplus shares that the credit union is entitled to issue, the total consideration to be paid for each such class of shares, and the rights, privileges, restrictions and conditions, including dividends, attached to the shares of each such class.

(2) Common shares shall rank behind all other classes of shares issued by the credit union and holders of common shares shall not, upon the winding-up or liquidation of a credit union, be entitled to redeem, in whole or in part, any common shares until the amounts outstanding on all other classes of shares have been paid in full.

(3) The Superintendent may not permit a credit union to create a class of shares, other than common shares, if, in the opinion of the Superintendent, the issuance of such shares would

- (a) not be consistent with the objects of a credit union generally;
- (b) not be in the financial interests of the credit union; or
- (c) increase the risk of a claim upon the Corporation. 1994, c. 4, s. 29.

No share certificates

30 A credit union is not required to issue share certificates for common or surplus shares. 1994, c. 4, s. 30.

Consideration for share

31 (1) A share shall not be issued until the consideration for the share is fully paid in money, or in property or past services that is not less in value than the fair equivalent of the money that the credit union would have received if the share had been issued for money.

(2) A credit union shall not issue a share if the proposed consideration for such share consists, in whole or in part, of a promissory note or a promise to pay. 1994, c. 4, s. 31.

Patronage refund

32 (1) After providing for all known liabilities, making allowance for doubtful accounts and making such other provisions as are required by this Act and the regulations and after providing for payment of dividends, if any, on all classes of shares, the directors of a credit union may allocate, as a patronage refund among, and credit to, its members any surplus arising from the operations of the credit union in each fiscal year, and each member shall be entitled to a share thereof proportionate to the business done by that member with or through the credit union in that fiscal year as computed by the directors at a rate approved by the resolution of the directors.

(2) *repealed 2004, c. 11, s. 6.*

1994, c. 4, s. 32; 2004, c. 11, s. 6.

Use of patronage refund or dividend

33 (1) A credit union may, in its charter by-laws, provide that in each fiscal year of the credit union the whole of any patronage refund or common or surplus share dividend credited to a member, or such part thereof as may be set out in the charter by-laws of the credit union, shall be applied to purchase, on behalf of the member, surplus shares of the credit union, up to such number as may be specified in the charter by-laws.

(2) A credit union may, in its charter by-laws, require its members to lend to it the whole, or such part as may be specified in the charter by-laws, of the patronage refunds or common or surplus share dividends to which the members may become entitled in any fiscal year, and the charter by-laws shall provide the terms upon which the loans are made including the method of their repayment and the rate of interest, if any, thereon.

(3) Loans made to a credit union pursuant to subsection (2) shall, with respect to the repayment of capital, in the event of a winding-up or dissolution of a credit union, rank ahead of the common shares of the credit union. 1994, c. 4, s. 33.

Redemption or repayment

34 (1) A credit union shall not make any payment to purchase or redeem shares issued by it or repay any loan of patronage refunds, or common or surplus share dividends, if there are reasonable grounds for believing that

(a) the credit union is, or would thereby be, unable to pay its liabilities as they become due; or

(b) the realizable value of the credit union's assets is, or would thereby be, less than the aggregate of

(i) its liabilities, and

(ii) the amount that would, at that time, be required to pay the holders of equity, that have a right to be paid, on a redemption, repayment or in a liquidation, rateably with or prior to the holders of the equity to be purchased, redeemed or repaid.

(2) Subject to subsection (1), no shares issued by a credit union, or any loan of patronage refunds or share dividends, may be redeemed or paid out at a price or an amount exceeding the issue price or the amount lent to the credit union, as the case may be. 1994, c. 4, s. 34.

Dividends on common or surplus shares

35 Subject to subsection 36(1), a credit union may declare and pay such dividends upon its outstanding common or surplus shares as may be established by a resolution of the directors. 1994, c. 4, s. 35; 2004, c. 11, s. 7.

Restriction

36 (1) A credit union shall not pay out a dividend on shares or pay out a patronage refund if there are reasonable grounds for believing that

(a) the credit union is, or would thereby be, unable to pay its liabilities as they become due;

(b) the realizable value of the credit union's assets is, or would thereby be, less than the aggregate of its liabilities and its equity other than retained surplus; or

(c) the equity of the credit union is, or would thereby be, less than the prescribed amount.

(2) Where, but for clause (1)(c), a credit union would be able to make any payments referred to in subsection (1), the Superintendent may, upon recommendation of the Corporation, authorize any payments referred to in subsection (1) upon such terms and conditions as the Superintendent deems advisable. 1994, c. 4, s. 36.

Limitation on holding of shares

37 Unless the charter by-laws otherwise provide, no person shall hold more than ten per cent of the total number of issued shares of any class comprising the capital of the credit union. 1994, c. 4, s. 37.

Application of Securities Act

38 (1) Subject to subsection (2), the *Securities Act* does not apply to the distribution of any securities of a credit union by the credit union, including shares of, and deposits in, a credit union.

(2) Where the Superintendent considers it to be in the public interest, the Superintendent may direct that the proposed issuance of securities by a credit union be subject to the *Securities Act*.

(3) The exemption set out in subsection (1) does not apply to the issue of securities by a subsidiary of a credit union. 1994, c. 4, s. 38.

Application of Securities Transfer Act

38A The transfer or transmission of a share or other security of a credit union is governed by the *Securities Transfer Act*. 2010, c. 8, s. 114

Non-voting shares

39 (1) All shares in a credit union shall be non-voting except in the case of a class vote as provided for in subsection (2).

(2) The holders of shares of a class other than common or surplus shares are, unless the articles otherwise provide in the case of an amendment

referred to in clauses (a), (b) and (e), entitled to vote separately as a class upon a proposal to amend the articles to

(a) increase or decrease any maximum number of authorized shares of the class, or increase any maximum number of authorized shares of any other class having rights or privileges equal or superior to the shares of that class;

(b) effect an exchange, reclassification or cancellation of all or part of the shares of the class;

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of the class and, without limiting the generality of the foregoing,

(i) remove or change prejudicially any right to accrued dividends or rights to cumulative dividends,

(ii) add, remove or change prejudicially any redemption rights,

(iii) reduce or remove any dividend preference or liquidation preference, or

(iv) add, remove or change prejudicially any conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of a corporation, or sinking fund provisions;

(d) increase the rights or privileges of any other class of shares having rights or privileges equal or superior to the shares of that class;

(e) create a new class of shares equal or superior to the shares of that class;

(f) make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class;

(g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class; or

(h) constrain the issue or transfer of the shares of the class or extend or remove the constraint. 1994, c. 4, s. 39.

Limit of liability

40 Subject to this Act, a member is not responsible for any act, default or liability whatsoever of the credit union or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever relating to or connected with the credit union. 1994, c. 4, s. 40.

Remedy preserved

41 Nothing in this Act curtails, abridges or defeats any remedy for the recovery from

- (a) the borrower of money loaned by a credit union in contravention of this Act or the regulations; and
- (b) the member of any amount withdrawn in excess of the amount standing to the member's credit in its deposit accounts. 1994, c. 4, s. 41.

Unclaimed balances

42 In the event that a deposit account contains less than a prescribed amount and no business has been transacted in connection with such account over a prescribed period, the credit union shall be entitled to deal with such account in a prescribed manner. 1994, c. 4, s. 42.

Members right to withdraw deposits

43 (1) A member shall be entitled to the balance remaining in any deposit account maintained by the member at the credit union together with any accrued interest at any time during normal business hours of the credit union.

(2) A credit union may, in its sole discretion, require up to ninety days' notice in writing of a member's intention to withdraw deposits or to redeem any shares.

(3) Subsection (2) does not apply in those circumstances where a member has placed deposits with a credit union for a stated term or in an account on which a bill of exchange payable on demand may be drawn. 1994, c. 4, s. 43.

Trust funds

44 (1) Except where the credit union is itself the trustee, a credit union is not bound to see to the execution of any trust, whether express, implied or constructive, to which any share or deposits are subject, and where such an account is subject to a trust of which the credit union has notice, the cheque, bill of exchange, withdrawal slip or receipt of the person

- (a) in whose name the account stands; or
- (b) who is, according to the document creating the trust, entitled to deal therewith,

is, notwithstanding any such trust, sufficient authorization and a valid and binding discharge of the credit union, and the credit union is not bound to see to the application of any money paid upon or with respect to any such cheque, bill of exchange, withdrawal slip or receipt.

(2) Unless the instrument of trust permits, moneys on deposit in a credit union held by a trustee in trust for a named beneficiary, or otherwise, may not be charged to secure a loan or obligation.

(3) Where a member of a credit union dies and there is no executor of a will of the deceased member or administrator of the estate of the deceased member, the credit union may, upon receipt of an affidavit or such other proof of death or proof of claim as may be required by the credit union, pay a prescribed amount out of moneys standing to the credit of the deceased member to the person who appears to be entitled to the amount of the deceased member's interest and payment made pursuant to this Section releases the credit union from any further liability with respect to the moneys so paid. 1994, c. 4, s. 44.

Loans

45 A credit union shall establish loan policies governing all lending activities of the credit union as prescribed and may, in accordance with such loan policies and the regulations, make loans to its members, including directors, officers and employees. 1994, c. 4, s. 45.

Material deposits

46 A credit union shall report to the Central the existence of any deposit in excess of a prescribed amount. 1994, c. 4, s. 46.

Lien on deposits and shares

47 (1) Notwithstanding anything contained in this Act to the contrary, a credit union has a lien on the deposits and shares of a member or other person to whose credit the deposits and shares stand in the records of the credit union together with interest or dividends thereon for any indebtedness due or accruing due to it by the member or other person or for any obligation in respect of the indebtedness, and the deposits and shares may not be withdrawn or redeemed unless the credit union consents.

(2) A credit union may apply the deposits and shares, and interest or dividends thereon on which it has a lien, to any indebtedness in default or to any obligation in respect of the indebtedness without notice to any person, and the exercise of the lien by application of the deposits, shares, interest and dividends does not constitute a realization of a security interest within the meaning of any enactment.

(3) For the purpose of subsection (2), an indebtedness is deemed to be in default where

(a) an amount of the principal or interest is not paid on the date upon which it becomes due and payable; or

(b) there has been a failure to observe or perform any obligation relating to the indebtedness. 1994, c. 4, s. 47.

Restrictions on overdrafts

48 No officer or employee of a credit union shall permit a withdrawal of funds from a deposit account of a member where the funds in such account are not sufficient to cover the withdrawal, except as may be prescribed. 1994, c. 4, s. 48.

Liquidity reserves and investments

49 (1) To meet withdrawals from deposit accounts, every credit union shall establish and maintain liquidity reserves as prescribed.

(2) All investments made by a credit union for the purpose of meeting liquidity reserve requirements shall be made in financial instruments as prescribed. 1994, c. 4, s. 49.

Investments generally

50 A credit union may only make investments, other than investments made for the purpose of maintaining liquidity reserves, as may be prescribed. 1994, c. 4, s. 50.

Allowance for doubtful accounts

51 A credit union shall establish and maintain an allowance for doubtful accounts as prescribed. 1994, c. 4, s. 51.

Equity

52 (1) A credit union shall establish and maintain a level of equity as prescribed.

(2) For the purpose of this Part, the equity of a credit union includes

(a) the value of the consideration paid for all shares issued by the credit union;

(b) the value of the consideration paid for any other securities issued by the credit union that are

(i) not subject to the guarantee of the Corporation, and

(ii) not repayable by the credit union within one year,

which shall include the amount of any loan by a member of a patronage refund or dividend; and

(c) the retained surplus or accumulated deficit of a credit union. 1994, c. 4, s. 52.

Matching

53 A credit union shall match the term and return of its investment and loans with the term and return of member deposits in the credit union as prescribed. 1994, c. 4, s. 53.

Insurance

54 Subject to this Act and the regulations, a credit union shall maintain such types and minimum levels of insurance and bonding coverage as may be determined from time to time by the Corporation. 1994, c. 4, s. 54.

Adjustments

55 (1) Where the returns required to be filed by a credit union disclose, or where the Superintendent otherwise learns that the stated value of the assets of a credit union are greater than their realizable value, the Superintendent may require the credit union to take such steps as the Superintendent deems appropriate to ensure that the financial position of the credit union is accurately reflected in the records of the credit union.

(2) Where it appears to the Superintendent that the realizable value of the assets of a credit union are less than the aggregate of its liabilities and its equity, other than retained surplus and common shares, the Superintendent may

(a) prohibit the credit union from taking deposits or making payments to its members;

(b) limit payments made pursuant to clause (a) for such period as the Superintendent considers necessary to protect the interest of the members;

(c) take such other action as the Superintendent considers necessary for the protection of or in the interest of the members. 1994, c. 4, s. 55.

PART VI

MEMBERSHIP

Members

56 (1) The membership of a credit union consists of its incorporators and those persons whose applications for membership are approved by the board of directors or approved in the manner authorized by the board of directors in accordance with this Act and the charter by-laws of the credit union.

(2) The directors of a credit union may refuse to approve an application for membership where they are satisfied that it is not in the interest of the credit union to approve such application.

(3) A person under nineteen years of age may be accepted as a member of a credit union and shares may be held and moneys received by the credit union in that person's name or in the name of a trustee for that person, if the trustee is a member or is eligible to be a member of the credit union.

(4) A credit union may not be a member of another credit union. 1994, c. 4, s. 56; 2004, c. 11, s. 8.

Common bond

57 (1) The articles of a credit union may provide that membership in the credit union is limited to groups having a bond of association.

(2) Where the articles of a credit union contain a provision pursuant to subsection (1), a member of the credit union who leaves the bond of association may nevertheless retain membership in the credit union and all the rights and privileges of a member. 1994, c. 4, s. 57.

Associates

58 (1) A credit union shall not permit persons to become associates of a credit union unless

(a) the credit union has provided for associate status in its articles; and

(b) the credit union has enacted a charter by-law pursuant to clause 6(4)(a).

(2) At no time shall the number of associates exceed one quarter of the number of members of the credit union.

(3) A credit union may not be an associate of another credit union.

(4) Subject to this Act, an associate of a credit union has all the rights and privileges and is subject to all of the obligations of a member of a credit union, except that an associate shall not

(a) vote at any meeting of members; or

(b) become an officer or a director of a credit union. 1994, c. 4, s. 58.

Termination of membership, appeals and re-admittance

59 (1) Unless the charter by-laws otherwise provide, the directors, by a resolution passed by a majority of not less than three-quarters of the directors at a meeting called to consider the resolution, may terminate the membership of a member.

(2) The member whose membership is proposed to be terminated by a resolution of the directors pursuant to subsection (1) is entitled to at least seven days' notice of the meeting at which the resolution is to be considered, together with a statement of the grounds upon which the membership is proposed to be terminated, and is entitled to appear, either personally or by or with an agent or counsel, to make submissions at the meeting.

(3) Within seven days after the date on which the resolution referred to in subsection (1) is passed by the requisite majority, the credit union

shall, in the same manner as that provided for the giving of notice of a meeting of members, notify the person whose membership was terminated of the resolution.

(4) A person whose membership is terminated pursuant to subsection (1) may appeal the decision of the directors at the next meeting of the members by sending a notice of appeal to the credit union within fourteen days after the date when notice was given pursuant to subsection (3).

(5) The meeting of members to which an appeal pursuant to subsection (4) is brought shall, by a majority vote, either confirm or set aside the resolution of the directors terminating the membership of a member.

(6) A meeting of members may, by special resolution, terminate the membership of a member.

(7) Subject to subsection (8), a person, the termination of whose membership is confirmed by a meeting of members pursuant to subsection (5) or whose membership has been terminated by a meeting of members pursuant to subsection (6), may appeal the termination to the Superintendent as prescribed, and the Superintendent may confirm or set aside the resolution terminating the membership.

(8) No person whose membership is terminated for failure to fulfil financial obligations to the credit union may appeal the termination to the Superintendent pursuant to subsection (7).

(9) A person who, in accordance with subsection (4) or (7), appeals a termination of membership shall, notwithstanding the resolution terminating membership, continue to be a member of the credit union until the termination is confirmed by the meeting of members pursuant to subsection (5) or by the Superintendent pursuant to subsection (7), as the case may be.

(10) A person whose membership is terminated upon an appeal to, or by special resolution of, a general meeting in accordance with this Section shall not again be admitted to membership in the credit union except by special resolution of a general meeting.

(11) This Section does not apply to associates. 1994, c. 4, s. 59.

Withdrawal

60 (1) A member may withdraw from a credit union on such terms and conditions as this Act, the articles or the charter by-laws of the credit union may provide.

(2) No provisions in respect of terminated or withdrawing members affect the provisions of any contract between a terminated or withdrawing member and the credit union and, without restricting the generality of the foregoing, shall not affect the term for which any person has agreed to place deposits with the credit union. 1994, c. 4, s. 60.

Remedy preserved

61 Withdrawal from or termination of membership in a credit union does not release a person from any liability to the credit union. 1994, c. 4, s. 61.

Power to enact by-laws

62 (1) The members of a credit union may, subject to this Act and the articles of the credit union, at any annual meeting or general meeting called for the purpose, enact, amend or repeal charter by-laws in respect of those matters authorized or required by any provision of this Act.

(2) A by-law may be enacted, amended or repealed by the members of a credit union if

(a) approved by special resolution of the members; or

(b) written notice of the proposed enactment, amendment or repeal is forwarded to each member of the credit union with the notice of the meeting at which the enactment, amendment or repeal is to be considered, by a majority of the votes cast at the meeting.

(3) A charter by-law, amendment or repeal is effective upon the approval of the Superintendent or, in the event that the charter by-laws have been approved pursuant to subsection (5), upon enactment of the charter by-law by the credit union.

(4) *repealed 2004, c. 11, s. 9.*

(5) At the option of the credit union, a charter by-law and an amendment or repeal of a charter by-law may be submitted to the Superintendent for approval prior to the adoption thereof by the members of the credit union and

(a) the charter by-law must be adopted by the members of the credit union within thirty days of receipt of the approval of the Superintendent; and

(b) a certified copy of the adopted charter by-law must be filed with the Superintendent within thirty days of its adoption by the members of the credit union.

(6) Where a credit union fails to comply with the requirements of subsection (5), the charter by-law, amendment or repeal is void. 1994, c. 4, s. 62; 2004, c. 11, s. 9.

Members bound by articles and by-laws

63 The articles and charter by-laws of a credit union bind the credit union and its members. 1994, c. 4, s. 63.

Place of meetings

64 Meetings of the members of a credit union shall be held at the place within the Province provided in the charter by-laws or, in the absence of that provision, at the place within the Province that the directors may determine. 1994, c. 4, s. 64.

Calling meetings

65 The directors of a credit union

(a) shall call an annual meeting of members which shall be held within four months after the fiscal year end of the credit union to consider the annual report of the directors, the financial statements and the auditor's report, to appoint the auditor, to elect directors and such other matters as may properly come before the meeting; and

(b) may at any time call a special meeting of members. 1994, c. 4, s. 65.

Record date

66 The record date for determining which members are entitled to receive notice of a meeting of members and vote at the meeting shall be at the close of business on the day immediately preceding the day on which the notice is given. 1994, c. 4, s. 66; 2004, c. 11, s. 10.

Notice of meeting

67 (1) Notice of the time and place of a meeting of members shall be given in accordance with the provisions of the charter by-laws or, in the absence of those provisions, not less than fourteen days nor more than thirty days before the meeting to each member entitled to vote at the meeting, and to the auditor of the credit union.

(2) Where a meeting of members is adjourned for less than seven days, it is not necessary, unless the charter by-laws otherwise provide, to give notice of the adjourned meeting other than by announcement at the earliest meeting that is adjourned.

(3) Where a meeting of members is adjourned by one or more adjournments for more than seven days, notice of the adjourned meeting shall be given in the same way as for an original meeting.

(4) All business transacted

(a) at a special meeting of members; or

(b) at an annual meeting of members, except consideration of the annual report of the directors, the financial statements, the auditor's report, the election of directors, the re-appointment of the auditor and any other business authorized by the charter by-laws to be transacted at an annual meeting,

is deemed to be special business.

(5) The notice of a meeting of members at which special business is to be transacted shall include a statement of the nature of the business, in sufficient detail to permit the member receiving the notice to form a reasoned judgement thereon.

(6) Copies of the information referred to in subsection (5) shall be made available at the registered office of the credit union at least ten days before the meeting referred to in subsection (5). 1994, c. 4, s. 67; 2004, c. 11, s. 11.

Waiver of notice

68 A member or any other person entitled to attend a meeting of members may in any manner waive notice of the meeting, and the attendance of the member or other person at the meeting is itself a waiver of notice of the meeting, except where that person attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called. 1994, c. 4, s. 68.

Member proposal

69 (1) A member entitled to vote at a meeting of members may

(a) submit to the credit union notice of any matter that the member proposes to raise at the meeting, hereinafter referred to as a "proposal";

(b) discuss at the meeting any matter in respect of which the member would have been entitled to submit a proposal.

(2) A credit union shall give notice of the meeting at which a proposal is to be presented.

(2A) A member submitting a proposal shall provide a statement outlining the intent of the proposal in sufficient detail to permit members reviewing the proposal to form a reasonable judgement regarding the proposal.

(2B) Copies of a proposal referred to in subsection (1) and any supporting information shall be made available at the registered office of the credit union at least ten days before the meeting at which the proposal will be considered.

(3) If so requested by a member submitting a proposal, the credit union shall include in the notice or attach thereto a statement by the member of not more than two hundred words in support of the proposal, and the name and address of the member.

(4) *repealed 2004, c. 11, s. 12.*

(5) A credit union is not required to comply with subsections (2), (2A), (2B) and (3) if

(a) the proposal is not submitted to the credit union at least sixty days before the first anniversary date of the previous annual meeting of the members;

(b) it clearly appears that the proposal is submitted by the member primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the credit union or its directors, officers, members or other security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the credit union, at the member's request, included a proposal in the notice of meeting of members held within two years preceding the receipt of the submission pursuant to subsection (1), and the member failed to present the proposal at that meeting;

(d) substantially the same proposal was submitted to the members in the notice of a meeting of members held within two years preceding the receipt of the member's request, and the proposal was defeated; or

(e) the rights conferred by this Section are being abused to secure publicity.

(6) No credit union or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this Section.

(7) Where a credit union refuses to include a proposal in a notice of meeting, the credit union shall, within ten days after receiving the proposal, notify the member submitting the proposal of its intention to omit the proposal from the notice and send to the member a statement of the reasons for the refusal.

(8) Upon the application of a member claiming to be aggrieved by a refusal pursuant to subsection (7), the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

(9) The credit union or any person claiming to be aggrieved by a proposal may apply to the court for an order permitting the credit union to omit the proposal from the notice of meeting, and the court, if it is satisfied that subsection (5) applies, may make the order.

(10) An applicant pursuant to subsection (8) or (9) shall give the Superintendent notice of the application, and the Superintendent is entitled to appear and be heard in person or by counsel. 1994, c. 4, s. 69; 2004, c. 11, s. 12.

Quorum

70 (1) Unless the charter by-laws otherwise provide, a number of members equal to the number of directors plus five constitutes a quorum.

(2) Where a quorum is present at the opening of a meeting of members, the members present may, unless the charter by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) Where a quorum is not present at the opening of a meeting of members, the members present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) This Section does not apply to associates. 1994, c. 4, s. 70.

Voting eligibility

71 (1) A member of a credit union, nineteen years of age or over, may vote at a meeting of members.

(2) Subject to the provisions of subsections 39(1) and (2), a member of a credit union has only one vote on any question that may be voted on at a meeting of the credit union. 1994, c. 4, s. 71.

Representatives of corporations

72 (1) Where a body corporate or association is a member of a credit union, the credit union shall recognize an individual authorized by resolution of the directors or governing body of the body corporate or association to represent it at meetings of members of the credit union.

(2) An individual authorized pursuant to subsection (1) may exercise, on behalf of the body corporate or association referred to in that subsection, all the powers the body corporate or association could exercise if it were an individual member. 1994, c. 4, s. 72.

Proxy

73 (1) Unless the charter by-laws otherwise provide, no member, other than a member that is a body corporate or association, shall vote by proxy at any meeting of members of a credit union.

(2) Where the charter by-laws provide for voting by proxy, no person other than a member of a credit union may be appointed proxy and

(a) no member may vote more than one proxy;

(b) no member may represent more than one body corporate or association; and

(c) no member may both vote a proxy and represent a body corporate or association,

at a meeting of members of a credit union.

(3) This Section does not apply to associates. 1994, c. 4, s. 73.

Joint membership

74 (1) A credit union may, in its charter by-laws, provide that two or more individuals may jointly hold a membership in a credit union, but that membership is entitled to one vote only.

(2) The individuals making up a joint membership are entitled to one vote each where the joint membership meets the requirements of subsection 27(3) with respect to each of the individuals making up the joint membership. 1994, c. 4, s. 74.

Mail or other forms of voting

75 A credit union may, by charter by-law, establish procedures to permit members to vote by mail ballot, in-branch ballot or by other means. 1994, c. 4, s. 75.

Executors and administrators

76 Every executor or administrator holding a membership or share in the credit union in the capacity of executor or administrator shall represent that membership or share at meetings of the credit union and may vote as a member or shareholder. 1994, c. 4, s. 76.

Method of voting

77 (1) Unless the charter by-laws otherwise provide, voting at a meeting of members shall be by show of hands, except where a ballot is demanded by a member entitled to vote at the meeting.

(2) A member may demand a ballot either before or after any vote by show of hands, and the result of the ballot shall be the decision of the members. 1994, c. 4, s. 77.

Members calling meetings

78 (1) Twenty-five members, who have the right to vote at a meeting sought to be held or such other number of members as the by-laws may provide, may, by written requisition, require the directors to call a special meeting of members for the purpose stated in the requisition.

(1A) The members referred to in subsection (1) shall identify themselves by providing to the directors their names, addresses and signatures.

(1B) The requisition referred to in subsection (1) shall include information with sufficient detail as to why the requisition is being made so that the directors and the members may form a reasonable judgement as to the intent of the requisition.

(2) The requisition referred to in subsection (1) may consist of several documents of like form, each signed by one or more members, and shall state the business to be transacted at the meeting, and shall be sent to the registered office of the credit union.

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of members to transact the business stated in the requisition, unless the business of the meeting as stated in the requisition includes a matter described in clauses 69(5)(b) to (e).

(4) Where the directors do not, within thirty days after receiving the requisition referred to in subsection (1), call a meeting, any member who signed the requisition may call the meeting.

(5) A meeting called pursuant to this Section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to this Act and the charter by-laws.

(6) Unless the members otherwise resolve at a meeting called pursuant to subsection (4), the credit union shall reimburse the members for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting. 1994, c. 4, s. 78; 2004, c. 11, s. 13.

Meeting called by Superintendent and quorum

79 (1) Where, for any reason, it is impracticable to call a meeting of members of a credit union in the manner in which meetings of members may be called, or to conduct the meeting in the manner prescribed by this Act and the charter by-laws, or if for any other reason the Superintendent thinks fit, the Superintendent may order a meeting to be called, and direct the manner of conducting the meeting and such meeting is for all purposes a meeting of members of the credit union duly called and conducted.

(2) Without restricting the generality of subsection (1), the Superintendent may order that the quorum required by this Act or the charter by-laws be varied or dispensed with at a meeting called, held and conducted pursuant to this Section. 1994, c. 4, s. 79.

PART VII

DIRECTORS AND OFFICERS

Numbers and duties of directors

80 (1) A credit union may, by charter by-law, establish a fixed number or a minimum and maximum number of directors but in no event shall the number of directors be less than five.

(2) The directors shall

(a) exercise the powers of the credit union directly, or indirectly through the employees and agents of the credit union; and

(b) direct the management of the business and affairs of the credit union. 1994, c. 4, s. 80.

Chair, vice-chair and secretary

81 (1) The directors shall appoint from among themselves a chair and a vice-chair.

(2) The directors shall appoint a secretary who may or may not be a director and such other officers as the directors consider appropriate.

(3) In the absence of the chair and the vice-chair, the directors present at a duly constituted meeting of the directors may appoint from among the directors a person to preside at the meeting. 1994, c. 4, s. 81.

Qualifications of directors

82 (1) A citizen of Canada who is nineteen years of age, a member of the credit union and satisfies the requirements set out in the charter by-laws of the credit union except

- (a) an undischarged bankrupt;
- (b) an employee of a member of the Central, the Central, the Corporation or a deposit insurer;
- (c) an auditor, or a partner of the auditor's firm, of any member of the Central;
- (ca) a member who is in arrears for more than ninety days under a debt obligation to a member of the Central;
- (d) the solicitor, or a partner of the solicitor's firm, of any member of the Central; or
- (e) a civil servant whose official duties are concerned with the affairs of credit unions,

may be a director of the credit union.

(2) A non-individual shall not be a director of a credit union.

(3) Within a period specified by the Central,

(a) a person elected or appointed for the first time as a director of a credit union; or

(b) where required by the Central, every director of a credit union who has not completed a director training program,

shall complete a credit union director training program determined by the Central. 1994, c. 4, s. 82; 2004, c. 11, s. 14; 2010, c. 49, s. 2.

Term of office of first directors and election

83 (1) Each director named in the articles holds office from the issue of the certificate of incorporation until the first meeting of members.

(2) The members of a credit union shall, by ordinary resolution at the first meeting of the members and at each succeeding annual meeting of the members at which an election of directors is required, elect directors to hold office for a term established in the charter by-laws, which term shall not exceed three years.

(3) Notwithstanding the provisions of subsection (2), the charter by-laws of a credit union may provide the manner in which members of a credit union elect directors for a district at a district meeting.

(4) It is not necessary that all directors elected at a meeting of members hold office for the same term.

(5) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of members following that director's election.

(6) Notwithstanding anything contained in this Section, if directors are not elected at a meeting of the members, the incumbent directors continue in office until their successors are elected. 1994, c. 4, s. 83.

Ceasing to hold office

84 (1) A director of a credit union ceases to hold office when the director

- (a) dies or resigns;
 - (b) is removed from office in accordance with Section 85;
- or
- (c) becomes disqualified pursuant to Section 82.

(2) The resignation of a director becomes effective at the time a written resignation is received by the credit union, or at the time specified in the resignation, whichever is later. 1994, c. 4, s. 84.

Removal of director

85 (1) The members of a credit union may, by ordinary resolution, at a special meeting remove any director from office.

(2) A vacancy created by the removal of a director from office may be filled at the meeting of the members at which the director is removed, or if not so filled, may be filled pursuant to Section 87. 1994, c. 4, s. 85.

Statement of director

- 86** (1) A director who
- (a) resigns;

(b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing the director from office; or

(c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed or elected to fill the office of director in that person's stead, whether because of that person's resignation or removal or because that person's term of office has expired or is about to expire,

is entitled to submit to the credit union a written statement giving the reasons for the resignation or for opposing any action or resolution proposed for the purposes described in clauses (b) and (c).

(2) A credit union shall forthwith send a copy of the statement referred to in subsection (1) to every member and to the Superintendent.

(3) No credit union or person acting on its behalf incurs any liability by reason only of circulating a statement in compliance with subsection (2). 1994, c. 4, s. 86.

Filling vacancy

87 (1) Subject to subsection (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in, or the members' failure to elect, the fixed or minimum number of directors.

(2) Where a meeting of the members fails, for any reason, to elect the fixed or minimum number of directors, the directors elected at that meeting may exercise all the powers of directors if the number of directors so elected constitutes a quorum.

(3) Where there is a failure to elect the fixed or minimum number of directors at a meeting of members, the directors then in office shall forthwith call a meeting of members to fill the vacancy and, where they fail to call a meeting or there are no directors then in office, the meeting may be called by any member.

(4) The articles or charter by-laws may provide that a vacancy among the directors shall be filled only by a vote of the members.

(5) Where a vacancy among the directors is filled pursuant to subsection (1), the appointment shall be ratified at the next meeting of members. 1994, c. 4, s. 87.

Notice of change of directors

88 (1) Within fifteen days after a change of directors occurs, a credit union shall send to the Superintendent a notice in the prescribed form setting out the change, and the Superintendent shall file the notice.

(2) An interested person or the Superintendent may apply to the court for an order requiring a credit union to comply with subsection (1) and, upon the application, the court may make the order and any further order it thinks fit.

(3) A director named in the articles or in a notice sent by the credit union to the Superintendent pursuant to subsection (1) and filed by the Superintendent is presumed for the purposes of this Act to be a director of the credit union. 1994, c. 4, s. 88.

Meeting of directors

89 (1) Unless the articles or charter by-laws otherwise provide, the directors of a credit union may meet at such place and upon such notice as the directors may determine.

(2) Unless the articles or charter by-laws otherwise provide, a majority of the directors constitutes a quorum at any meeting of directors and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) Unless the charter by-laws otherwise provide, a notice of a meeting of directors need not specify any matter that is to be dealt with at the meeting except

- (a) any question or matter requiring the approval of the members;
- (b) the filling of a vacancy among the directors;
- (c) the issuance or redemption of any securities of the credit union other than common shares; or
- (d) the approval of any financial statements of a kind referred to in Section 105.

(4) A director may in any manner waive notice of a meeting of directors and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called.

(5) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

(6) Subject to the charter by-laws, a director may, where all the directors participating in the meeting consent, participate in a meeting of directors or of a committee of directors by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a director participating in the meeting by such means is deemed for the purposes of this Act to be present at that meeting. 1994, c. 4, s. 89; 2004, c. 11, s. 15.

Delegation to committee

90 (1) The directors of a credit union may appoint committees and may delegate to those committees any of the powers of the directors.

(2) The members of a committee appointed by the directors shall be members of the credit union and the chair of the committee shall be a director of the credit union.

(3) A committee appointed by the directors shall keep minutes of its proceedings and shall submit to the directors at each meeting of directors the minutes of the committee's proceedings during the period since the last meeting of the directors.

(4) Notwithstanding subsection (1), a committee appointed by the directors has no authority to

(a) submit to the members any question or matter requiring approval of the members;

(b) fill a vacancy among the directors;

(ba) hire or establish the terms of employment of the general manager of the credit union;

(c) issue or redeem shares, except in the manner and on the terms authorized by the directors; or

(d) approve any financial statements referred to in Section 105. 1994, c. 4, s. 90; 2004, c. 11, s. 16.

Audit committee and credit committee

91 The directors of a credit union shall establish, in accordance with the regulations, an audit committee and a credit committee, which committees shall perform such duties and have such powers as may be provided for in the regulations. 1994, c. 4, s. 91.

Validity of act of directors and officers

92 An act of a director or officer is valid, notwithstanding any irregularity in the election of or appointment or any defect in the qualifications of the director. 1994, c. 4, s. 92.

Resolution in lieu of meeting

93 (1) A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors

(a) satisfies all requirements of this Act relating to meetings of directors or meetings of committees of directors or of a committee of directors, as the case may be;

(b) is as valid as if it had been passed at a meeting of directors or of a committee of directors, as the case may be; and

(c) is effective from the date specified in the resolution, which shall not be prior to the date on which the first director signed the resolution.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors, as the case may be. 1994, c. 4, s. 93.

Liability of directors and others

94 (1) Directors of a credit union who vote for or consent to a resolution authorizing a payment contrary to Sections 34 and 36, or the payment of an indemnity contrary to Section 102, are jointly and severally liable to restore to the credit union any amount so distributed or paid and not otherwise recovered by the credit union.

(2) Where a loan or advance is made by a credit union to a member thereof in violation of this Act or the regulations, the person receiving the loan or advance and all directors and other officers and members of committees of the credit union who, with knowledge of the violation, make or approve the loan or advance, are jointly and severally liable to the credit union for the unpaid balance of the loan or advance with interest.

(3) A director, officer or member of a committee who satisfies a judgment rendered pursuant this Section is entitled to contribution from all other persons who, by virtue of this Act, are also liable.

(4) A director, officer or member of a committee who is liable pursuant to subsection (1) or (2) may apply to the court for an order compelling a member or other recipient to pay any money or deliver any property to the director, officer or member of a committee that was improperly paid or distributed to the member or other recipient.

(5) An action to enforce a liability imposed by subsections (1) and (2) may not be commenced after two years from the date of the resolution authorizing the thing complained of. 1994, c. 4, s. 94.

Duty of directors to report

95 Where a director of a credit union becomes aware that

(a) the credit union is unable to make any lawful payment it is required to make, except with the result that

(i) the credit union would after that payment be unable to pay its liabilities as they become due, or

(ii) the realizable value of the credit union's assets would thereby be less than the aggregate of its liabilities and the capital account of all classes of shares of the credit union other than common shares; or

(b) the credit union is financially unsound or conducting its affairs in a manner that tends to increase the risk of a claim upon the Corporation,

the director shall, within seven days, give written notice thereof to the Superintendent. 1994, c. 4, s. 95.

Interest in “material contract”

96 (1) Without in any way limiting those matters which may be considered to be material in nature, a “material contract” in this Section includes a contract of any kind made by a credit union under which it

- (a) employs a person as a full-time employee;
- (b) retains the service of a person otherwise than as an employee; or
- (c) disposes of or acquires property whether by sale, purchase, lease or otherwise, for consideration that exceeds five thousand dollars in value.

(2) A director or officer is deemed to have a material interest in a material contract in which any of the following persons is a party or in which they have a material interest:

- (a) the spouse of the director or officer;
- (b) the parent, child, grandparent, grandchild, brother or sister of the director or officer or of the spouse of the director or officer;
- (c) the spouse of any person mentioned in clause (b).

(3) A director or officer is deemed to have a material interest in a material contract involving another person where the director or officer is

- (a) a creditor of that person for a debt that is in excess of five thousand dollars;
- (b) a guarantor of the debts of that person in an amount that is in excess of five thousand dollars;
- (c) the owner or beneficial owner of not less than twenty per cent of the issued shares of any class of shares of that person;
- (d) a partner of that person; or
- (e) a director or officer of that person.

(4) In this Section, “officer” includes a committee member, general manager or agent of a credit union.

(5) For the purpose of this Section, a material contract does not include

(a) an arrangement by way of security for money lent to or obligations undertaken by a director, officer or employee of the credit union for the benefit of the credit union;

(b) a contract relating primarily to the remuneration of directors or officers of the credit union;

(c) a contract for indemnity or insurance pursuant to Section 102; or

(d) loans made to directors, officers or employees in the ordinary course of the credit union's business and in compliance with this Act and the regulations, the charter by-laws and the loan policies of the credit union.

(6) A director or officer of a credit union who

(a) is a party to a material contract or proposed material contract with the credit union; or

(b) has a material interest in a contract or proposed contract between a person and the credit union,

is deemed to have a conflict of interest with the credit union and shall disclose in writing to the credit union and request to have entered in the minutes of meetings of directors, the nature and extent of the interest and shall not participate in any vote conducted by the directors or of a committee of the credit union relating to the material contract or proposed material contract.

(7) The onus is upon the director or officer and the credit union to demonstrate

(a) that the terms of any loan in which the director or officer has a material interest are no more favourable than those offered by the credit union in the ordinary course of business; and

(b) for the purpose of subsection (1), that it is reasonable that the services or property be obtained or supplied and such services or property are normally provided to the public in the ordinary course of business by the director or officer.

(8) A director or officer shall make the disclosure required by subsection (6) forthwith upon the director or officer becoming aware of the conflict of interest in the manner prescribed by regulation.

(9) For the purpose of this Section, general notice to the directors by a director or officer, declaring that the director is a director or officer of or is to be regarded as having a material interest in any contract made with a person, is a sufficient declaration of interest in relation to any contract so made.

(10) A contract or transaction in which a director or officer has a conflict of interest is neither void nor voidable by reason only of that conflict of interest or by reason only that a director with a conflict of interest is present at or is

counted to determine the presence of a quorum of a meeting of directors or a committee of directors that authorized the contract or transaction, if the director or officer disclosed the conflict of interest in accordance with this Section, did not participate in the vote to authorize such contract or transaction and the contract or transaction was approved by the directors or the members and it was reasonable and fair to the credit union at the time it was approved.

(11) Where a director votes on a resolution in which the director has declared a conflict of interest, the contract or transaction that is the subject of the resolution will only be valid if it is approved by not less than two thirds of the votes cast by the members at a special meeting of the credit union.

(12) Where a director or officer of a credit union fails to disclose a conflict of interest in accordance with this Section or participates in a vote which is not subsequently ratified by the members, the court may, upon the application of the credit union or a member of the credit union, set aside the contract or transaction on such terms as it sees fit.

(13) A director or officer of a credit union who, without reasonable cause, fails to disclose a conflict of interest in accordance with this Section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars and such director or officer, on conviction, shall cease to hold office and shall not be eligible for election as a director or for appointment as an officer of a credit union for a period of five years after the date of the conviction. 1994, c. 4, s. 96.

Report of breach by auditor

97 An auditor shall promptly report to the board of directors and the Superintendent any breach of a provision of Section 96 of which the auditor is aware and, if the board of directors does not act to rectify the breach within a reasonable period of time, the auditor shall promptly report the failure to rectify to the Superintendent. 1994, c. 4, s. 97.

Officers

98 Subject to the articles and charter by-laws,

(a) the directors may designate the officers of the credit union, elect or appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the credit union except powers to

(i) submit to the members a question or matter requiring the approval of the members,

(ii) fill a vacancy among the directors,

(iii) issue or redeem securities, except in the manner and on the terms authorized by the directors, or

- (iv) approve a financial statement of a kind referred to in Section 105;
- (b) the directors may elect or appoint committees and delegate powers, duties and responsibilities to them, except powers to do anything referred to in clause (a);
- (c) a director may become an officer of the credit union and may become a member of a committee; and
- (d) two or more offices of the credit union may be held by the same person. 1994, c. 4, s. 98.

Remuneration

99 Subject to the articles and the by-laws, the directors of a credit union may fix the remuneration of the directors, officers, committee members, delegates and employees of the credit union. 1994, c. 4, s. 99.

Duty of care of directors and officers

100 (1) Every director and officer of a credit union, in exercising the powers and discharging the duties of a director or officer, shall

- (a) act honestly and in good faith with the view to the best interest of the credit union; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (2)** Every director and officer of a credit union shall comply with this Act and the regulations, and the articles and charter by-laws of the credit union.
- (3)** No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves the director or officer from liability for a breach of this Act or the regulations.
- (4)** This Section is in addition to and not a derogation of any other enactment or rule of law relating to the duty or liability of directors or officers of a credit union. 1994, c. 4, s. 100.

Dissent

101 (1) A director who is present at a meeting of directors is deemed to have consented to any resolution passed or action taken at the meeting, unless the director

- (a) requests that the director's dissent be or the dissent is entered in the minutes of the meeting;
- (b) sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) sends a dissent by registered mail to the registered office of the credit union immediately after the meeting is adjourned.

(2) A director who votes for or consents to a resolution is not entitled to dissent pursuant to subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented thereto unless, within seven days after becoming aware of the resolution, the director

(a) causes the director's dissent to be placed with the minutes of the meeting; or

(b) sends a dissent by registered mail to the registered office of the credit union.

(4) A director who relies in good faith upon

(a) financial statements of the credit union represented by an officer or the auditor of the credit union to reflect fairly the financial condition of the credit union; or

(b) the report of a lawyer, accountant, engineer, appraiser or any other person whose profession lends credibility to any statement made by that person,

is not liable pursuant to Section 94. 1994, c. 4, s. 101.

Indemnification

102 (1) Except in the case of an action by or on behalf of the credit union or body corporate to procure a judgment in its favour, or by or on behalf of the Superintendent or the Corporation pursuant to Section 236, in which case the approval of the court must first be obtained, a credit union may indemnify a director or officer of the credit union or a person who acts or acted at the credit union's request as a director or officer of a body corporate of which the credit union is or was a member, shareholder or creditor, and that person's heirs and legal representatives, against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person in respect of any civil, criminal or administrative action or proceeding to which that person is made a party by reason of being or having been a director or officer of the credit union or body corporate, if the director or officer

(a) acted honestly and in good faith with a view to the best interests of the credit union; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing the conduct was lawful.

(2) Notwithstanding anything contained in this Section, a person referred to in subsection (1) is entitled to indemnity from the credit union in respect of all costs, charges and expenses reasonably incurred in connection with the

defence of any civil, criminal or administrative action or proceeding to which that person is made a party by reason of being or having been a director or officer of a credit union or body corporate if the person seeking indemnity

(a) was substantially successful on the merits in defence of the action or proceeding; and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(3) A credit union may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by that person

(a) as a director or officer of the credit union, except where the liability relates to the failure of that person to act honestly and in good faith with a view to the best interests of the credit union; and

(b) as a director or officer of another body corporate where the person acts or acted in that capacity at the credit union's request, except where the liability relates to the failure to act honestly and in good faith with a view to the best interests of the body corporate.

(4) A credit union or a person referred to in subsection (1) may apply to the court for an order approving an indemnity pursuant to this Section, and the court may so order and make any further order it thinks fit.

(5) An application pursuant to subsection (4) shall give the Superintendent and the Corporation notice of the application, and the Superintendent and the Corporation are entitled to appear and be heard in person or by counsel.

(6) Upon an application pursuant to subsection (4), the court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel. 1994, c. 4, s. 102.

PART VIII

RETURNS AND FINANCIAL DISCLOSURE

Fiscal year

103 The fiscal year of a credit union ends on December 31st of each year unless the charter by-laws of the credit union otherwise provide. 1994, c. 4, s. 103.

Returns

104 (1) Every credit union shall, not later than four months after the end of each fiscal year, complete and file a return with the Superintendent showing, as of the end of the preceding fiscal year

(a) the name of the credit union;

(b) the address of the registered office of the credit union, giving the street and number on the street;

(c) the date when the latest annual meeting of the members of the credit union was held;

(d) the names, principal occupations and addresses of the directors of the credit union, giving the street and number on the street;

(e) the names and addresses of the officers including the manager, of the credit union, giving the street and number on the street; and

(f) such other information relating to the credit union as may be required by this Act and the Superintendent.

(2) The return shall be in a form prescribed by the Superintendent and shall be signed and the contents thereof certified to be true by a director or officer of the credit union.

(3) In addition to the return required pursuant to subsection (1), the Superintendent may require a credit union to file within a set time a return containing such other information as the Superintendent considers necessary.

(4) The regulations may prescribe a filing fee payable by a credit union to the Superintendent upon the filing of a return pursuant to this Section, and additional fees for late filing. 1994, c. 4, s. 104.

Annual financial statements

105 (1) At each annual meeting of members of a credit union, the directors shall place before the members

(a) financial statements, as prescribed, for the period that began on the date the credit union came into existence and ended not more than four months before the annual meeting, or if the credit union has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than four months before the annual meeting;

(b) the report of the auditor; and

(c) any further information respecting the financial position of the credit union and the results of its operations required by this Act or the regulations or the articles or charter by-laws of the credit union.

(2) The financial statements required pursuant to subsection (1) shall, except as otherwise required by this Act or the regulations or as otherwise specified by the Superintendent, be prepared in accordance with generally accepted accounting principles, the primary source of which is the CPA Canada Handbook.

(3) At each annual meeting of members of a credit union the directors shall disclose

- (a) the aggregate amount of remuneration paid to all directors;
- (b) the aggregate amount paid to all directors as reimbursement for expenses incurred on credit union business;
- (c) the details of any loans made to directors or officers and to any persons in whom directors or officers have a material interest, which do not conform to the credit union's ordinary lending practices for members who are not directors or officers; and
- (d) such other information as may be required to be disclosed by the regulations. 1994, c. 4, s. 105; 2015, c. 30, s. 147.

Copies of documents

106 A credit union shall, at least ten days before each annual meeting of members of the credit union,

- (a) send a copy of the documents referred to in Section 105 to the Superintendent and the Corporation; and
- (b) make a copy of the documents referred to in Section 105 available to members at the registered office of the credit union. 2004, c. 11, s. 17.

Condition precedent to issue

107 A credit union shall not issue, publish or circulate copies of the financial statements referred to in Section 105, unless the financial statements are

- (a) approved by the directors, and the approval is evidenced by the signatures of two or more of the directors on the statements; and
- (b) accompanied by the report of the auditor of the credit union. 1994, c. 4, s. 107.

Request for documents

108 A credit union shall, at any time on the request of a member, make available to that member a copy of the documents referred to in Section 105. 1994, c. 4, s. 108.

Auditor

109 (1) At each annual meeting of a credit union the members of the credit union shall appoint, from a list of approved auditors prepared by the Corporation, auditors for the credit union.

(2) Subject to subsection (6), a person who is not independent of the credit union or of the directors or officers of the credit union is disqualified from being an auditor of a credit union.

- (3) For the purpose of this Section,
- (a) independence is a question of fact;
 - (b) a person is deemed not to be independent of the credit union if that person or that person's business partner
 - (i) is a business partner, director, officer or employee of the credit union or of any director, officer or employee of the credit union, or
 - (ii) has loans or deposits with the credit union at the time an audit is performed and such loans and deposits do not conform to the ordinary lending and deposit practices of the credit union.
- (4) An auditor who becomes disqualified pursuant to this Section shall, subject to subsection (6), resign forthwith after becoming aware of the disqualification.
- (5) Notwithstanding subsection (6), any interested person may apply to the court for an order declaring an auditor to be disqualified pursuant to this Section and the office of auditor to be vacant.
- (6) Any interested person may apply to the Superintendent for an order exempting an auditor from disqualification pursuant to this Section, and the Superintendent may, if satisfied that an exemption would not unfairly prejudice the members, make an exemption order on such terms as the Superintendent thinks fit, and may make the order with retroactive effect. 1994, c. 4, s. 109.

Ceasing to hold office

- 110 (1) An auditor of a credit union ceases to hold office on
- (a) death or resignation; or
 - (b) removal from office pursuant to subsection 109(5) or subsection 111(1).
- (2) A resignation of an auditor becomes effective at the time a written resignation is sent to the credit union, or at the time specified in the resignation, whichever is later. 1994, c. 4, s. 110.

Removal of auditor

- 111 (1) The members of a credit union may, at a special meeting, remove from office and replace any auditor appointed by them.
- (2) Notice of a meeting called for the purpose of removing an auditor from office shall be given to the Corporation and the Corporation is entitled to be represented and be heard at such meeting. 1994, c. 4, s. 111.

Filling vacancy

112 (1) Subject to subsection (3), the directors shall forthwith fill any vacancy in the office of auditor.

(2) Where there is not a quorum of directors, the directors then in office shall, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any member.

(3) The charter by-laws of a credit union may provide that a vacancy in the office of auditor shall only be filled by a vote of the members.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of the auditor's predecessor. 1994, c. 4, s. 112.

Court appointed auditor

113 (1) Where a credit union does not have an auditor, the court may, upon the application of a member or the Superintendent, appoint and fix the remuneration of an auditor and the auditor so appointed holds office until an auditor is appointed by the members.

(2) The remuneration of an auditor appointed pursuant to subsection (1) shall be paid by the credit union. 1994, c. 4, s. 113.

Right to attend meetings

114 The auditor of a credit union is entitled to receive notice of every meeting of members and of the audit committee and to attend and be heard on matters relating to the auditor's duties. 1994, c. 4, s. 114.

Statement of auditor

115 (1) An auditor who

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing that auditor from office;
or

(c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because the auditor's term of office has expired or is about to expire,

is entitled to submit to the credit union a written statement giving the reasons for the resignation or opposing any proposed action or resolution.

(2) The credit union shall forthwith send a copy of the statement referred to in subsection (1) to every member entitled to receive notice of a meeting referred to in Section 114, to the Corporation and to the Superintendent.

(3) No person shall accept an appointment or consent to be appointed as an auditor of a credit union to replace an auditor who has resigned, been removed or whose term has expired or is about to expire until that person has requested and received from that auditor a written statement of the circumstances and the reason why the auditor is to be replaced.

(4) Notwithstanding subsection (3), a person otherwise qualified may accept an appointment or consent to be appointed as auditor of a credit union if, within fifteen days after making the request referred to in that subsection, no reply is received.

(5) Unless subsection (4) applies, the appointment of an auditor of a credit union of a person who has not complied with subsection (3) is void. 1994, c. 4, s. 115.

Examination and report by auditor

116 (1) The auditor of a credit union shall make such examinations as the auditor considers necessary to enable the auditor to report on the financial statements referred to in Section 105 and on any other financial statement required by this Act or the regulations or the articles or by-laws of the credit union to be placed before the members of a credit union.

(2) The auditor's examination referred to in subsection (1) shall, except as otherwise required by this Act or the regulations or as otherwise specified by the Superintendent, be conducted in accordance with generally accepted auditing standards, the primary source of which is the CPA Canada Handbook. 1994, c. 4, s. 116; 2015, c. 30, s. 148.

Scope of audit and payment of costs

117 (1) The Superintendent may enlarge or extend the scope of the audit or direct any other or particular examination to be made or procedure to be established in any particular case as, in the Superintendent's opinion, the public interest may require.

(2) The credit union shall pay the costs and expenses incurred in connection with any report or audit required pursuant to subsection (1). 1994, c. 4, s. 117.

Right to information

118 (1) Upon the demand of an auditor of a credit union, the present or former directors, officers, committee members, employees or agents of the credit union or its subsidiary shall furnish

- (a) such information and explanations; and

(b) such access to records, documents, books, accounts and vouchers of the credit union,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required pursuant to Section 105 and as the directors, officers, committee members, employees or agents are reasonably able to furnish.

(2) Upon the demand of the auditor of a credit union, the directors of the credit union shall obtain from the present or former directors, officers, employees and agents of any subsidiary of the credit union and furnish to the auditor any information or explanations that the present or former directors, officers, employees and agents of the subsidiary are reasonably able to furnish and that, in the opinion of the auditor, is necessary to enable the auditor to make the examination or report required pursuant to Section 105.

(3) A person who in good faith makes an oral or written communication pursuant to this Section is not liable in any civil action arising from the communication. 1994, c. 4, s. 118.

Duty of auditor

119 (1) The auditor of a credit union shall make a report in writing

(a) on the financial statements referred to in Section 105, to the members of the credit union not fewer than fifteen days before the date of the annual meeting of the members; and

(b) on such other financial statements as may be required by this Act or the regulations or the articles or by-laws of the credit union to be placed before the members on or before the date that the statement is distributed.

(2) In a report required pursuant to subsection (1), the auditor shall state an opinion on the financial statements in accordance with the CPA Canada Handbook. 1994, c. 4, s. 119; 2004, c. 11, s. 18; 2015, c. 30, s. 149.

120 *repealed 2004, c. 11, s. 19.*

Duty of auditor to manager and directors

121 (1) It is the duty of the auditor to report to the manager, the audit committee and directors of the credit union, in writing, any transactions or conditions affecting the well-being of the credit union that, in the auditor's opinion, are not satisfactory and require rectification and, without restricting the generality of this requirement, the auditor shall, as occasion requires, make a report to the audit committee with respect to

(a) any transactions of the credit union that, in the opinion of the auditor, have not been within the powers of the credit union; and

(b) any unsound financial practices, transactions or policies that, in the auditor's opinion, may contribute to losses by the credit union.

(2) An auditor who makes a report pursuant to subsection (1), shall transmit it, in writing, to the manager, audit committee and directors of the credit union and the report shall be presented to the meeting of directors next ensuing after it is received, and it shall be incorporated in the minutes of that meeting and the auditor shall, at the time of transmitting the report, furnish a copy of the report to the Corporation and the Superintendent.

(3) An auditor is not required to make a report pursuant to this Section unless the auditor becomes aware of the transactions or conditions referred to in subsection (1) in the ordinary course of the auditor's duties. 1994, c. 4, s. 121.

Working papers made available

122 On the request of the Superintendent, the auditor shall make available to the Superintendent the working papers of the auditor used in conducting an audit or preparing a report pursuant to this Act. 1994, c. 4, s. 122.

Qualified privilege

123 An oral or written statement or report made pursuant to this Act by the auditor of a credit union has qualified privilege. 1994, c. 4, s. 123.

No civil liability

124 (1) An auditor or former auditor of a credit union who in good faith makes an oral or written statement or report pursuant to this Act shall not be liable in any civil action arising from the statement or report.

(2) Subsection (1) does not relieve an auditor or former auditor from liability in connection with a report referred to in subsection 119(1) or clause 105(1)(b). 1994, c. 4, s. 124.

PART IX

FUNDAMENTAL CHANGES

Amendment of articles

125 (1) Subject to the approval of the Superintendent pursuant to Section 127, the articles of a credit union may be amended by special resolution of the members.

(2) Notwithstanding subsection (1), the articles of a credit union containing a clerical error may be amended by resolution of the directors or by ordinary resolution of the members to correct the error.

(3) Where the articles of a credit union are amended pursuant to this Section, articles of amendment shall, within six months of the date of the resolution of the members authorizing the amendment, be sent to the Superintendent for filing and the Superintendent shall refuse to file the articles if not so sent.

(4) The directors of a credit union may, if authorized by the members in a resolution effecting an amendment pursuant to this Section, revoke the resolution before it is acted upon without further approval of the members. 1994, c. 4, s. 125.

Articles sent to Superintendent

126 Subject to a revocation pursuant to subsection 125(4), after an amendment is adopted pursuant to subsection 125(1), articles of amendment in prescribed form shall be sent to the Superintendent. 1994, c. 4, s. 126.

Certificate of amendment

127 Upon receiving articles of amendment, the Superintendent may, if satisfied that the amendment is advisable and subject to Section 138, file the articles and issue a certificate of amendment in accordance with Section 258. 1994, c. 4, s. 127.

Effect of certificate and existing rights

128 (1) An amendment becomes effective on the date shown on the certificate of amendment, and the articles are amended accordingly.

(2) No amendment to the articles of a credit union affects an existing cause of action, claim or liability to prosecution in favour of or against the credit union or any of its directors, committee members or officers or any civil, criminal or administrative action or proceeding to which the credit union or any of its directors, committee members or officers is a party. 1994, c. 4, s. 128.

Restated articles and certificate

129 (1) The directors may, at any time, and shall when so directed by the Superintendent, restate the articles of incorporation as amended.

(2) Restated articles of incorporation, in prescribed form, shall be sent to the Superintendent.

(3) Upon receipt of restated articles of incorporation, the Superintendent shall issue a restated certificate of incorporation in accordance with Section 258.

(4) Restated articles of incorporation are effective on, from and after the date shown in the restated certificate of incorporation and supersede the original articles of incorporation and all amendments thereto. 1994, c. 4, s. 129.

Amalgamation

130 (1) Two or more credit unions may amalgamate and continue as one credit union.

(2) A credit union that is under supervision shall not amalgamate without the consent of its supervisor. 1994, c. 4, s. 130.

Amalgamation agreement

131 Credit unions proposing to amalgamate shall enter into an agreement with each other setting out the terms and means of effecting the amalgamation and, in particular, setting out

(a) the provisions that are required to be included in the articles of incorporation;

(b) the address of the registered office of the amalgamated credit union;

(c) the name and address of each proposed director of the amalgamated credit union;

(d) the manner in which the shares of each amalgamating credit union are to be converted into shares or other securities of the amalgamated credit union;

(e) where any shares of an amalgamating credit union are not to be converted into shares or other securities of the amalgamated credit union, the amount of money or securities that the holders of those shares are to receive in addition to or instead of securities of the amalgamated credit union;

(f) the proposed charter by-laws of the amalgamated credit union; and

(g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated credit union. 1994, c. 4, s. 131.

Approval of amalgamation agreement

132 (1) The directors of each amalgamating credit union shall submit the amalgamation agreement for approval to a meeting of the members.

(2) A notice of a meeting of members shall be sent in accordance with Section 67 to each member of each amalgamating credit union and shall

(a) include or be accompanied by a copy or summary of the amalgamation agreement; and

(b) state that a member is entitled to dissent in accordance with Section 138.

(3) An amalgamation agreement is adopted when the members of each amalgamating credit union have approved the amalgamation by a special resolution.

(4) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of any of the amalgamating credit unions. 1994, c. 4, s. 132.

Articles of amalgamation

133 (1) Subject to subsection 132(4), after an amalgamation has been adopted pursuant to Section 132, articles of amalgamation in prescribed form shall be sent to the Superintendent.

(2) The articles of amalgamation shall have attached thereto a statutory declaration of a director or an officer of each amalgamating credit union that establishes to the satisfaction of the Superintendent that

(a) there are reasonable grounds for believing that

(i) each amalgamating credit union is, and the amalgamated credit union will be, able to pay its liabilities as they become due, and

(ii) the realizable value of the assets of the amalgamated credit union upon completion of the amalgamation will not be less than the aggregate of its liabilities and capital account of all shares of the credit union other than common shares; and

(b) there are reasonable grounds for believing that

(i) no creditors and shareholders of the amalgamating credit unions who are not members thereof, will be prejudiced by the amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating credit unions and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) The Superintendent may exempt a credit union from the requirements of clause (2)(a) if the Corporation consents to the amalgamation.

(4) For the purpose of subsection (2), adequate notice is given if

(a) a notice in writing is sent to each known creditor having a claim against the credit union that exceeds one thousand dollars;

(b) a notice is published in the Royal Gazette and once in a newspaper published or distributed in a place where each amalgamating credit union has its registered office; and

(c) each notice states that the credit union proposes to amalgamate with one or more specified other credit unions in accordance with this Act unless a creditor of the credit union objects to the amalgamation within thirty days from the date of the notice. 1994, c. 4, s. 133.

Compulsory amalgamation

134 Where a credit union which is under supervision is ordered by its supervisor to amalgamate pursuant to Section 243, the provisions of Section 132 and subsection 133(2) do not apply to the credit union which is ordered to amalgamate. 1994, c. 4, s. 134.

Certificate of amalgamation

135 (1) Upon receiving articles of amalgamation, the Superintendent may, if satisfied that the amalgamation is advisable and subject to Section 138, file the articles and issue a certificate of amalgamation in accordance with Section 258.

(2) On the date shown in the certificate of amalgamation

(a) the amalgamation of the amalgamating credit unions and their continuance as one credit union becomes effective;

(b) the property of each amalgamating credit union continues to be the property of the amalgamated credit union;

(c) the amalgamated credit union continues to be liable for the obligations of each amalgamating credit union;

(d) an existing cause of action, claim or liability to prosecute remains unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against any of the amalgamating credit unions may be continued by or against the amalgamated credit union;

(f) a conviction against or a ruling, order or judgment in favour of or against any of the amalgamating credit unions may be enforced by or against the amalgamated credit union;

(g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated credit union and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated credit union;

(h) on the filing of a copy of the certificate of amalgamation, certified as a true copy by the Superintendent, in any land titles, registry or other recording office, all the lands, charges on land, estates, properties, real, personal or mixed, charges on personal property, effects, rights, credits, judgments, assignments and choses in action of every description belonging to the amalgamating credit unions are transferred and vested in the amalgamated credit union without further act, conveyance or other deed; and

(i) the members and associates of the amalgamating credit unions become members and associates of the amalgamated credit union and the shares held in the amalgamating credit unions become shares in the amalgamated credit union subject to the terms of the amalgamation agreement. 1994, c. 4, s. 135.

Extraordinary sale, lease or exchange

136 (1) A sale, lease or exchange of all or substantially all of the property of a credit union requires the approval of the members in accordance with this Section.

(2) A notice of a meeting of members called pursuant to subsection (1) shall be sent in accordance with Section 67 to each member and shall

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and

(b) state that a member is entitled to dissent in accordance with Section 138.

(3) At the meeting referred to in subsection (2), the members may by special resolution approve the sale, lease or exchange and may fix or authorize the directors to fix any of the terms and conditions of the sale, lease or exchange.

(4) A sale, lease or exchange referred to in subsection (1) is adopted when the members have approved the sale, lease or exchange.

(5) The directors of a credit union may, if so authorized by the members approving a proposed sale, lease or exchange and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the members. 1994, c. 4, s. 136.

Approval of Superintendent

137 (1) The credit union shall, prior to completion of a sale, lease or exchange referred to in Section 136, obtain the approval of the Superintendent.

(2) An approval shall not be granted pursuant to subsection (1) unless the Superintendent has received a statutory declaration of a director or officer of the credit union proposing to sell, lease or exchange its property establishing, to the satisfaction of the Superintendent, that there are reasonable grounds for believing that

(a) the sale, lease or exchange of the property will not increase the likelihood of a claim upon the Corporation;

(b) no creditors, including shareholders of the credit union who are not members, will be prejudiced by the sale, lease or exchange of the property; and

(c) adequate notice has been given to all known creditors of the credit union and no creditor objects to the sale, lease or exchange of the property otherwise than on grounds that are frivolous or vexatious.

(3) For the purpose of subsection (2), adequate notice is given if

(a) a notice is published once in the Royal Gazette and once in a newspaper published or distributed in the place where the credit union has its registered office; and

(b) each notice states that the credit union proposes to sell, lease or exchange all, or substantially all, of its property, as the case may be, pursuant to Section 136, unless a creditor of the credit union objects to the sale, lease or exchange within thirty days from the date of the notice.

(4) The *Bulk Sales Act* does not apply to a sale, lease or exchange of the property of a credit union. 1994, c. 4, s. 137.

Right to dissent

138 (1) Subject to Sections 139 and 218, a member of a credit union may dissent if the credit union resolves to

- (a) change its name;
- (b) amalgamate with another credit union pursuant to Section 132;
- (c) sell, lease or exchange all or substantially all its property pursuant to Section 136; or
- (d) add, change or remove any provision that is set out in the articles.

(2) A dissenting member shall send to the credit union, at or before any meeting of members at which a resolution referred to in subsection (1) is to be voted on, a written objection to the resolution but, where the dissenting member fails to send the written objection as required, the dissenting member does not thereby lose the right to dissent if the credit union failed to give the dissenting member notice of the purpose of the meeting or of the right to dissent.

(3) The credit union shall, within ten days after the members adopt the resolution,

- (a) send to each member who has filed an objection pursuant to subsection (2), a notice that the resolution has been adopted, but notice is not required to be sent to any member who withdraws an objection; and

(b) send to the Superintendent a copy of the resolution and copies of any written objections received by the credit union pursuant to subsection (2).

(4) No resolution in respect of which written objection has been sent to the credit union pursuant to subsection (2) shall be effective until approved by the Superintendent.

(5) The Superintendent may require as a condition of approval pursuant to subsection (4) that a part or all of the indebtedness or other liability of the credit union to the dissenting member be paid or satisfied on such terms as the Superintendent may stipulate. 1994, c. 4, s. 138.

Reorganization of credit union

139 (1) In this Section, “reorganization” means the reorganization of a credit union pursuant to a court order made under

(a) Section 218; or

(b) the *Bankruptcy and Insolvency Act* (Canada) approving a proposal; or

(c) any other Act of the Legislature that affects the rights of the credit union, its members or creditors.

(2) Where a credit union is subject to a reorganization, its articles may be amended by the order to effect any change that might lawfully have been made by an amendment pursuant to Section 125.

(3) Where a reorganization is made, the court may also

(a) authorize the issue of debt obligations of the credit union and fix the terms of the issue; and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After a reorganization has been made, articles of reorganization in prescribed form shall be sent to the Superintendent.

(5) Upon the receipt of articles of reorganization, the Superintendent shall file the articles and issue a certificate of amendment in accordance with Section 258.

(6) A reorganization becomes effective on the date shown in the certificate of amendment, and the articles of incorporation are amended accordingly.

(7) A member is not entitled to dissent pursuant to this Section.
1994, c. 4, s. 139.

Extra-provincial credit unions

140 A credit union incorporated under the laws of a jurisdiction other than Nova Scotia may, if so authorized by the laws of that jurisdiction and upon filing with the Superintendent such documents and other materials as the Superintendent may require, become registered in the Province for certain limited purposes approved by the Superintendent, but in no case shall the credit union be permitted to carry on in the Province the ordinary business of deposits and loans. 1994, c. 4, s. 140.

Extra-provincial registration

141 With the approval of the Superintendent, a credit union may register to carry on business under the laws of a jurisdiction other than Nova Scotia. 1994, c. 4, s. 141.

PART X

DISSOLUTION, LIQUIDATION
AND REVIVAL**Dissolution of credit unions**

142 (1) A credit union that has not issued any shares may be dissolved at any time by resolution of all the directors.

(2) A credit union that has no property and no liabilities may be dissolved by special resolution of the members and, where it has issued more than one class of shares, other than surplus shares, by special resolutions of the holders of each class of shares, whether or not they are otherwise entitled to vote.

(3) A credit union that has property or liabilities, or both, may be dissolved by special resolution of the members and, where it has issued more than one class of shares, other than surplus shares, by special resolutions of the holders of each class of shares if

(a) by the special resolution or resolutions the members and shareholders authorize the directors to cause the credit union to distribute any property and discharge any liabilities; and

(b) the credit union has, pursuant to Section 136, sold its property and distributed any residual property and discharged all of its liabilities.

(4) Notwithstanding subsections (2) and (3), the holders of any class of shares shall not be entitled to vote if, as a result of the dissolution, they would receive all moneys owing to them by the credit union.

(5) A credit union which is being dissolved pursuant to this Section shall prepare articles of dissolution in accordance with Section 144. 1994, c. 4, s. 142.

Proposing liquidation and dissolution

143 (1) The directors, or a member pursuant to Section 69, may make a proposal for the voluntary liquidation and dissolution of a credit union.

(2) Notice of any meeting of members at which voluntary liquidation and dissolution is to be proposed shall set out the terms thereof.

(3) A credit union may liquidate and dissolve by special resolution of the members and, where the credit union has issued more than one class of shares, other than surplus shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote.

(4) Notwithstanding subsection (3), the holders of any class of shares shall not be entitled to vote if, as a result of the dissolution, they would receive all moneys owing to them by the credit union.

(5) A statement of intent to dissolve in prescribed form shall be sent to the Superintendent.

(6) Upon receipt of a statement of intent to dissolve, the Superintendent, if satisfied that prior to dissolution the credit union will be able to discharge all of its obligations and liabilities, shall issue a certificate of intent to dissolve in accordance with Section 258.

(7) Upon issue of a certificate of intent to dissolve, the credit union shall cease to carry on business except to the extent necessary for the liquidation, but its legal existence continues until the Superintendent issues a certificate of dissolution.

(8) After issue of a certificate of intent to dissolve, the credit union shall

(a) immediately cause notice thereof to be sent to each known creditor of the credit union;

(b) forthwith publish notice in the Royal Gazette and once in a newspaper published or distributed in the place where the credit union has its registered office and take reasonable steps to give notice thereof in every jurisdiction where the credit union carries on business;

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its members and shareholders, to discharge all its obligations and to do all other acts required to liquidate its business; and

(d) after giving the notice required pursuant to clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, in accordance with the provisions of the special resolution authorizing the dissolution.

(9) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Superintendent a statement of revocation of intent to dissolve in prescribed form, if the revocation is approved in the same manner as the resolution pursuant to subsection (3).

(10) Upon receipt of a statement of revocation of intent to dissolve, the Superintendent shall issue a certificate of revocation of intent to dissolve in accordance with Section 258.

(11) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the credit union may continue to carry on its business.

(12) Where a certificate of intent to dissolve has not been revoked and the credit union has complied with subsection (8), the credit union shall send articles of dissolution in accordance with Section 144. 1994, c. 4, s. 143.

Articles of dissolution and certificate

144 (1) Articles of dissolution in prescribed form shall be sent to the Superintendent.

(2) Upon receipt of articles of dissolution, the Superintendent shall issue a certificate of dissolution in prescribed form and in accordance with Section 258.

(3) The credit union ceases to exist on the date shown in the certificate of dissolution. 1994, c. 4, s. 144.

Dissolution by Superintendent

145 (1) Subject to subsections (2) and (3), where

(a) a credit union is in default for a period of two consecutive years in sending to the Superintendent any notice or document required by this Act;

(b) the Superintendent has reasonable cause to believe that a credit union is not carrying on business or is not in operation; or

(c) a credit union is in default in sending to the Superintendent any fee required by this Act,

the Superintendent may dissolve the credit union by issuing a certificate of dissolution pursuant to this Section.

(2) The Superintendent shall not dissolve a credit union pursuant to this Section until

(a) the credit union has been given ninety days notice of the Superintendent's decision to dissolve the credit union; and

(b) a notice has been published in the Royal Gazette of the decision to dissolve the credit union not less than thirty days prior to the date the Superintendent may dissolve the credit union.

(3) Where a credit union, in writing, notifies the Superintendent that it is not carrying on business or is not in operation, clause (2)(a) does not apply and the Superintendent may publish a notice in compliance with clause (2)(b).

(4) Unless the credit union remedies the default or cause to the contrary is shown or an order is made by a court pursuant to Section 224, the credit union is deemed to be dissolved on the date specified in the notice pursuant to clause (2)(b) and the Superintendent shall issue a certificate of dissolution pursuant to Section 144. 1994, c. 4, s. 145.

Application to court to liquidate

146 (1) A member or the Superintendent may apply to the court for an order to liquidate and dissolve a credit union and, where

- (a) the court is satisfied that
 - (i) any act or omission of the credit union effects a result,
 - (ii) the business or affairs of the credit union are or have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the credit union have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or unfairly disregards the interests of any depositor, security holder, creditor, director or officer; or

- (b) the court is satisfied that the credit union is
 - (i) not fulfilling the purpose of a credit union generally pursuant to Section 3,
 - (ii) not carrying on business in accordance with the restrictions contained in its articles, or
 - (iii) not organized or operated in accordance with this Act and the regulations; or

(c) it is just and equitable that the credit union should be liquidated and dissolved,

the court may order that the credit union be placed under the supervision of a supervisor for the purpose of liquidation and dissolution.

(2) Upon an application pursuant to this Section, the court may make such order, in addition to the order pursuant to subsection (1), as it thinks fit.

(3) Upon receipt of an order pursuant to subsection (1), the Superintendent shall

- (a) publish notice of the order in the Royal Gazette; and
- (b) issue a certificate of dissolution pursuant to Section 258 after
 - (i) all obligations of the credit union are discharged and all its property distributed or disposed of, and
 - (ii) the supervisor has rendered a final report to the court. 1994, c. 4, s. 146.

Custody of records

147 The Corporation shall retain custody of the documents and records of any dissolved credit union for a period of six years following the effective date of the credit union's dissolution. 1994, c. 4, s. 147.

Continuation of actions after dissolution

148 (1) In this Section, "member" includes the heirs and legal representatives of a member.

(2) Notwithstanding the dissolution of a credit union pursuant to this Act,

- (a) a civil, criminal or administrative action or proceeding commenced by or against the credit union before its dissolution may be continued as if the credit union had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the credit union within two years after its dissolution as if the credit union had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment or order if the credit union had not been dissolved remains available for that purpose.

(3) Service of a document upon a credit union after its dissolution may be effected by serving the document upon a person named in the most recent notice on the records of the Superintendent.

(4) Notwithstanding the dissolution of a credit union, a member or shareholder to whom any of its property has been distributed is liable to any person claiming pursuant to subsection (2) to the extent of the amount received by that member or shareholder upon the distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the credit union.

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were members or shareholders as a class, subject to

such conditions as the court thinks fit and, if the plaintiff's claim is established, the court may refer the proceedings to a referee or other officer of the court who may

- (a) add as a party to the proceedings each person who was a member or shareholder found by the plaintiff;
- (b) determine, subject to subsection (4), the amount that each person who was a member or shareholder shall contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined. 1994, c. 4, s. 148.

Unknown claimants

149 (1) Upon the dissolution of a credit union, the portion of the property distributable to a creditor, shareholder or member who cannot be found shall be converted into money and paid to the Corporation.

(2) A payment pursuant to subsection (1) is deemed to be in satisfaction of the debt to or claim of the creditor, shareholder or member.

(3) Where at any time it is established that a person is entitled to any moneys paid to the Corporation pursuant to this Act, the Corporation shall pay such an amount to that person, without interest.

(4) Where at any time after the dissolution of a credit union it is established that a person is entitled to receive a document for registration in a land registration office or the registry of deeds duly executed by that credit union, the Corporation shall execute the document on behalf of the dissolved credit union.

(5) Any document executed by the Corporation pursuant to subsection (4) shall be accepted for registration in any land registration office or the registry of deeds, as the case may be, if the Corporation has placed an explanation for its actions upon the document and the Corporation has otherwise complied with the requirements of the land titles office or the registry of deeds.

(6) Subject to this Section and Section 148, property of a credit union that has not been disposed of at the date of its dissolution vests in the Corporation. 1994, c. 4, s. 149; 2003, c. 6, s. 102.

Revival by Superintendent or court

150 (1) Where a credit union is dissolved pursuant to Section 142, 143 or 145, an interested person may apply to the Superintendent to have the credit union revived by filing articles of revival in prescribed form.

(2) Where a credit union is dissolved on the order of the court, an interested person may apply to the court to have the credit union revived. 1994, c. 4, s. 150.

Certificate of revival and preservation of rights

151 (1) Upon the receipt of articles of revival in prescribed form, or an order of the court to revive the credit union, the Superintendent shall issue a certificate of revival in prescribed form and in accordance with Section 258.

(2) A credit union is revived as a credit union pursuant to this Act on the date shown on the certificate of revival, and thereafter the credit union, subject to such reasonable terms as may be imposed by the court or the Superintendent and to the rights acquired by any person after its dissolution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved. 1994, c. 4, s. 151.

Return of property on revival

152 Where a credit union is revived pursuant to Section 151, any property other than money that vested in the Corporation pursuant to Section 149 and that has not been disposed of shall be returned to the credit union and there shall be paid to the credit union by the Corporation

(a) an amount equal to any money received by the Corporation pursuant to Section 149; and

(b) where property other than money vested in the Corporation pursuant to Section 149 and that property has been disposed of, an amount equal to the lesser of

(i) the value of the property at the date it vested in the Corporation, and

(ii) the net amount realized by the Corporation from the disposition of the property. 1994, c. 4, s. 152.

Non-application of Part

153 (1) This Part does not apply to a credit union that is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

(2) Any proceedings taken pursuant to this Part to dissolve or to liquidate and dissolve a credit union shall be stayed if at any time a credit union becomes subject to or takes a proceeding under the *Bankruptcy and Insolvency Act* (Canada). 1994, c. 4, s. 153.

PART XI

NOVA SCOTIA CREDIT UNION
DEPOSIT INSURANCE CORPORATION**Application of Part**

154 This Part applies to the Nova Scotia Credit Union Deposit Insurance Corporation. 1994, c. 4, s. 154.

Stabilization Fund continued

155 (1) The Nova Scotia Credit Union Stabilization Fund is hereby continued as the Nova Scotia Credit Union Deposit Insurance Corporation, subject to the provisions of this Act, and the members of the board and the officers of the Nova Scotia Credit Union Stabilization Fund on the coming into force of this Act continue in office until their successors are appointed or elected.

- (2)** In addition to the provisions of Section 263,
- (a)** the Corporation continues to be
 - (i)** the owner of its property, and
 - (ii)** liable for its obligations;
 - (b)** an existing cause of action, claim or liability to prosecution involving the Nova Scotia Credit Union Stabilization Fund is unaffected;
 - (c)** a civil, criminal, or administrative action or proceeding pending by or against the Nova Scotia Credit Union Stabilization Fund may be continued to be prosecuted by or against the Corporation; and
 - (d)** a conviction against, or ruling, order or judgment in favour of or against the Nova Scotia Credit Union Stabilization Fund may be enforced by or against the Corporation. 1994, c. 4, s. 155.

Purposes of Corporation

156 The purposes of the Corporation are

- (a)** to provide, for the benefit of persons having deposits with credit unions in the Province, deposit insurance against loss of part or all of such deposits by making payment to the depositors to the extent and in the manner authorized by this Act and the regulations;
- (b)** in such circumstances as the Corporation considers appropriate, to assist credit unions by providing financial assistance to credit unions for the purpose of stabilization;
- (c)** to protect deposits in credit unions against impairment arising from financial losses or insolvency by
 - (i)** the development, promotion and implementation of sound business and financial policies and procedures by credit unions, and
 - (ii)** establishing and implementing loss prevention programs and other controls; and
- (d)** to do such other things as may be required or authorized by this Act or the regulations. 1994, c. 4, s. 156.

Powers

157 The Corporation may

- (a) determine the amounts of money to be levied and collected from credit unions for the purpose of Section 172;
- (b) borrow money on the credit of the Corporation or on bills of exchange or promissory notes drawn, made, accepted or endorsed by or on behalf of the Corporation and pledge as security any or all of the assets of the Corporation;
- (c) enter into any agreement or arrangement with any person relating to
 - (i) the prevention of insolvency of credit unions,
 - (ii) financial assistance that it considers necessary to meet the requirements of its operations,
 - (iii) other matters as it considers appropriate for the attainment of its purposes;
- (d) apply to the Minister for loans or guarantees of loans to assist it in carrying out its purpose;
- (e) make or cause to be made such examinations and inquiries in relation to credit unions and such actuarial or similar studies as the Corporation considers appropriate;
- (f) guarantee loans made by third parties to credit unions and take security for such guarantees;
- (g) make investments in relation to the deposit insurance fund or cause such investments to be made;
- (h) assume or purchase the liabilities or assets of credit unions on their liquidation or dissolution;
- (i) establish terms, conditions, restrictions and limitations in relation to the lending activities of credit unions and the loan policies to be established by credit unions;
- (j) in consultation with the Superintendent and the Central, issue directives in relation to sound business and financial policies and procedures to be followed by credit unions including, without limiting the generality of the foregoing, directives in relation to those matters referred to in clause (i);
- (k) make available to credit unions any form of financial assistance for the purpose of stabilization that it considers appropriate on such terms and conditions as it considers appropriate;
- (l) assume the costs of the supervision and winding up of credit unions in accordance with Part XIV;
- (m) enter into an agreement with the Central whereby the Central is authorized to carry out such duties and activities on behalf of the Corporation as may be specified in the agreement;

- (n) engage any employees, enter into any agreements or arrangements and incur any costs and expenses that are required to carry out the purposes of the Corporation;
- (o) arrange or determine compulsory insurance programs for credit unions or insurance coverage on behalf of those credit unions;
- (p) require credit unions to make reports and specify the contents, frequency and form of such reports;
- (pa) make arrangements with other jurisdictions to provide services or share and exchange resources as may be mutually agreed;
- (pb) establish and maintain an intervention system;
- (q) do such other things as may be necessary or incidental to the attainment of its purposes. 1994, c. 4, s. 157; 2004, c. 11, s. 20.

Board

158 (1) The affairs of the Corporation shall be administered by a board of seven members who shall be appointed by the Governor in Council.

(2) The Central may make recommendations respecting the appointment of board members pursuant to subsection (1).

(3) Where the Central makes recommendations pursuant to subsection (2), the Governor in Council shall appoint a minimum of three members of the board from those persons recommended by the Central. 1994, c. 4, s. 158.

Chair

159 The board shall elect a chair and such other officers as it deems appropriate. 1994, c. 4, s. 159.

Qualification of board members and resignation

160 (1) Any citizen or permanent resident of Canada and resident of the Province who is nineteen years of age except

- (a) an undischarged bankrupt;
- (b) an employee of a member of the Central or the Central;
- (ba) a director or officer of a member of the Central or the Central;
- (c) an employee of a deposit insurer;
- (d) an auditor of
 - (i) a deposit insurer,
 - (ia) a member of the Central, or
 - (ii) the Central; or

(e) a solicitor of a deposit insurer,
may be a board member of the Corporation.

(2) A non-individual shall not be a board member of the Corporation.

(3) If a person referred to in clause (1)(b), (ba), (c), (d) or (e) accepts an appointment to the board of the Corporation, that person shall resign from the office or position referred to in clause (b), (ba), (c), (d) or (e).

(4) Notwithstanding anything contained in this Section, a person referred to in clause (1)(b) or (c) may not be a board member of the Corporation unless at least two years has passed since the person ceased to be an employee of a member of the Central, the Central, the Corporation or a deposit insurer, as the case may be. 1994, c. 4, s. 160; 2004, c. 11, s. 21; 2007, c. 36, s. 1; 2010, c. 49, s. 3.

Term of office

161 Unless the Governor in Council otherwise orders, members of the board hold office for a term of three years commencing from and including the day on which they are appointed and thereafter until their successors are appointed and may be re-appointed for such maximum number of consecutive terms as is determined in the by-laws of the Corporation. 1994, c. 4, s. 161; 2004, c. 11, s. 22.

Vacancy

162 Where a vacancy occurs for any reason in the board of the Corporation, the Governor in Council shall fill the vacancy. 1994, c. 4, s. 162.

Ceasing to hold office

163 A member of the board of the Corporation ceases to hold office upon

- (a) death or resignation;
- (b) becoming disqualified from holding the office pursuant to Section 160; or
- (c) being removed from office by the Governor in Council. 1994, c. 4, s. 163.

Duties of board

164 The board shall

- (a) exercise the powers of the Corporation directly, or indirectly through the employees and agents of the Corporation; and
- (b) direct the management of the business and affairs of the Corporation. 1994, c. 4, s. 164.

Quorum

165 (1) A majority of the appointed members of the board constitutes a quorum.

(2) The Central may designate an individual to attend the meetings of the board but that individual is not to be counted when determining whether a quorum exists and that individual does not have a vote. 1994, c. 4, s. 165; 2004, c. 11, s. 23.

By-laws

166 (1) The board, in order to regulate the business and affairs of the Corporation, may enact by-laws not contrary to law and amend or repeal any of them, but no by-law and no amendment or repeal thereof is in force, or may be acted upon, unless the approval of the Superintendent is obtained and a certified copy is filed with the Superintendent.

- (2) The Corporation may make by-laws
- (a) respecting the administration, management and control of the property and affairs of the Corporation;
 - (b) respecting the functions, duties and remuneration of the officers, agents and employees of the Corporation, if any;
 - (c) respecting the appointment or disposition of any special committees from time to time created by the Corporation;
 - (d) respecting the appointment of an auditor;
 - (e) determining the seal of the Corporation;
 - (f) respecting the time and place for the holding of meetings of the directors and the procedure at such meetings;
 - (g) respecting the maximum number of consecutive terms that a member of the board may hold office;
 - (h) respecting the manner in which a credit union may represent that it is a contributor to the deposit insurance fund by authorizing and controlling the use by credit unions of marks, signs, advertisements or other devices indicating that deposits with credit unions are insured by the Corporation;
 - (i) defining the word “deposit” for the purpose of deposit insurance; and
 - (j) respecting the conduct in all other particulars of the affairs of the Corporation. 1994, c. 4, s. 166; 2004, c. 11, s. 24.

By-laws filed with Superintendent

167 Within six months after the board of directors is appointed or elected in accordance with this Act, the Corporation shall file by-laws in accordance with Section 166 with the Superintendent. 1994, c. 4, s. 167.

Insured deposits

168 (1) Subject to the by-laws of the Corporation, the Corporation shall insure deposits placed with a credit union to an amount determined in accordance with the regulations.

(2) Where the Corporation is obliged to make payment in accordance with clause 171(a) in relation to any deposit insured by it, the Corporation as soon as possible after the obligation arises shall, in relation to such deposit, make payment, or cause such payment to be made to such person as appears entitled to it by the records of the credit union with whom the deposit was made by paying, or causing to be paid, to such person an amount in money equal to so much of the person's outstanding claim against the credit union as is insured by the Corporation.

(3) Payment pursuant to this Section by or on behalf of the Corporation in relation to any deposit insured by deposit insurance discharges the Corporation from all liability in relation to that deposit.

(4) Where the Corporation makes a payment, or causes a payment to be made, pursuant to this Section in relation to any deposit with a credit union, the Corporation is subrogated to the extent of the payment made to all the rights and interests of the depositor as against that credit union. 1994, c. 4, s. 168.

Superintendent entitled to financial statements

169 The Superintendent is deemed to have an interest in the deposit insurance fund as representative of all persons who may be claimants against credit unions, and the directors of the Corporation shall furnish the Superintendent with such financial statements and other information in relation to the fund and the Corporation as the Superintendent may require. 1994, c. 4, s. 169.

Permitted advertising and offence

170 (1) A credit union shall not advertise or hold out by any written or oral representation that its deposits are insured by the Corporation otherwise than by such marks, signs, advertisements or other devices as are authorized by the by-laws of the Corporation and used in the manner and on the occasions specified by the by-laws.

(2) A credit union that violates subsection (1) is guilty of an offence. 1994, c. 4, s. 170.

Deposit insurance fund

171 The Corporation shall establish and maintain a deposit insurance fund which may be used for the following purposes:

(a) to pay out claims of depositors in accordance with Section 168 on the liquidation of a credit union;

(b) to provide financial assistance to credit unions for the purpose of stabilization; and

(c) to pay any costs or expenses incurred in doing such other things as may be necessary for or incidental to the attainment of the purposes of the Corporation. 1994, c. 4, s. 171.

Levy on credit unions

172 The Corporation shall determine the amount of money to be levied and collected from credit unions from time to time to enable the Corporation to provide its services and to carry out its purposes in accordance with this Act and the regulations. 1994, c. 4, s. 172.

Collection of levy by Corporation

173 (1) The Corporation shall levy and collect from credit unions such amounts as may be determined by the Corporation, in such manner and at such times as the Corporation may direct.

(2) A credit union shall pay to the Corporation such amounts as may be levied pursuant to subsection (1) at such times as may be required by the Corporation. 1994, c. 4, s. 173.

Loans or advances to Corporation

174 (1) On the application of the Corporation, the Minister may, with the approval of the Governor in Council and subject to such terms and conditions as the Minister considers appropriate,

- (a) make loans or advances to the Corporation; and
- (b) guarantee any loans or advances made to the Corporation by others.

(2) The amount of any loan or advance made to the Corporation pursuant to clause (1)(a) shall be paid out of the Consolidated Fund of the Province. 1994, c. 4, s. 174.

Records

175 The board shall keep proper records of the affairs of the Corporation and shall keep such accounts of its finances as the Superintendent may require. 1994, c. 4, s. 175.

Fiscal year

176 The fiscal year of the Corporation ends on December 31st in each year. 1994, c. 4, s. 176.

Audit

177 The Corporation shall be audited at least annually by an auditor approved by the Superintendent. 1994, c. 4, s. 177.

Procedure

178 Sections 92, 93, 95 to 102, 105, 107, 109, 110, 112, 113 and 118 to 123 apply, with the necessary changes, to the Corporation. 2004, c. 11, s. 25.

Levies

179 Each credit union shall pay to the Corporation the amounts levied by the Corporation. 1994, c. 4, s. 179.

Annual report

180 (1) At the end of each fiscal year the board of the Corporation shall report on the administration of the Corporation to the Superintendent and to the credit unions.

(2) The board of the Corporation shall report to the Superintendent on the administration of the Corporation at such other times as the Superintendent may require. 1994, c. 4, s. 180.

PART XII

THE CREDIT UNION CENTRAL OF NOVA SCOTIA

Interpretation of Part

180A In this Part, “special resolution” means a resolution

(a) passed by a majority of the votes cast and by not less than two thirds of the delegates who voted in respect of that resolution; or

(b) in writing signed by all of the members entitled to vote on that resolution. 2010, c. 49, s. 4.

Application of Part

181 This Part applies to the Central. 1994, c. 4, s. 181.

Credit Union Central continued

182 (1) The Credit Union Central of Nova Scotia established before the commencement of this subsection is hereby continued as a body corporate subject to the provisions of this Act.

(1A) Notwithstanding subsection (1), the Credit Union Central of Nova Scotia continued by subsection (1) is renamed as the “Atlantic Central”.

(2) For greater certainty, the directors and officers of the Central referred to in subsection (1) who held office immediately before the commencement of subsection (1A) continue in office until their successors are appointed or elected in accordance with this Act.

(3) On the commencement of subsection (1),

- (a) the Central referred to in subsection (1)
 - (i) becomes the Central to which this Act applies,
 - (ii) continues to be the owner of its property, and
 - (iii) continues to be liable for its obligations;
- (b) an existing cause of action, claim or liability to prosecution involving the Central is unaffected;
- (c) a civil, criminal or administrative action or proceeding pending by or against the Central may be continued by or against the Central; and
- (d) a conviction against, or ruling, order or judgment in favour of or against the Central may be enforced by or against the Central. 1994, c. 4, s. 182; 2010, c. 49, s. 5.

183 *repealed 2010, c. 49, s. 6.*

Amendment of articles

184 (1) Subject to the approval of the Superintendent pursuant to Section 184B, the articles of the Central may be amended by special resolution of the members.

(2) Notwithstanding subsection (1), the articles of the Central containing a clerical error may be amended by resolution of the directors of the Central or by ordinary resolution of the members of the Central to correct the error.

(3) Where the articles of the Central are amended pursuant to this Section, articles of amendment must be sent, within six months of the date of the resolution of the members of the Central authorizing the amendment, to the Superintendent for filing and the Superintendent shall refuse to file the articles if not so sent.

(4) Where authorized by the members of the Central in a resolution effecting an amendment pursuant to this Section, the directors of the Central may revoke the resolution before it is acted upon without further approval of the members the Central. 2010, c. 49, s. 7.

Articles sent to Superintendent

184A Subject to a revocation pursuant to subsection 184(4), after an amendment is adopted pursuant to subsection 184(1), articles of amendment in prescribed form must be sent to the Superintendent. 2010, c. 49, s. 7.

Certificate of amendment

184B Upon receiving articles of amendment, the Superintendent may file the articles and issue a certificate of amendment in accordance with Section 258. 2010, c. 49, s. 7.

Effect of certificate and existing rights

184C (1) An amendment becomes effective on the date shown on the certificate of amendment, and the articles are amended accordingly.

(2) No amendment to the articles of the Central affects an existing cause of action, claim or liability to prosecution in favour of or against the Central or any of its directors, committee members or officers or any civil, criminal or administrative action or proceeding to which the Central or any of its directors, committee members or officers is a party. 2010, c. 49, s. 7.

Restated articles and certificate

184D (1) The directors of the Central may, at any time, and shall when so directed by the Superintendent, restate the articles of incorporation as amended.

(2) Restated articles of incorporation, in prescribed form, must be sent to the Superintendent.

(3) Upon receipt of restated articles of incorporation, the Superintendent shall issue a restated certificate of incorporation in accordance with Section 258.

(4) Restated articles of incorporation are effective on, from and after the date shown in the restated certificate of incorporation and supersede the original articles of incorporation and all amendments thereto. 2010, c. 49, s. 7.

Section 139 applies

184E Section 139 applies *mutatis mutandis* in relation to the articles of the Central. 2010, c. 49, s. 7.

Purposes of Central

185 The purposes of the Central are to

(a) receive and manage deposits made by its members for the purpose of meeting the liquidity requirements of its members;

(b) receive and manage deposits made by its members in addition to those deposits referred to in clause (a);

(c) develop and provide to its members, financial services and any other services which, by their nature, can be most effectively provided by the Central, including advisory, educational and research services;

(d) develop and promote sound business and financial policies and procedures, including those relating to lending activities, for the benefit of its members and to assist those members in the implementation of such policies and procedures;

(e) promote the organization, development and welfare of its members;

- (f) encourage co-operation among co-operatives and its members; and
- (g) do such other things as may be required or authorized by this Act or the regulations. 1994, c. 4, s. 185; 2010, c. 49, s. 8.

Capacity of Central

186 (1) The Central has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

(2) The Central has the capacity to carry on its business, conduct its affairs and exercise its powers

- (a) in the Province;
- (b) in the provinces of New Brunswick, Prince Edward Island and Newfoundland and Labrador to the extent that the laws of those provinces permit; and
- (c) subject to the approval of the Superintendent, in any other jurisdiction to the extent that the laws of that jurisdiction permits. 1994, c. 4, s. 186; 2010, c. 49, s. 9.

Powers of Central

187 (1) Subject to this Act, it is not necessary for a charter by-law to be passed in order to confer any particular power on the Central or its directors.

(2) The Central shall not carry on any business or exercise any power which it is restricted by its charter by-laws from carrying on or exercising, nor shall the Central exercise any powers in a manner contrary to its charter by-laws.

(3) No act of the Central is invalid by reason only that the act is contrary to its charter by-laws or this Act. 1994, c. 4, s. 187.

Powers

188 The Central may do all things necessary or incidental to the attainment of its purposes, and may, in addition,

- (a) carry out such other duties and activities in relation to its members as the Central and its members agree or as may be set out in the by-laws of the Central;
- (b) carry out such duties and activities on behalf of a deposit insurer as such deposit insurer and the Central may agree;
- (c) assist its members in carrying out any recommendations or orders made by a deposit insurer or credit union regulator in relation to its members;

(d) subject to subsection 186(2), accept and exercise all rights, powers, privileges and immunities conferred on it by the *Cooperative Credit Associations Act* (Canada) or successor legislation. 1994, c. 4, s. 188; 2010, c. 49, s. 10.

Duties

189 The Central

(a) shall invest, in accordance with the regulations, those amounts provided to the Central by its members for the purpose of meeting the liquidity requirements of its members; and

(b) may make any other investments only in accordance with the regulations. 1994, c. 4, s. 189; 2010, c. 49, s. 11.

Information to be provided

190 The Central shall provide to any deposit insurer such information concerning the Central and its members as the deposit insurer may reasonably require to enable the deposit insurer to carry out its legislated purposes. 2010, c. 49, s. 12.

Levy for dues

191 Subject to such terms and conditions as may be specified in the by-laws, the Central may levy and collect from its members such amount of money in the form of dues as may be required by the Central to enable it to carry out its purposes pursuant to this Act and the regulations. 1994, c. 4, s. 191; 2010, c. 49, s. 13.

Registered office and records

192 Part IV, except subsection 22(5), applies, with the necessary changes, to the Central. 1994, c. 4, s. 192.

Common shares

193 (1) The Central is authorized to issue to its members an unlimited number of common shares and such other numbers and classes of shares that have the terms and conditions set out in the charter by-laws.

(2) Members and associate members of the Central shall purchase and hold such number of shares in the Central as may be required by charter by-law. 1994, c. 4, s. 193; 2010, c. 49, s. 14.

Shares other than common shares

194 In addition to common shares, the articles of the Central may provide for the issuance to its members and associate members of more than one class of shares, and if the articles so provide, there shall be set out therein the maximum number of shares in each class, other than common shares, that the Central is entitled to issue, the total consideration to be paid for each such class of shares, and the

rights, privileges, restrictions, conditions, including dividends, attached to the shares of each such class. 1994, c. 4, s. 194.

Patronage refunds

195 Section 32 applies, with the necessary changes, to the payment of patronage refunds by the Central. 1994, c. 4, s. 195.

Use of patronage refund

196 The Central may, in its charter by-laws, provide that in each fiscal year of the Central the whole of any patronage refund credited to a member or associate member or such part thereof as may be prescribed in the charter by-laws shall be applied to purchase on behalf of the member or associate member additional shares of the Central, up to such number, if any, as may be specified in the charter by-laws. 1994, c. 4, s. 196.

Dividends and redemption of shares

197 The Central shall not pay a dividend on, or redeem, shares if there are reasonable grounds for believing that

- (a) the Central is, or would thereby be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the Central's assets is, or would thereby be, less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amount that would, at that time, be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed. 1994, c. 4, s. 197.

Securities

198 Section 38 applies, with the necessary changes, to the issuance of securities by the Central. 1994, c. 4, s. 198.

Voting rights

199 Section 39 applies, with the necessary changes, to all shares issued by the Central. 1994, c. 4, s. 199.

Financial matters

200 Sections 41, 47 and 52, and subsection 49(2) and Section 50 apply, with the necessary changes, to the Central. 1994, c. 4, s. 200.

Membership in Central

201 (1) Every credit union is a member of the Central.

- (2) The Central may have as members
- (a) credit unions incorporated or otherwise existing in the provinces of New Brunswick, Prince Edward Island and Newfoundland and Labrador to the extent that the laws of those provinces permit; and
 - (b) subject to the approval of the Superintendent, credit unions operating in any other jurisdiction to the extent that the laws of that jurisdiction permits. 1994, c. 4, s. 201; 2010, c. 49, s. 15.

Associate members

202 (1) The Central may, in its charter by-laws, permit persons who are not credit unions to become associate members of the Central upon such terms and conditions as are set out in its charter by-laws.

(2) An associate member of the Central has only those rights and privileges which are specifically granted to associate members in the charter by-laws of the Central. 1994, c. 4, s. 202.

Establishment of delegate system

203 (1) The powers of the members of the Central are vested in delegates to be elected or appointed by the members of the Central in such a manner as shall be prescribed in the charter by-laws of the Central.

(2) Delegates elected or appointed pursuant to the charter by-laws of the Central shall exercise fully and completely the powers, or any of them, of the members of the Central and, as such, a meeting of the delegates of the Central has the same effect in every way as a meeting of the members of the Central.

(3) A delegate may only vote in the manner provided for in the charter by-laws of the Central on any question that may be voted on at a meeting of the Central.

(4) A delegate may vote by proxy at a meeting of the Central as provided for in the charter by-laws of the Central. 1994, c. 4, s. 203; 2004, c. 11, s. 26; 2010, c. 49, s. 16.

Limit of liability

204 Subject to this Act, a member or associate member is not responsible for any act, default or liability whatsoever of the Central or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever relating to or connected with the Central. 1994, c. 4, s. 204.

Amendment of charter by-laws

205 (1) Subject to this Act and the articles of the Central, the members of the Central may, at any annual meeting or general meeting called for the purpose,

enact, amend or repeal charter by-laws in respect of those matters authorized or required by this Act.

(2) A by-law may be enacted, amended or repealed by the members of the Central if

(a) approved by special resolution of the members of the Central; or

(b) written notice of the proposed enactment, amendment or repeal is forwarded to each member of the Central with the notice of the meeting at which the enactment, amendment or repeal is to be considered and the proposed enactment, amendment or repeal is approved by a majority of the votes cast at the meeting.

(3) A charter by-law, amendment or repeal is effective upon the approval of the Superintendent or, in the event that the charter by-laws have been approved pursuant to subsection (4), upon enactment of the charter by-law by the Central.

(4) At the option of the Central, a charter by-law and an amendment or repeal of a charter by-law may be submitted to the Superintendent for approval before its adoption by the members of the Central, in which case

(a) the charter by-law must be adopted by the members of the Central within thirty days of receipt of the approval of the Superintendent; and

(b) a certified copy of the adopted charter by-law must be filed with the Superintendent within thirty days of its adoption by the members of the Central.

(5) Where the Central fails to comply with the requirements of subsection (4), the charter by-law, amendment or repeal is void. 2010, c. 49, s. 17.

Superintendent's approval

206 The Superintendent shall approve any charter by-law enacted by the Central if the Superintendent is satisfied that the charter by-law conforms with this Act and is consistent with the purposes of the Central. 1994, c. 4, s. 206.

Charter by-laws

207 The charter by-laws of the Central shall provide for any matter required by this Act to be included and shall provide for such other matters which are applicable including, without limiting the generality of the foregoing,

(a) qualifications, conditions and method of applying for and terminating membership or associate membership;

(b) the location of meetings of delegates, the mode of holding meetings and the quorum at meetings;

- (c) the procedure by which members or delegates call a special meeting of delegates;
- (d) the enactment, amendment or repeal of charter by-laws at any annual meeting or general meeting called for that purpose;
- (e) the right of delegates to vote by ballot or mail, or both, and the manner, form and effect of votes at meetings;
- (ea) the right of delegates to vote by proxy;
- (eb) the establishment of a credit committee and an audit committee;
- (f) the election, term of office, removal of and filling of vacancies among directors, committee members and officers, their powers, duties and remunerations;
- (g) the procedure and quorum at meetings of board of directors;
- (h) the establishment, maintenance and relocation of a registered office and branch offices for the Central wherever so deemed necessary or appropriate;
- (i) the establishment of the fiscal year end of the Central;
- (j) the incorporation and ownership of subsidiary companies by the Central;
- (k) investment and use of the assets of the Central;
- (l) the loan of any moneys to its members or associate members;
- (m) the borrowing or raising or securing the payment of money;
- (n) the charging, hypothecation, mortgaging or pledging the real and personal property of the Central;
- (o) the issuing of debt obligations by the Central; and
- (p) all other matters which, by this Act, are required to be dealt with in the charter by-laws of the Central. 1994, c. 4, s. 207; 2004, c. 11, s. 27.

Members bound by charter by-laws

208 The charter by-laws of the Central bind the Central and its members. 1994, c. 4, s. 208.

Number of directors

209 (1) The Central shall, by charter by-law, establish a fixed number, or a minimum and maximum number, of directors for the Central.

(2) The directors of the Central shall

- (a) exercise the powers of the Central directly, or indirectly through the employees and the agents of the Central; and

(b) direct the management of the business and affairs of the Central. 1994, c. 4, s. 209.

Qualification of directors

210 (1) A citizen of Canada who is a member in good standing of a member of the Central and nineteen years of age except

- (a) an undischarged bankrupt;
- (b) an employee, auditor or solicitor of the Central or a deposit insurer;
- (c) a director of a deposit insurer;
- (d) a civil servant whose official duties are concerned with the affairs of the Central or its members; or
- (e) a delegate of a member which fails to comply with the requirements set out in the charter by-laws of the Central,

may be a director of the Central.

(2) A non-individual shall not be a director of the Central.

(3) Within a period specified by the Central,

(a) a person elected or appointed for the first time as a director of the Central; or

(b) where required by the Central, every director of the Central who has not completed a director training program,

shall complete a director training program as determined by the Central. 1994, c. 4, s. 210; 2004, c. 11, s. 28; 2010, c. 49, s. 18.

Application of other Parts of Act

211 With the exception of Sections 80, 82 and 91 and clause 96(3)(e), Part VII and, with the exception of subsection 109(1) and Section 120, Part VIII apply, with the necessary changes, to the Central. 2004, c. 11, s. 29.

Auditor

212 At each annual meeting of the Central the members of the Central shall appoint an auditor approved by the Superintendent. 1994, c. 4, s. 212.

213 *repealed 2010, c. 49, s. 19.*

Credit committee

214 The Central shall establish a credit committee as prescribed for the purpose of monitoring the credit granting procedures of credit unions in the Province and the credit committee shall perform those duties assigned to it pursuant to this Act and the regulations. 1994, c. 4, s. 214.

PART XIII

REMEDIES, OFFENCES
AND PENALTIES**Interpretation**

215 In this Part,

- (a) “action” means an action pursuant to this Act;
- (b) “complainant” means
 - (i) a member,
 - (ii) a registered owner or beneficial owner, or former registered owner or beneficial owner, of a security of a credit union, or the Central,
 - (iii) a director or an officer, or a former director or officer, of a credit union, the Central or the Corporation or any of their subsidiaries,
 - (iv) a creditor,
 - (v) the Superintendent,
 - (vi) a credit union,
 - (vii) the Central,
 - (viii) the Corporation, or
 - (ix) any other person who, in the discretion of the court, is a proper person to make an application pursuant to this Part. 1994, c. 4, s. 215.

Commencing derivative action

216 (1) Subject to subsection (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of a credit union, or intervene in an action to which the credit union is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the credit union.

(2) A complainant pursuant to this Section shall give the Superintendent notice of the application, and the Superintendent is entitled to appear and be heard in person or by counsel.

(3) No action may be brought and no intervention in an action may be made pursuant to subsection (1) unless the court is satisfied that

- (a) the complainant has given reasonable notice to the directors of the credit union of the complainant’s intention to apply to the court pursuant to subsection (1) if the directors of the credit union do not bring and diligently prosecute or defend, or discontinue the action;

- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interest of the credit union that the action be brought, prosecuted, defended or discontinued, as the case may be. 1994, c. 4, s. 216.

Powers of court

217 In an action brought or intervened in pursuant to Section 216, the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing, an order

- (a) authorizing the complainant or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by the defendant in the action shall be paid, in whole or in part, directly to former and present members or other security holders of the credit union;
- (d) requiring the credit union to pay reasonable legal fees incurred by the complainant in connection with the action;
- (e) requiring the credit union to furnish to the complainant or to any other person all material or information relevant to the action including, without limitation,
 - (i) the financial statements of the credit union,
 - (ii) the name and address of each member of the credit union, and
 - (iii) the name and address of each creditor of the credit union, including any creditor with unliquidated, future or contingent claims and any person with whom the credit union has a contract. 1994, c. 4, s. 217.

Application to court by complainant

218 (1) A complainant may apply to the court for an order pursuant to this Section.

(2) Where, upon an application pursuant to subsection (1) with respect to any credit union, the Central or the Corporation, the court is satisfied that

- (a) an act or omission of the credit union, the Central or the Corporation effects a result;
- (b) the business or affairs of a credit union, the Central or the Corporation are or have been carried on or conducted in a manner; or
- (c) the powers of the directors of a credit union, the Central or the Corporation are or have been exercised in a manner,

that is unlawful, unfairly prejudicial or that unreasonably disregards the interests of a complainant, the court may make an order to rectify the matters complained of.

(3) In an application pursuant to this Section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order restraining the conduct complained of;
- (b) an order placing a credit union or the Central under supervision pursuant to Sections 238 and 239;
- (c) an order placing a credit union under supervision pursuant to Section 238 for the purpose of liquidation and dissolution;
- (d) an order to regulate the affairs of a credit union, the Central or the Corporation by amending its articles or by-laws, as the case may be;
- (e) an order directing an issue or exchange of securities;
- (f) in the case of a credit union or the Central, an order appointing directors in place of or in addition to all or any of the directors then in office;
- (g) an order varying or setting aside a transaction or contract to which a credit union, the Central or the Corporation is a party, and compensating the credit union, the Central or the Corporation or any other party to the transaction or contract;
- (h) an order directing rectification of the registers or other records of the credit union, the Central or the Corporation pursuant to Section 220;
- (i) an order requiring the trial of any issue;
- (j) an order compensating a complainant or any other person.

(4) Where an order made pursuant to this Section directs an amendment of the articles or by-laws of a credit union or the Central, in the case of

- (a) an amendment to the articles, the directors shall forthwith comply with subsection 139(4); and
- (b) an amendment to the by-laws, the directors shall forthwith send to the Superintendent the amended by-laws together with a certified copy of the court order,

and no other amendment to the articles or by-laws shall be made without consent of the court, until the court otherwise orders.

(5) A member of a credit union is not entitled to dissent pursuant to Section 138 if an amendment to the articles is effected pursuant to this Section. 1994, c. 4, s. 218.

Evidence of member approval not decisive

219 (1) An application made or an action brought or intervened in pursuant to this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to a credit union or the Central has been or may be approved by the members thereof, but evidence of approval by the members may be taken into account by the court in making an order pursuant to this Part.

(2) An application made or an action brought or intervened in pursuant to this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interest of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice thereof to that complainant.

(3) A complainant is not required to give security for costs in an application made or action brought or intervened in pursuant to this Part.

(4) In an application made or an action brought or intervened in pursuant to this Part, the court may at any time order the credit union, the Central or the Corporation to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for any interim costs so paid upon final disposition of the application or action. 1994, c. 4, s. 219.

Application to court to rectify records

220 (1) Where the name of a person is alleged to be or to have been wrongly registered or retained in, or wrongly deleted or omitted from, the registers or other records of a credit union, the Central or the Corporation, the credit union, the Central or the Corporation or a member or other security holder thereof or any complainant may apply to the court for an order that the registers or records be rectified.

(2) Upon an application pursuant to subsection (1), the court may make any order it thinks fit including, without limiting the generality of the foregoing, an order

(a) requiring the registers and records of the credit union or the Central to be rectified;

(b) restraining the credit union or the Central from calling or holding a meeting of members or allocating or paying interest before rectification of the registers or records;

(c) determining the right of a party to the proceedings to have that party's name entered or retained in, or deleted or omitted from the registers or records of the credit union or the Central whether the issue arises between two or more members or security holders, or between the credit union or the Central and any member or security holder or alleged member or security holder;

(d) compensating a party who has incurred a loss by reason of the wrongful entry, retention, deletion or omission. 1994, c. 4, s. 220.

Compliance or restraining order

221 Where a credit union, the Central or the Corporation, or any director, officer, member, employee, agent, auditor, trustee or supervisor thereof does not comply with or is acting in breach of

- (a) a provision of this Act;
- (b) the regulations;
- (c) the articles or by-laws of the credit union or the Central; or
- (d) an order of the Superintendent made pursuant to this Act,

a complainant may, in addition to any other remedy the complainant has, apply to the court for an order directing compliance with or restraining the action in breach of the provision, articles, by-laws or order and the court may make the order and any further order it thinks fit. 1994, c. 4, s. 221.

Application for directions

222 The Superintendent may apply to the court for directions in respect of any matter concerning the Superintendent's duties pursuant to this Act and, upon the application, the court may give such directions and makes such order as it thinks fit. 1994, c. 4, s. 222.

Appeal of Superintendent's decision

223 A person may appeal any decision of the Superintendent to the court within thirty days from the making of the decision. 1994, c. 4, s. 223.

Questions of fact or law

224 An appeal pursuant to Section 223 may be made in a question of law or fact, or both, and the court, after hearing the appeal, may

- (a) affirm or reverse the decision;
- (b) direct the Superintendent to make any other decision or order that the Superintendent is authorized to make pursuant to this Act;
- (c) substitute its decision for that of the Superintendent. 1994, c. 4, s. 224.

Review by Superintendent

225 The Superintendent

- (a) shall review or cause to be reviewed information and returns received from credit unions, the Central or the Corporation and their directors, officers, committee members or employees;

- (b) may examine or cause to be examined the business and affairs of any credit union, the Central or the Corporation;
- (c) shall be given access to all records, books, accounts, vouchers and other documents; and
- (d) may make such inquiries as are necessary to ascertain whether a credit union, the Central or the Corporation has complied with this Act, the regulations or any order or direction. 1994, c. 4, s. 225.

Submission to Superintendent

226 (1) For the purpose of the examination referred to in Section 225, a credit union and the Central shall prepare and submit to the Superintendent such information with respect to its business and affairs, in addition to the returns required pursuant to Part VIII, as the Superintendent may require.

(2) Upon an examination, the Superintendent or any person authorized by the Superintendent has the powers of a commissioner appointed pursuant to the *Public Inquiries Act*. 1994, c. 4, s. 226.

Program of voluntary compliance

227 (1) Where, in the opinion of the Superintendent, a credit union or the Central is committing an act or pursuing a course of conduct that

- (a) does not comply with this Act or the regulations;
- (b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;
- (c) does not comply with an undertaking given or an agreement made with the Minister or Superintendent pursuant to this Act; or
- (d) constitutes a practice that might prejudice or adversely affect the interests of depositors,

the credit union or the Central may enter into a program of voluntary compliance related to any act or course of conduct described in clause (a), (b), (c) or (d).

(2) A voluntary compliance program pursuant to this Section shall be in writing and binds the credit union or the Central from the time it is approved by the Minister.

(3) Where a voluntary compliance program has been entered into, the Superintendent shall not be prevented from making orders against the credit union or the Central

- (a) on matters not covered by the program;
- (b) where the program is not complied with, on matters covered in the voluntary compliance program;

(c) if there has been a deterioration in the condition of the credit union or the Central; or

(d) on matters covered in the program where all the facts related to the matter covered by the program were not known by the Minister at the time the program was entered into.

(4) The Minister may, on the request of a credit union or the Central, approve the alteration of a voluntary compliance program entered into pursuant to this Section. 1994, c. 4, s. 227.

Notice of order and hearings

228 (1) Where, in the opinion of the Superintendent, a credit union or the Central is committing an act or pursuing a course of conduct that

(a) does not comply with this Act or the regulations;

(b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with a voluntary compliance program pursuant to Section 227; or

(d) does not comply with an undertaking given or agreement made with the Minister or the Superintendent pursuant to this Act,

the Superintendent may give notice to the credit union or the Central of an intention to order the credit union or the Central to

(e) cease doing any act or to cease pursuing any course of conduct identified by the Superintendent; or

(f) perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) The credit union or the Central may, by written notice served on the Superintendent within fifteen days after the service of the notice on the credit union or the Central pursuant to subsection (1), request a hearing before the Superintendent.

(3) Where no hearing is requested within the time set out in subsection (2) or (4), or where a hearing is held and the Superintendent is of the opinion that an order described in clause (1)(e) or (f) should be made, the Superintendent may make an order under either or both of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

(4) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the depositors or the public may be prejudiced or adversely affected by any delay in the issuance of an order, the Superintendent may make an interim order as described in clause (1)(e) or (f) which shall become final

on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

(5) A request for a hearing pursuant to subsection (4) shall be in writing and served on the Superintendent.

(6) Where a hearing is requested pursuant to subsection (4), the Superintendent may extend the interim order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

(7) Where an order is made with respect to a credit union or the Central pursuant to this Section, a copy of the order shall be sent to each director of the credit union or the Central.

(8) The Superintendent may, after giving the credit union or the Central named in the order an opportunity to be heard, modify or revoke an order made pursuant to this Section. 1994, c. 4, s. 228.

Appeal of decision to Minister

229 (1) A party to a hearing before the Superintendent may, within fifteen days after the receipt of the Superintendent's decision, appeal the decision to the Minister by serving a notice in writing of the appeal on the Superintendent who shall advise the Minister immediately of the appeal and the Minister may hear the appeal or appoint an appeal board to do so.

(2) An appeal shall be based on such evidence as may be presented to the Minister or the appeal board and the Minister or the appeal board upon hearing an appeal may confirm, vary or revoke the decision, order, approval or consent that is the subject of the appeal. 1994, c. 4, s. 229.

Minister may impose terms and conditions

230 (1) Where this Act provides for a decision, order, approval or consent of the Minister, the decision, order, approval or consent is subject to such terms and conditions as the Minister may impose.

(2) A decision, order, approval or consent of the Minister pursuant to this Act shall be in writing and is not subject to appeal.

(3) Before rendering a decision, making an order, refusing an approval or consent or granting an approval or consent subject to terms and conditions, the Minister shall give the credit union or the Central notice of the Minister's intention and the credit union or the Central may require a hearing before the Minister.

(4) The Minister may at any time, having given the credit union or the Central an opportunity to be heard confirm, revoke or vary any decision, order, approval, consent or refusal. 1994, c. 4, s. 230.

Superintendent entitled to appear

231 The Superintendent is entitled to appear and be heard in person or by counsel at a hearing before the Minister or an appeal board. 1994, c. 4, s. 231.

Hearing in private or in public

232 A hearing before the Superintendent or the Minister or an appeal board, at the discretion of the Superintendent or the Minister or the appeal board, as the case may be, may be heard in private or in public. 1994, c. 4, s. 232.

Offence respecting reports

233 (1) A person who makes or assists in making a report, return, notice or other document required by this Act to be sent to the Superintendent or to any other person that

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or both.

(2) Where the person guilty of an offence pursuant to subsection (1) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or both.

(3) No person is guilty of an offence pursuant to subsection (1) or (2) if the untrue statement or omission was unknown to that person and in the exercise of reasonable diligence could not have been known to that person. 1994, c. 4, s. 233.

Offence

234 Every person who, without reasonable cause, contravenes a provision of this Act and no other punishment therefore is provided herein, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars. 1994, c. 4, s. 234.

Order to comply

235 (1) Where a person is convicted of an offence pursuant to this Act, the convicting court may, in addition to any punishment imposed, order the person to comply with the provisions of the Act for the contravention of which that person has been convicted.

(2) A prosecution for an offence pursuant to this Act shall be instituted at any time within two years from the time when the subject-matter of the complaint arose.

(3) No civil remedy for an act or omission pursuant to this Act is suspended or affected by reason only that the act or omission is an offence pursuant to this Act. 1994, c. 4, s. 235.

Suit brought by Superintendent or Corporation

236 Notwithstanding anything contained in this Part, where an action could be brought against a person by a credit union or the Central for any loss or damage suffered by or any accounting due to the credit union or the Central by reason of the negligence of the person or the failure of the person to comply with this Act, or with the articles or by-laws of the credit union or the Central or any orders, directions or notices of the Superintendent or the Corporation, if

(a) the action has not been brought, the Superintendent or, in the case of a credit union, the Corporation may, without leave, bring and maintain the action; or

(b) the action has been brought, the Superintendent or, in the case of a credit union, the Corporation may apply to the court to be added as a plaintiff and to be given the conduct of the action,

and any money recovered by the Superintendent or the Corporation shall be held for the benefit of the credit union or the Central or, where a grant, loan or advance has been made by the Corporation, shall be held for the benefit of the Corporation. 1994, c. 4, s. 236.

No action for damages

237 No action for damages lies against the Minister, the Superintendent, the Corporation or any person directed by them, for any act or thing done or omitted pursuant to this Act or the regulations that was done or omitted in good faith. 1994, c. 4, s. 237.

PART XIV

SUPERVISION

Supervision of credit union

238 Where the Superintendent is satisfied that a credit union is carrying on its business in a manner that contravenes this Act or the regulations, or that is financially unsound, including those situations where

(a) a credit union is unable to pay its liabilities as they become due;

(b) the realizable value of a credit union's assets is less than the aggregate of its liabilities and the capital account of all classes of shares of the credit union, other than common shares;

(c) a credit union has requested and the Corporation has determined to give it financial assistance;

(d) a credit union fails to adhere to the operating standards established pursuant to Part V; or

(e) a credit union fails to file a report or document required to be filed by this Act within the time fixed for filing by this Act,

the Superintendent may give notice to the credit union that it is declared to be under the supervision of a supervisor appointed by the Superintendent. 1994, c. 4, s. 238.

Supervision of Central

239 Where the Superintendent is satisfied that the Central is carrying on its business in a manner that contravenes this Act or the regulations, or that is financially unsound, including those situations where

(a) the Central is unable to pay its liabilities as they become due;

(b) the realizable value of the Central's assets is less than the aggregate of its liabilities and the capital account of all classes of shares of the Central;

(c) the Central is unable to meet its obligations to manage liquidity requirements; or

(d) the Central fails to file a report or document required to be filed by this Act within the time fixed for filing by this Act,

the Superintendent may give notice to the Central that it is declared to be under the supervision of a supervisor appointed by the Superintendent. 1994, c. 4, s. 239.

Supervisor of credit union

240 The supervisor appointed by the Superintendent pursuant to Section 238 shall be the Corporation. 1994, c. 4, s. 240.

Supervisor of Central

241 The supervisor appointed by the Superintendent pursuant to Section 239 shall not be the Corporation. 1994, c. 4, s. 241.

Term of supervision

242 Where a credit union or the Central is declared to be under supervision, the credit union or the Central remains subject to the supervision until

(a) the supervisor applies to the Superintendent to have the credit union or the Central released from supervision;

(b) it applies in writing to the Superintendent, with notice to the supervisor, to be released from supervision, stating reasons in support of its application, and the Superintendent approves the application;

- (c) the Superintendent, by notice to the credit union or the Central and its supervisor, releases the credit union or the Central from supervision;
- (d) the credit union is liquidated, dissolved or amalgamated; or
- (e) in the case of a credit union or the Central which has been placed under supervision by the court, an order of the court has been made releasing the credit union or the Central from supervision. 1994, c. 4, s. 242.

Powers and duty of supervisor

243 (1) Subject to the approval of the Superintendent, or to any order of the court, where a credit union or the Central has been placed under the supervision of a supervisor, the supervisor may

- (a) exercise or cause to be exercised any or all of the powers of the credit union or the Central;
- (b) inspect the affairs of the credit union or the Central and make inquiries from its officers, directors, committee members, employees and members;
- (c) require the credit union or the Central to correct any practices that, in the opinion of the supervisor, are contributing to the financial difficulties suffered by the credit union or the Central or are likely to contribute to the unsound conduct of its affairs;
- (d) order the credit union or the Central and its directors, committee members, officers and employees to refrain from exercising in whole or in part, such of the powers of the credit union or the Central or of its directors, committee members, officers or employees or any of them as may be specified in the order unless approved by the supervisor or the supervisor's authorized agent or employee;
- (e) order the credit union or the Central not to declare or pay interest or dividends, or to restrict the amount of interest or dividends to be paid to a rate or an amount fixed by the supervisor;
- (f) carry on, manage and conduct the operations of the credit union or the Central and, in the name of the credit union or the Central, preserve, maintain, realize, dispose of and add to the property of the credit union or the Central, receive the incomes and revenues of the credit union or the Central and exercise all the powers of the credit union or the Central and of its directors, officers, committees and employees;
- (g) exclude the directors of the credit union or the Central and its officers, committee members, employees and agents from the property and business of the credit union;
- (h) in the case of a credit union, amalgamate, dissolve, wind-up, liquidate or otherwise dispose of the business of the credit union;

(i) exercise such other powers as may be granted to it by order of the court.

(2) A supervisor shall ensure that the interests of all creditors of a credit union or the Central are properly and lawfully provided for.

(3) A supervisor shall meet with the members of the credit union that has been placed under supervision to explain the supervision and the rationale for any action taken by the supervisor pursuant to subsection (1). 1994, c. 4, s. 243; 2004, c. 11, s. 30.

Court direction

244 A supervisor may apply to the court for direction in the exercise of any of its powers. 1994, c. 4, s. 244.

Accounting to Superintendent

245 A supervisor appointed by the Superintendent shall, upon request of the Superintendent and upon discharge, fully account to the Superintendent for the supervision of the credit union or the Central. 1994, c. 4, s. 245.

Discharge

246 Unless the Superintendent or the court otherwise orders, within thirty days after completion of the final accounting pursuant to Section 245, the supervisor is released from all claims by the credit union or the Central or any member or any creditor thereof other than claims arising out of fraud or dishonesty. 1994, c. 4, s. 246.

Temporary supervision

247 (1) Notwithstanding Section 238, the Corporation may, if the special circumstances of any case so require and upon the grounds of urgency or for other reasons appearing to it to be sufficient, give notice to a credit union that it is declared to be under the temporary supervision of the Corporation.

(2) Where the Corporation acts pursuant to subsection (1), it shall report in writing within forty-eight hours to the Superintendent, and the Superintendent shall conduct or cause to be conducted such investigation of the reasons for action by the Corporation pursuant to subsection (1) as the Superintendent considers necessary.

(3) The Superintendent shall, within fourteen days after the receipt of a report pursuant to subsection (2),

(a) release the credit union from the temporary supervision of the Corporation; or

(b) give notice to the credit union that it is declared to be under supervision pursuant to Section 238. 1994, c. 4, s. 247.

PART XV

GENERAL

Notice to directors and members

248 (1) A notice or document required by this Act, or by the charter by-laws of a credit union, or the Central, to be sent to a person entitled to receive notice from the credit union or the Central may be given in accordance with the charter by-laws or, in the absence of a provision in the charter by-laws, may be sent by prepaid mail addressed to, or may be delivered personally to,

(a) the person at the latest address of the person, as shown in the records of the credit union or the Central or its transfer agent; and

(b) in the case of a director, at the latest address of the director, as shown in the records of the credit union or the Central, or in the last notice filed pursuant to Section 88.

(2) A notice or document mailed in accordance with subsection (1) is deemed to have been received by the person entitled to receive notice at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the person did not receive the notice or document at that time or at all.

(3) Where a credit union or the Central mails a notice or document to a person in accordance with subsection (1) and the notice or document is returned on two consecutive occasions because the person cannot be found, the credit union or the Central is not required to send any further notices or documents to the person until the credit union or the Central is informed, in writing, of that person's new address.

(4) Where the charter by-laws of a credit union or the Central provide for the giving of a notice to members pursuant to subsection (1) by insertion of the notice in a newspaper or other publication, the notice is deemed to have been received by the members at the time the publication containing the notice is distributed in the ordinary course.

(5) Where the charter by-laws of a credit union or the Central provide for the giving of a notice to members pursuant to subsection (1) by posting the notice in a specified place or places, the notice is deemed to have been received by the members at the time the notice is posted. 1994, c. 4, s. 248.

Notice to and service upon a credit union

249 A notice or document required to be sent to or served upon a credit union or the Central may be sent by registered mail to the registered office of the credit union or the Central shown in the last prescribed notice filed with the Superintendent and, if so sent, is deemed to have been received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable

grounds for believing that the credit union or the Central did not receive the notice or document at that time or at all. 1994, c. 4, s. 249.

Waiver of notice

250 (1) Where a notice or document is required by this Act to be given or sent, the giving or sending thereof may be waived or the time for the giving or sending thereof may be waived or abridged at any time with the consent in writing of the person entitled thereto. 1994, c. 4, s. 250.

Certificate of Superintendent

251 (1) Where this Act requires or authorizes the Superintendent to issue a certificate or to certify any fact, the certificate shall be signed by the Superintendent or by a deputy superintendent appointed pursuant to Section 256.

(2) A certificate referred to in subsection (1) or a certified copy thereof, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate. 1994, c. 4, s. 251.

Certificate of credit union or Central

252 (1) A certificate issued on behalf of a credit union or the Central stating any fact that is set out in the articles or the charter by-laws of the credit union or the Central, or in the minutes of the meetings of the directors, a committee of directors or the members of the credit union or the Central, or in a trust indenture or other contract to which the credit union or the Central is a party may be signed by a director, officer or a transfer agent of the credit union or the Central.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a certificate of a kind referred to in subsection (1);
- (b) a certified extract from a members register or a securities register of a credit union or the Central; or
- (c) a certified copy of minutes or an extract from minutes of a meeting of members or directors or a committee of directors of a credit union or the Central,

is, in the absence of evidence to the contrary, proof of the facts thereby certified without proof of the signature or official character of the person appearing to have signed the certificate.

(3) An entry in a securities register of, or a security certificate issued by, a credit union or the Central is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is the owner of the securities described in the register or in the certificate. 1994, c. 4, s. 252.

Copies

253 Where a notice or document is required to be sent to the Superintendent pursuant to this Act, the Superintendent may accept a photostatic or photographic copy thereof. 1994, c. 4, s. 253.

Proof required by Superintendent

254 (1) The Superintendent may require that a document or a fact stated in a document required by this Act to be sent to the Superintendent shall be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Superintendent to be verified may be verified by affidavit.

(3) The Superintendent may require a credit union or the Central to authenticate a document, and the authentication may be signed by the secretary or any director or authorized person or by the solicitor for the credit union or the Central. 1994, c. 4, s. 254.

Minister has supervision of Act

255 The Minister has the general supervision and management of this Act and the regulations. 1994, c. 4, s. 255.

Appointment of Superintendent and Deputy

256 (1) The Governor in Council shall appoint a person in the public service to be the Superintendent of Credit Unions and may appoint one or more deputy superintendents to carry out the purpose of this Act.

(2) The Minister or the Superintendent may authorize a deputy superintendent to carry out or exercise any duties or powers that may be carried out or exercised by the Superintendent pursuant to this Act.

(3) Notice of the appointment of the Superintendent and deputy superintendents, if any, shall be published in the Royal Gazette. 1994, c. 4, s. 256.

Regulations, forms and statements

257 (1) The Governor in Council may make regulations

- (a) prescribing any matter required or authorized by this Act to be prescribed;
- (b) prescribing the form and content of the charter by-laws;
- (c) respecting the names of credit unions and the Central;
- (d) prescribing restrictions on the businesses which may be carried on by a credit union;

- (e) respecting the establishment of branch offices by a credit union;
- (f) respecting the form and content of annual returns, notices and other documents required to be sent to or issued by the Superintendent;
- (g) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes of shares;
- (h) respecting the designation of classes of shares;
- (i) prescribing an amount which may be paid upon the death of a member;
- (j) respecting conditions, restrictions or limitations on the making of loans or advances of any kind by a credit union;
- (k) respecting the establishment of policies for the granting and making of loans or advances of any kind by a credit union;
- (l) respecting reviews of outstanding loans of any kind;
- (m) prescribing an amount pursuant to Section 46;
- (n) prescribing the circumstances in which a member may be permitted to make overdrafts on deposit accounts of the member and requiring or respecting the establishment of policies of credit unions in respect of overdrafts;
- (o) respecting liquidity reserves to be established and maintained;
- (p) respecting conditions, restrictions or limitations on the making of investments;
- (q) respecting an allowance for doubtful accounts to be established and maintained;
- (r) prescribing the level of equity to be established and maintained;
- (s) respecting matching pursuant to Section 53;
- (t) respecting insurance to be taken out and maintained by a credit union;
- (u) prescribing the manner in which a person may appeal membership termination;
- (v) prescribing the fees to be paid for services, searches and other things pursuant to this Act and fixing the time and manner of payment thereof;
- (w) prescribing the form and content of financial statements;

- (x) respecting the establishment of an audit committee;
- (y) respecting the manner of selecting and the qualifications of nominees for the board of the Corporation;
- (z) respecting the establishment of a credit committee;
- (aa) prescribing rules for any exemptions permitted by this Act;
- (ab) prescribing the circumstances in which the Superintendent may waive the payment of fees;
- (ac) prescribing the manner in which this Act shall be reviewed periodically;
- (ad) respecting any matter required for the efficient administration of this Act.

(2) The Governor in Council may, in regulations pursuant to subsection (1), provide for the use of forms and statements.

(3) When no fee is fixed in the regulations for any services performed pursuant to this Act, the Minister may fix the fee therefor.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 1994, c. 4, s. 257.

Filings

258 (1) In this Section, “statement” means a statement of intent to dissolve or statement of revocation of intent to dissolve referred to in Section 143.

(2) Where this Act requires that articles or a statement relating to a credit union be sent to the Superintendent, unless otherwise specifically provided herein

(a) two duplicate originals of the articles or the statement shall be signed by a director or officer of the credit union or, in the case of articles of incorporation, by the incorporators; and

(b) if the articles or statement conform to law and are accompanied by all the required by-laws or other documents and the fees in respect thereof are paid, the Superintendent shall, subject, where required by this Act, to being satisfied that it is advisable,

(i) endorse on each of the two duplicate originals of the articles or statement the prescribed certificate indicating the date on which the articles or statement become effective,

(ii) file one duplicate original of the articles or statement endorsed in accordance with subclause (i),

(iii) send the other duplicate original of the articles or statement, endorsed in accordance with subclause (i), to the credit union or its representative, and

(iv) publish in the Royal Gazette a notice of the issue of the certificate and the date the articles or statement to which it relates become effective.

(3) The date indicated on a certificate issued pursuant to subsection (2) as the date the articles or statement becomes effective shall not be earlier than the date on which the Superintendent received the articles or statement or court order pursuant to which the certificate is issued.

(4) The Superintendent may furnish any person with

(a) a certificate that a credit union or other person has or has not filed with the Superintendent a document required to be filed pursuant to this Act or any other Act for which this Act was substituted; or

(b) a certified copy of any document in the custody and control of the Superintendent. 1994, c. 4, s. 258.

Alteration

259 The Superintendent may alter any notice or document, other than an affidavit or statutory declaration, if so authorized by or on behalf of the person who sent the notice or document to the Superintendent. 1994, c. 4, s. 259.

Corrections

260 (1) Where a certificate or order containing an error is issued by the Superintendent, the Superintendent shall issue a corrected certificate or order and may

(a) demand the surrender of the certificate or order containing the error; and

(b) request the directors or members of the credit union to

(i) pass resolutions, or

(ii) send to the Superintendent the documents required to comply with this Act,

and take such other steps as the Superintendent reasonably requires.

(2) A certificate or order corrected pursuant to subsection (1) has effect from the date of the certificate or order it replaces.

(3) Where a corrected certificate or order issued pursuant to subsection (1) materially amends the terms of the original certificate or order, the Superintendent shall forthwith give notice of the correction in the Royal Gazette. 1994, c. 4, s. 260.

Inspection

261 (1) A person who has paid the appropriate fee is entitled during usual business hours to examine the annual returns, notices, articles or charter by-laws of a credit union or the Central or any order or declaration of the Superintendent or court filed with the Superintendent.

(2) The Superintendent shall furnish, upon receipt of the appropriate fee, any person with a copy or a certified copy of any document to which reference is made in subsection (1). 1994, c. 4, s. 261.

Form of records of Superintendent

262 (1) Records required by this Act to be prepared and maintained by the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) Where records maintained by the Superintendent are prepared and maintained in other than written form

(a) the Superintendent shall furnish any copy required to be furnished pursuant to subsection 261(2) in intelligible written form; and

(b) a report reproduced from those records, if it is certified by the Superintendent, is admissible in evidence to the same extent as the original records would have been if they had been in written form.

(3) The Superintendent is not required to produce any document, other than a certificate and attached articles or statement filed pursuant to Section 258, after six years from the date the Superintendent receives it. 1994, c. 4, s. 262.

PART XVI

TRANSITIONAL, CONSEQUENTIAL AMENDMENTS
REPEAL AND COMMENCEMENT**Continuation of former incorporations**

263 (1) Notwithstanding the repeal of the *Credit Union Act*

(a) all articles;

(b) all cancellations, suspensions, proceedings, acts, registrations and things; and

(c) all affidavits, declarations, by-laws, resolutions, regulations and documents,

are continued pursuant to this Act as if they had in fact been granted, issued, imposed, made, taken, done, commenced, filed or passed pursuant to this Act.

(2) Subject to subsection (4), where any provision of the articles, by-laws or resolutions of a credit union, the Central or the Corporation that

(a) was in force immediately prior to the date this Act comes into force; and

(b) was not unlawful under the law as it was immediately prior to the date this Act comes into force,

is inconsistent with the provisions of this Act, that provision is not invalid solely for that reason.

(3) Where a provision of the articles, by-laws or resolutions of a credit union, the Central or the Corporation is inconsistent with the provisions of this Act, the credit union, the Central or the Corporation shall file with the Superintendent amending articles, by-laws or resolutions that comply with this Act within two years of the coming into force of this Act or such longer period as may be prescribed.

(4) An addition or amendment to or deletion from any provision in the letters patent, supplementary letters patent, articles, or by-laws of a credit union, the Central or the Corporation shall be made in accordance with this Act.

(5) Any reference in an Act, articles, by-laws or resolutions to the *Credit Union Act*, as it existed before the coming into force of this Act, or to any procedure pursuant to that Act, is deemed to be a reference to this Act and to the equivalent procedure pursuant to this Act. 1994, c. 4, s. 263.

Credit Union Act repealed

264 Chapter 111 of the Revised Statutes, 1989, the *Credit Union Act*, is repealed. 1994, c. 4, s. 264.

Proclamation

265 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1994, c. 4, s. 265.

Proclaimed - December 20, 1994
In force - January 1, 1995