

Insurance Act

CHAPTER 231 OF THE REVISED STATUTES, 1989

as amended by

1992, c. 20, s. 28; 1995-96, c. 20; 1998, c. 8, ss. 44-49;
2000, c. 29, ss. 22-24; 2002, c. 5, ss. 31, 32; 2003, c. 11;
2003 (2nd Sess.), c. 1, ss. 2-25; 2010, c. 18, ss. 1-3, 4(b), 5, 6;
2011, c. 35; 2015, c. 6, ss. 28, 29



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2011, c. 35; 2015, c. 6, ss. 28, 29

**An Act to Amend and Consolidate
the Acts Relating to Insurance**

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Short title

- 1 This Act may be cited as the *Insurance Act*. R.S., c. 231, s. 1.
- 2 *repealed 2003 (2nd Sess.), c. 1, s. 2.*

INTERPRETATION

Interpretation

- 3 In this Act,
 - (a) “accident insurance” means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;
 - (b) “accidental death insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;
 - (c) “adjuster” means a person who
 - (i) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety

or guarantee bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or

(ii) holds himself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include

(iii) a barrister or solicitor acting in the usual course of his profession,

(iv) a trustee or agent of the property insured,

(v) a licensed agent or a salaried employee of an insurer licensed pursuant to Section 6 to carry on the business of insurance in the Province while acting on behalf of such insurer in the adjustment of losses,

(vi) a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or

(vii) a person who acts as an adjuster of marine losses only;

(d) “agent” means a person who, on behalf of another person, effects, negotiates, solicits or places a contract or renewal thereof;

(da) “Board” means the Nova Scotia Insurance Review Board established by this Act;

(e) “business of insurance” means the business of insurance within the meaning of the *Insurance Companies Act* (Canada);

(f) “class of insurance” has the meaning ascribed to it by the *Insurance Companies Act* (Canada);

(fa) “common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year, neither of them being a spouse; and

(g) “compensation association” means a body corporate or unincorporated association that has been designated pursuant to the regulations as a compensation association;

(h) “contract” means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

(i) “disability insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease;

(j) “fraternal society” means a society, order or association incorporated for the purpose of making with its members only and not for profit,

contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act;

(k) “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance;

(l) “insurance money” includes benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract;

(m) “insured” means a person who makes a contract with an insurer;

(n) “insurer” means the person, corporation, underwriter, partnership, fraternal or other society, association, or syndicate who undertakes or agrees or offers to undertake a contract;

(o) “life insurance” means insurance whereby an insurer undertakes to pay insurance money

(i) on death,

(ii) on the happening of an event or contingency dependent on human life,

(iii) at a fixed or determinable future time, or

(iv) for a term dependent on human life,

and, without restricting the generality of the foregoing, includes

(v) accidental death insurance but not accident insurance,

(vi) disability insurance, and

(vii) an undertaking entered into by an insurer to provide an annuity or what would be an annuity except that the periodic payments may be unequal in amount and such an undertaking shall be deemed always to have been life insurance;

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

(p) “person” includes a firm, partnership or corporation;

(q) “policy” means the instrument evidencing a contract;

(r) “premium” means the single or periodical payment to be made for the insurance and includes dues and assessments;

(s) “sickness insurance” means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance;

(sa) “spouse” means either of a man or woman who are married to each other;

(t) “Superintendent” means the Superintendent of Insurance and includes a Deputy Superintendent of Insurance or such person as the Governor in Council may authorize to perform the duties of the Superintendent. R.S., c. 231, s. 3; 2000, c. 29, s. 22; 2003 (2nd Sess.), c. 1, s. 3; 2011, c. 35, s. 2.

PART I

GENERAL

Superintendent and other personnel

4 (1) The Governor in Council may appoint

(a) a person in the public service to be the Superintendent of Insurance; and

(b) one or more persons in the public service to be a Deputy Superintendent of Insurance.

(2) Such officers and clerks as may be necessary to assist the Superintendent or a Deputy Superintendent may be appointed under the *Civil Service Act*. R.S., c. 231, s. 4; 2011, c. 35, s. 3.

Duty and powers of Superintendent and regulations

5 (1) The Superintendent has general supervision over the business of insurance in the Province.

(2) The Superintendent shall secure the enforcement of this Act and, in so doing, may issue such rulings, instructions and orders as he may deem necessary.

(3) The Governor in Council may make regulations

(a) respecting the qualifications of insurance agents;

(b) respecting the form and content of courses of study for licenses of insurance agents;

(c) respecting the time and manner of conducting examinations of insurance agents;

(d) prescribing books, accounts and records to be kept and maintained by insurance agents;

(e) respecting fees for licenses and renewals of licenses of any class or kind issued under this Act;

(f) and (g) *repealed 2003 (2nd Sess.), c. 1, s. 4.*

(h) extending the provisions of this Act or any of them to a system or class of insurance not specifically mentioned in this Act;

(i) respecting group insurance contracts or schemes, or any class thereof and, without restricting the generality of the forego-

ing, prescribing and regulating their terms and conditions, qualifications for membership in groups and respecting the marketing of group insurance contracts or schemes;

(j) respecting the advertising of insurance contracts or any class thereof and, without restricting the generality of the foregoing, prescribing and regulating the form and content of the advertisements and requiring advertisements to be filed and approved by the Superintendent;

(k) designating as compensation associations bodies corporate or unincorporated associations, or both, whose purposes are to provide compensation to policyholders of and eligible claimants on insolvent insurers;

(l) prescribing classes of insurance for the purposes of Section 10 and designating a compensation association for one or more of such classes of insurance;

(m) designating insurers as being adequately covered by a plan of compensation other than that provided by reason of membership in a compensation association;

(n) defining insolvent insurers for the purposes of this Act;

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

(o) generally for the better carrying out of the provisions of this Act and the more efficient administration of it.

(3A) A regulation made pursuant to clause (na) of subsection (3) may define words or expressions differently for different provisions of this Act.

(4) The exercise by the Governor in Council of the authority contained in subsection (3) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 231, s. 5; 2003 (2nd Sess.), c. 1, s. 4; 2010, c. 18, s. 1.

License

6 (1) Notwithstanding any other enactment, no person shall carry on the business of insurance in the Province without a license, issued pursuant to this Section, that is in force.

(2) Every insurer carrying on the business of insurance in the Province who does not hold a license that is in force is guilty of an offence.

(3) The Superintendent may issue a license to an insurer subject to such limitations and conditions as the Superintendent may prescribe.

(4) The Superintendent may suspend or revoke a license of an insurer issued pursuant to this Section for misconduct by the insurer or a violation

by the insurer of any provision of this Act, the regulations or any federal or provincial enactment applicable to the insurer. R.S., c. 231, s. 6.

Entry and inspection of documents

7 The Superintendent, or a person authorized by the Superintendent, may, from time to time and at all reasonable times, enter upon the business premises of an insurer or upon premises where the insurer's records are kept if it is reasonably necessary to do so in order to determine whether or not this Act, the regulations or any federal or provincial enactment applicable to the insurer are being complied with and may inspect, audit or examine documents therein, and the person occupying or in charge of the premises shall answer all questions pertaining to those matters and shall produce for inspection such documents as the Superintendent, or a person authorized by the Superintendent, may request. R.S., c. 231, s. 7.

Regulations

8 (1) Where the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada) does not apply to an insurer, the Governor in Council may make regulations respecting any matters dealt with by those Acts or regulations made pursuant thereto.

(2) Regulations made by the Governor in Council pursuant to subsection (1) may be made applicable in whole or in part to such insurers as the regulations provide.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 231, s. 8.

Agreements

9 (1) The Minister, with the approval of the Governor in Council, may enter into agreements with compensation associations relating to a plan for the compensation by compensation associations of policyholders of, and eligible claimants on, insolvent insurers.

(2) An agreement pursuant to subsection (1) may exempt a specifically named insurer from membership in the compensation association that is a party to the agreement. R.S., c. 231, s. 9; 2003 (2nd Sess.), c. 1, s. 5.

Compensation association

10 (1) Where a compensation association has been designated by the regulations made pursuant to subsection (3) of Section 5 for any of the classes of insurance prescribed by those regulations then, subject to subsection (2), every insurer, while licensed to carry on that class of insurance and, except for the classes of life and accident and sickness insurance, for one hundred and eighty-three days after ceasing to be so licensed, is a member of that compensation association.

- (2) Subsection (1) does not apply to an insurer
- (a) that is designated by a regulation made pursuant to clause (m) of subsection (3) of Section 5;
 - (b) whose business is limited to that of re-insurance; or
 - (c) that is exempted from membership by an agreement made pursuant to Section 9.
- (3) Every member of a compensation association is bound by the by-laws and memorandum of operation of the compensation association.
- (4) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association.
- (5) Where a member fails to pay an assessment or levy within thirty days of the mailing of the notice of assessment or levy to the member,
- (a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member; and
 - (b) the Minister, on the recommendation of the Superintendent, may cancel the license of the member to carry on the business of insurance.
- (6) A debt due pursuant to subsection (5) does not cease to be due on the termination of the member's membership. R.S., c. 231, s. 10; 1998, c. 8, s. 44; 2003 (2nd Sess.), c. 1, s. 6.

Representing prohibited insurer

11 No person shall do or carry on any part of the business of insurance in the Province on behalf of or as agent for an insurer who is prohibited by Section 6 from carrying on the business of insurance in the Province. R.S., c. 231, s. 11; 1998, c. 8, s. 45.

Signature and commission of agents

12 (1) This Section does not apply to an insurer having its head office in the Province.

(2) No insurer shall insure real or personal property located in the Province against loss of or damage to such property arising from the peril of fire unless the policy, duplicate policy, or contract of fire insurance has been signed or countersigned by an agent licensed under this Act who is a resident of the Province and unless that agent receives the commission or a part thereof not less than five per cent of the premium paid covering that portion of the risk situate in the Province, when the premium is paid.

(3) This Section does not apply in respect of direct insurance covering property in transit that is in the possession and custody of common carriers, or moveable property of such common carriers used or employed by them in their business as common carriers. R.S., c. 231, s. 12.

Violation of law not necessarily fatal

13 (1) This Section does not apply to a contract of life insurance except with respect to disability insurance undertaken as part of the contract.

(2) Unless the contract otherwise provides, a violation of any criminal or other law shall not, *ipso facto*, render unenforceable a claim for indemnity under a contract except where the violation is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage. R.S., c. 231, s. 13.

Statement of agent or broker

14 An insurer carrying on any part of the business of insurance in the Province shall each year file with the Superintendent a statement verified under oath of its manager or chief agent in the Province, showing the name and residence of every person authorized to act in the Province as agent, sub-agent or broker for the insurer. R.S., c. 231, s. 14.

Filing and use of form of policy

15 (1) The Superintendent may require an insurer to file with him a copy of any form of policy, any form of application for a policy, or any endorsement, rider or advertising material issued or used by the insurer.

(2) Where an insurer issues a policy or uses an application, or endorsement or rider or advertising material that, in the opinion of the Superintendent, is unfair, fraudulent, unduly restrictive or not in the public interest, he may prohibit the insurer from issuing or using that form of policy, application, endorsement, rider or advertising material.

(3) No insurer shall, after being prohibited, pursuant to subsection (2), use any prohibited policy, application, endorsement, rider or advertising material. R.S., c. 231, s. 15.

Substitution of successor

16 Where, under an agreement between an insurer, in this Section called the "continuing insurer," and another insurer, in this Section called the "retiring insurer," in contemplation of the retiring insurer ceasing to do business in the Province, the continuing insurer assumes liability under contracts of insurance specified in the agreement issued by the retiring insurer and the retiring insurer ceases to carry on business in the Province, an insured or other person entitled to rights under those contracts may enforce the rights as though those contracts had been issued by the continuing insurer. R.S., c. 231, s. 16.

PART 1A

NOVA SCOTIA INSURANCE REVIEW BOARD

Interpretation of Part**16A** In this Part,

- (a) “Chair” means the Chair of the Board;
- (b) “Executive Officer” means the Executive Officer of the Board;
- (c) “member” means a member of the Board;
- (d) “Vice-chair” means the Vice-chair of the Board. 2003 (2nd Sess.), c. 1, s. 7.

Nova Scotia Insurance Review Board

16B (1) There is hereby established a board to be known as the Nova Scotia Insurance Review Board.

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

- (a) this Act or any other enactment; or
- (b) the Governor in Council.

(3) The Governor in Council may assign to the Board the powers, functions and duties of any board, commission or agency and, while the assignment is in effect, that board, commission or agency is deemed to be discontinued in so far as the assignment is concerned.

(4) The Board shall examine into and report to the Governor in Council respecting any matter referred to it by the Governor in Council, including

- (a) automobile insurance rates and factors affecting them;
- (b) casualty insurance rates and availability and factors affecting them, including accident insurance, fire insurance, homeowners’ and tenants’ insurance and like coverages;
- (c) liability insurance rates and availability factors affecting them; and
- (d) any matter designated by the Governor in Council respecting any class of insurance and the factors affecting its cost or availability.

(5) The Board shall conduct an examination of the rates and availability of fire, other property and liability insurance for homeowners, tenants, non-profit organizations and small businesses and report to the Governor in Council on or before the first day of November, 2004. 2003 (2nd Sess.), c. 1, s. 7.

Membership

16C (1) The Board consists of at least five and not more than nine members appointed by the Governor in Council.

(2) Each member appointed under subsection (1) holds office on good behaviour for such term, not exceeding five years, as the Governor in Council determines.

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

(4) A member may be re-appointed by the Governor in Council to more than one term.

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

(6) A determination by the Governor in Council pursuant to subsection (5) may be made before or after such resignation, retirement or expiration of term and may be retroactive in effect. 2003 (2nd Sess.), c. 1, s. 7.

Chair and Vice-chair

16D (1) The Governor in Council shall designate one of the members to be the Chair of the Board and another member to be the Vice-chair of the Board.

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

(3) In the case of the absence of the Chair or the Chair's inability to act, the Vice-chair shall perform the duties and exercise the powers of the Chair. 2003 (2nd Sess.), c. 1, s. 7.

Remuneration of members

16E A member shall be paid such remuneration as the Governor in Council determines and, subject to the regulations, shall be reimbursed for reasonable travelling and other expenses necessarily incurred by the member in connection with the work of the Board. 2003 (2nd Sess.), c. 1, s. 7.

Conflict of interest

16F (1) No member shall be directly or indirectly employed by or interested in an insurance company or interested in a share, stock, bond, mortgage, security or contract of an insurance company and, where a member voluntarily

becomes so interested, the member's office becomes vacant or, where the member becomes so interested otherwise than voluntarily, the member shall, within a reasonable time, dispose of the interest.

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

(3) No member is disqualified from acting in a matter affecting an insurance company by reason only of being an insured of an insurance company, but the member may not be involved in an application, appeal, proceeding, matter or thing involving that insurance company. 2003 (2nd Sess.), c. 1, s. 7.

Personnel

16G (1) An Executive Officer and such other officers and employees as are required for the administration of the Board shall be appointed in accordance with the *Civil Service Act*.

(2) The Executive Officer shall keep a record of the proceedings of the Board, have the custody and care of all records and documents belonging to or pertaining to the Board and perform such duties as the Board requires.

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

(4) The Board may avail itself of the services of an officer or other employee of a board, commission or department of the Province, subject to the approval of the member of the Executive Council or other person in charge of the administration of the service in which the officer or employee is employed. 2003 (2nd Sess.), c. 1, s. 7.

Expenses

16H (1) The expenses of the Board shall be paid out of the levies made by the Board and out of money appropriated by the Legislature for that purpose or, for the 2003-04 fiscal year, out of the Consolidated Fund of the Province on the direction of the Minister of Finance.

(2) The fiscal year of the Board is the same as the fiscal year of the Province. 2003 (2nd Sess.), c. 1, s. 7.

Rules of practice and procedure

16I The Board may make rules respecting practice and procedure in relation to matters coming before it. 2003 (2nd Sess.), c. 1, s. 7.

Powers and duties of Chair

16J (1) The Chair has the responsibility for the administration of the Board.

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

(3) The Chair, when present, shall preside at all sittings of the Board and, in the Chair's absence, the Vice-chair shall preside.

(4) Subject to subsection (3), the Chair shall designate the member to preside at a sitting of the Board where at least two members, not including the Chair or Vice-chair, are scheduled to be present. 2003 (2nd Sess.), c. 1, s. 7.

Quorum

16K The quorum of the Board is one member where there is no hearing and three members in all other cases. 2003 (2nd Sess.), c. 1, s. 7.

Panels

16L Different panels of the Board may sit at the same time to determine matters before the Board. 2003 (2nd Sess.), c. 1, s. 7.

Vacancy does not impair

16M A vacancy on the Board does not impair the right of the remaining members to act. 2003 (2nd Sess.), c. 1, s. 7.

Powers, privileges and immunities

16N In a matter over which the Board has jurisdiction, the Board and each member has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2003 (2nd Sess.), c. 1, s. 7.

Oaths, certificates and subpoenas

16O (1) A member may administer oaths or affirmations, certify as to official acts of the Board and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(2) Where a person fails to comply with an order of the Board or a subpoena or where a witness refuses to testify to a matter regarding which the witness may be interrogated before the Board or a member, a judge of the Supreme Court of Nova Scotia shall, on application of the Board or a member, compel obedience by attachment proceedings for contempt as in the case of the disobedience of the requirements of a subpoena issued by the Court or a refusal to testify in court. 2003 (2nd Sess.), c. 1, s. 7.

Evidence

16P The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law. 2003 (2nd Sess.), c. 1, s. 7.

Adjournment of hearing

16Q A hearing may be adjourned from time to time by the Board on reasonable grounds on its own motion or on the request of a party to the proceedings. 2003 (2nd Sess.), c. 1, s. 7.

Representation by counsel

16R A party may be represented before the Board by counsel. 2003 (2nd Sess.), c. 1, s. 7.

Exclusive jurisdiction

16S (1) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it.

(2) The Board, as to all matters within its jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact. 2003 (2nd Sess.), c. 1, s. 7.

Determination of question of fact

16T (1) In determining a question of fact, the Board is not bound by the finding or judgment of a court in a proceeding involved in the determination of the fact, but such finding or judgment is, in the proceedings before the Board, *prima facie* evidence only.

(2) The Board has jurisdiction to hear and determine a question of fact notwithstanding that a proceeding involving the same question of fact is pending in a court. 2003 (2nd Sess.), c. 1, s. 7.

Orders

16U In any matter before the Board, it shall grant an order, either as specified in the application or notice of appeal or as the Board decides. 2003 (2nd Sess.), c. 1, s. 7.

Form of order

16V It is not necessary that an order of the Board show upon its face that any proceedings or notice were had or given or that circumstances existed necessary to give it jurisdiction to make the order. 2003 (2nd Sess.), c. 1, s. 7.

Binding determination

16W The finding or determination of the Board upon a question of fact within its jurisdiction is binding and conclusive. 2003 (2nd Sess.), c. 1, s. 7.

Final decision

16X (1) A final decision of the Board shall be in writing and set forth reasons for the decision.

(2) A copy of the final decision shall be certified by the Executive Officer and sent to each party to the proceedings. 2003 (2nd Sess.), c. 1, s. 7.

Costs

16Y (1) The costs of and incidental to a proceeding before the Board are in the discretion of the Board and may be fixed at a sum certain or may be taxed.

(2) The Board may order by whom costs are to be taxed and may prescribe the scale under which costs are to be taxed. 2003 (2nd Sess.), c. 1, s. 7.

Appeal

16Z (1) An appeal lies to the Nova Scotia Court of Appeal from an order of the Board upon any question as to its jurisdiction or upon any question of law.

(2) A notice of appeal must be filed within thirty days of the issuance of the order and must contain the names of the parties and the date of the order appealed from.

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

(4) Where there is a conflict between this Section and another enactment, that enactment prevails. 2003 (2nd Sess.), c. 1, s. 7.

Regulations

16AA (1) The Governor in Council may make regulations

(a) prescribing the terms and conditions, including remuneration, for the Board engaging the services of professional persons, technical persons and experts to advise the Board;

(b) respecting the remuneration and expenses of the Chair, Vice-chair and members of the Board;

(c) respecting the jurisdiction of the Board, and conferring additional powers, functions, duties and responsibilities upon it;

(d) respecting the location of hearings of the Board;

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

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

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

(h) respecting the keeping of a record of matters or proceedings before the Board;

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

(j) respecting the manner in which the expenses of the Board are to be recovered from insurers;

(k) defining any word or expression used but not defined in this Part;

(l) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2003 (2nd Sess.), c. 1, s. 7.

PART II

INSURANCE CONTRACTS IN THE PROVINCE

Application of Part

17 Where not inconsistent with some other provision of this Act, this Part applies in respect of every contract other than

(a) a contract of accident and sickness insurance to which Part V applies;

(b) a contract of life insurance to which Part VIII applies; and

(c) a contract of marine insurance to which Part IX applies. R.S., c. 231, s. 17.

Delivery and contents of policy

18 An insurer shall, within a reasonable time after a contract is entered into, deliver to the insured a policy setting out the terms of the contract which shall include

(a) the name or a sufficient description of

- (i) the insured, and
- (ii) the person to whom the insurance money is payable;
- (b) the amount, or the method of determining the amount of the premium;
- (c) the subject-matter of the insurance;
- (d) the indemnity for which the insurer may become liable;
- (e) the event on the happening of which the liability is to accrue;
- (f) the date upon which the insurance takes effect; and
- (g) the date upon which the insurance terminates or the method by which termination is fixed or to be fixed. R.S., c. 231, s. 18.

Copy of application

19 An insurer shall furnish a copy of the application to the insured at the time the application is signed by the insured. R.S., c. 231, s. 19.

Effect of delivery of policy

20 (1) Where a contract has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not been paid, and although delivered by an officer or agent of the insurer who did not have authority to deliver it.

(2) The insurer may deduct the unpaid premium from the amount for which it may become liable under the contract or may sue the insured therefor. R.S., c. 231, s. 20.

Default in paying and payment of premium

21 (1) Where a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail.

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter. R.S., c. 231, s. 21.

Assignment of refund of premium

22 (1) Where an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract under the terms thereof and notice of the assignment is given by the assignee to the insurer, the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be

paid to the insured or to accompany any notice of cancellation or termination to the insured.

(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this Section. R.S., c. 231, s. 22.

Proof of loss form

23 (1) An insurer, immediately upon receipt of a request, and in any event not later than sixty days after receipt of notice of loss, shall furnish to the person insured or person to whom the insurance money is payable forms upon which to make the proof of loss required under the contract.

(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and, in addition, the provisions of Section 24 shall not be available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of money payable under the contract of insurance.

(3) The insurer, by furnishing forms to make proof of loss, shall not be taken to have admitted that a valid contract is in force or that the loss in question falls within the insurance provided by the contract. R.S., c. 231, s. 23.

Commencement of proceeding

24 No action shall be brought for the recovery of money payable under a contract until the expiration of sixty days after proof, in accordance with the provisions of the contract,

(a) of the loss; or

(b) of the happening of the event upon which the insurance money is to become payable,

or of such shorter period as may be fixed by the contract. R.S., c. 231, s. 24.

Payment to agent or broker

25 Notwithstanding any agreement, condition or stipulation to the contrary, payments in cash in whole or in part to an agent or broker of an insurer of the amount of a premium or an assessment due in respect of a contract issued by the insurer, shall be deemed a payment to the insurer. R.S., c. 231, s. 25.

Agent holds money in trust

26 (1) An agent who acts in negotiating, or renewing or continuing a contract of insurance other than life insurance, with an authorized or a licensed insurer, and who receives any money or substitute for money as a payment on account of a premium for such a contract from the insured, shall be deemed to hold such payment in trust for the insurer, and, if he fails to pay the payment over to the

insurer within fifteen days after written demand made upon him therefor, less his commission and any deductions to which, by the written consent of the company, he is entitled, such failure is *prima facie* evidence that he has used or applied the payment for a purpose other than paying it over to the insurer.

(2) An agent who acts in negotiating or renewing or continuing a contract of insurance with an authorized or a licensed insurer, and who receives any money or substitute for money for payment to a person in respect of the contract of insurance shall be deemed to hold such money in trust for the person entitled thereto, and, if he fails to pay the money over to such person within fifteen days after written demand made upon him therefor, less his commission and any deductions to which he is entitled, such failure is *prima facie* evidence that he has used or applied the money for a purpose other than paying it over to the person entitled.

(3) No agent shall assign, pledge, hypothecate or mortgage or in any way charge the payment or payments referred to in subsections (1) or (2) whether or not such payment or payments have been received or remain receivable.

(4) Any assignment, pledge, hypothecation, mortgage or other charge of or on the payment or payments referred to in subsections (1) or (2) is null and void as against the beneficial owner of the payment or payments. R.S., c. 231, s. 26.

Payment into court

27 (1) Where the insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of a person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

(2) The court may fix the costs incurred in connection with an application or order made under subsection (1) and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it deems just.

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 27.

Action against insurer

28 (1) Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against him in respect of his liability, and an exe-

cution against him in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

(2) This Section does not apply to motor vehicle liability policies.
R.S., c. 231, s. 28.

Notice to insured or insurer

29 Subject to any statutory condition, where the mode of giving a notice for any purpose is not provided, the notice may, in the case of notice by an insurer, be given by mailing it by registered letter to the last known address of the insured on its records or, if there is no such record, to the address of the insured given in his application or by delivering it to the insured and, in the case of notice by an insured, be given by mailing it by registered letter to the last known address of the insurer in the Province or failing that by mailing it by registered letter or delivering it to a licensed agent of the insurer. R.S., c. 231, s. 29.

Imperfect compliance

30 An act or omission of an insurer that results in non-compliance or imperfect compliance with a provision of this Act does not render a contract invalid as against an insured. R.S., c. 231, s. 30.

Fire insurance as security

31 (1) Where a contract of fire insurance is given as collateral security to a mortgage or vendor's lien on property, or a contract so given is about to expire and no specific insurer is named in the mortgage or agreement for sale, a condition requiring the mortgagor or purchaser to insure is sufficiently satisfied, save as to the amount, by the production by such mortgagor or purchaser of a subsisting policy of insurance in any insurer authorized to carry on its business in the Province.

(2) No mortgagee and no officer or employee of a mortgagee shall receive any commission or other consideration in respect of a contract or renewal thereof under which loss, if any, is payable to the mortgagee.

(3) No insurer or insurance agent shall pay, allow or give any commission or other consideration to a mortgagee or officer or employee of a mortgagee in respect of any contract or renewal thereof under which loss, if any, is payable to the mortgagee. R.S., c. 231, s. 31.

Determination by appraisers or umpire

32 (1) This Section applies to a contract containing a condition, statutory or otherwise, providing, in the event of difference or disagreement between the insured and insurer, for appraisal to determine the matters specified in the condition.

(2) The appraisal shall be made by two disinterested appraisers, the insured and the insurer each selecting one and the two so chosen then selecting a competent and disinterested umpire.

(3) The appraisers shall then determine the matters specified in the conditions and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

(4) Each party to the appraisal shall pay the appraiser selected by him and shall bear equally the expense of the appraisal and umpire.

(5) Where

(a) a party fails to name an appraiser within seven clear days after being served with written notice so to do;

(b) the appraisers fail to agree upon an umpire within fifteen days after their appointment; or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,

a judge of the Supreme Court or the county court having jurisdiction in the county or district in which the appraisal is to be made may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer. R.S., c. 231, s. 32.

Court may relieve against forfeiture

33 Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just. R.S., c. 231, s. 33.

Canadian dollars

34 Insurance money is payable in the Province in lawful money of Canada. R.S., c. 231, s. 34.

Waiver

35 (1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part, unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs, or to the investigation or adjustment of any claim under the contract. R.S., c. 231, s. 35.

PART III

LICENSES FOR AGENTS

Licensing of agent

36 (1) The Superintendent may issue to a person who has complied with the requirements of this Part and the regulations and paid the fee prescribed in the Schedule to this Part a license or licenses of the kind or kinds described in subsection (4).

(2) A license issued to a partnership or corporation shall be issued in the name of the partnership or corporation.

(3) The license shall be subject to any limitations and conditions the Superintendent prescribes.

(4) Licenses issued pursuant to this Section are of two kinds, namely,

(a) a life insurance license authorizing the licensee to act as an agent for life and accident and sickness insurance or a life insurance license restricting the licensee to act as an accident and sickness insurance agent only; and

(b) a general insurance license authorizing the licensee to act as an agent for any class or classes of insurance other than those classes authorized under a life insurance license.

(5) A license for any class of insurance other than life insurance entitles the agent to act as a broker.

(6) Every license expires at the end of three years after it has been issued or at such time as the Superintendent may determine, but may be renewed on application to the Superintendent and payment of the fee prescribed in the Schedule to this Part, unless cancelled or suspended by the Superintendent.

(7) Notwithstanding subsection (6), the Superintendent may determine for a particular license or class of license an expiry date which is less than three years from the date on which it was issued or renewed.

(8) The Superintendent may grant a license where

(a) in the Superintendent's opinion, the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable;

(b) the applicant passes a qualification examination if one is prescribed by the Superintendent or passes any supplemental examination if the applicant fails the qualification examination and pays any fees associated with the writing of examinations as may be prescribed by the regulations;

(c) the application indicates the name of the insurer who sponsors the applicant;

(d) the Superintendent is satisfied that the applicant intends to hold himself out publicly and carry on business as a *bona fide* agent; and

(e) the Superintendent is satisfied that the applicant is not in a position to use coercion or undue influence to secure insurance business.

(9) In determining the granting or refusal of an application for a license or renewal of a license, or the suspension or cancellation of a license or the reinstatement of any suspended or cancelled license, the Superintendent may, in any case where the Superintendent deems it proper, nominate an advisory board consisting of three persons, one of whom shall be the Superintendent or another person appointed by the Superintendent, one of whom shall be a representative of insurers and one of whom shall be a representative of agents licensed pursuant to this Act and may refer a matter to the board for hearing and report, and the Superintendent shall take such report into consideration when making a decision pursuant to this Section. R.S., c. 231, s. 36; 2015, c. 6, s. 28.

Application form

37 An application for a license shall be in the form the Superintendent prescribes and shall be made to the Superintendent. R.S., c. 231, s. 37.

License required

38 (1) In this Section, “representative” means an officer, employee or shareholder, whether the shares are held in trust or not.

(2) Subject to this Section, no person shall

(a) either on his own account; or

(b) as a member or representative of

(i) a partnership or a corporation, or

(ii) an insurer licensed pursuant to Section 6 to carry on the business of insurance in the Province,

act or offer to act as an agent or broker for any class of insurance unless he holds a license that is in force for that class of insurance.

(3) A member or representative of an insurer licensed pursuant to Section 6 to carry on the business of insurance in the Province, who does not receive a commission and who acts only in the name of and on behalf of the insurer may, without a license, act as an agent for the insurer.

(4) A member of a fraternal society may, without a license, solicit insurance contracts on behalf of the society unless he devotes or intends to devote

more than one half his time to soliciting such contracts or has in the previous license year solicited and procured life insurance contracts on behalf of the society in an amount in excess of twenty thousand dollars.

(5) Every application in respect of an insurance license shall be signed by a representative of the insurer who sponsors the applicant.

(6) In the event of withdrawal of the sponsorship by the insurer, the agent or broker from whom sponsorship has been withdrawn shall forthwith return the license to the insurer and the insurer shall

(a) within ten business days of receipt, return the license to the Superintendent; and

(b) give the Superintendent the reason for the withdrawal of sponsorship.

(7) If an insurer withdraws sponsorship, the license is cancelled.

(8) Subject to subsection (9), the license authorizes the holder to act as an agent on behalf of the sponsoring life insurer only, but if the license holder is unable to negotiate insurance on behalf of an applicant for insurance with the sponsoring life insurer, the agent may procure insurance from another insurer if the other insurer obtains in each case the consent in writing of the sponsoring insurer and files a copy of the consent with the Superintendent.

(9) After being the holder of a license as a life insurance agent for a continuous and uninterrupted period of not less than two years, and subject to any additional requirements prescribed by regulation, an agent may effect insurance with any other life insurer licensed to carry on business in the Province. R.S., c. 231, s. 38.

No compensation except to licensee

39 (1) No insurer, and no licensed agent shall, directly or indirectly, pay, or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person in respect of the effecting or negotiating or placing of any contract or renewal thereof unless that person holds a license that is in force under this Part.

(2) Subsection (1) does not affect the payment by an agent of part of his commission to a licensed broker or agent outside the Province. R.S., c. 231, s. 39.

Premium in policy

40 No insurer and no licensed agent shall, directly or indirectly,

(a) make or attempt to make any agreement in respect of the premium to be paid for a policy other than as set forth in the policy with; or

(b) pay, allow or give, or offer or agree to pay, allow or give

(i) any rebate of the whole or part of the premium stipulated by the policy to, or

(ii) any other consideration intended to be in the nature of a rebate of premium to,

any person insured or applying for insurance. R.S., c. 231, s. 40.

Personal liability of agent or broker

41 An agent or broker is personally liable to the insured on all contracts unlawfully made by or through him directly or indirectly with any insurer not licensed pursuant to Section 6 to carry on the business of insurance in the Province in the same manner as if such agent or broker were the insurer. R.S., c. 231, s. 41.

Misrepresentation of policy prohibited

42 No insurer and no agent shall mislead a person about to insure by misrepresentation of any of the terms of a contract, whether issued by the insurer represented by the agent or issued by any other insurer. R.S., c. 231, s. 42.

Inducing policyholder to lapse or surrender

43 No person shall, by means of a false or misleading representation, procure or induce, or attempt to procure or induce any person to forfeit, lapse or surrender a policy. R.S., c. 231, s. 43.

Disclosure statement

44 Every agent, upon taking an application where replacement of an existing contract of life insurance by another contract of life insurance is intended, shall give the applicant a disclosure statement as prescribed by the regulations. R.S., c. 231, s. 44.

Suspension or cancellation of license

45 (1) Subject to Section 46, a license may be suspended or cancelled by the Superintendent if, after due investigation, the Superintendent determines that the holder of a license has

(a) made a material mis-statement in the application for the license;

(b) violated any provision of this Act or the regulations; or

(c) demonstrated his incompetency or untrustworthiness to act as an insurance agent by anything done or omitted in connection with the business for which the license was granted.

(2) The Superintendent shall notify the holder of the license by registered mail of the suspension or cancellation of the license pursuant to subsection (1).

(3) Upon receipt of the notification referred to in subsection (2), the holder of the license shall forthwith return the license to the Superintendent. R.S., c. 231, s. 45.

Hearing prior to suspension or cancellation

46 (1) Before suspending or cancelling an agent's license pursuant to Section 45, the Superintendent shall fix a time and place for a hearing to review the evidence and shall give the agent fifteen days notice of such hearing.

(2) The notice referred to in subsection (1) shall be delivered personally or by registered mail and shall include the particulars of all evidence in the possession of the Superintendent to be reviewed at the hearing in sufficient detail to enable the agent to respond. R.S., c. 231, s. 46.

Person ceasing or starting to act for insurer

47 (1) Where an agent or broker ceases to act for an insurer, the insurer shall, within ten business days, notify the Superintendent in writing of the fact along with the reason for the termination and, until such notification is received by the Superintendent, the agent or broker shall be deemed to be authorized to act in the Province as agent or broker for the insurer.

(2) Where an insurer authorizes a person to act as agent or broker in the Province, it shall notify the Superintendent in writing of the fact. R.S., c. 231, s. 47.

Evidence of licensee status

48 A certificate purporting to be given by the Superintendent that on a day mentioned in the certificate

- (a) a person mentioned therein was or was not licensed under this Part;
- (b) a person mentioned therein was originally issued a license; or
- (c) the license of an agent mentioned therein was renewed, suspended, revived or revoked,

is admissible in evidence without proof of the signature or office of the person purporting to give the certificate and is *prima facie* proof of the facts stated in the certificate. R.S., c. 231, s. 48.

Investigation

49 (1) The Superintendent, or any person authorized by the Superintendent, may, upon complaint of any interested person, or when the Superintendent or person authorized by the Superintendent deems it necessary without complaint, investigate and inquire into any matter that the Superintendent or person authorized by the Superintendent deems expedient for the due administration of this Act, including the circumstances surrounding any transaction or matter or thing done by any insurer or agent whether licensed or not licensed.

(2) For the purpose of an investigation pursuant to subsection (1), the Superintendent or the person authorized by the Superintendent may inquire into and examine the business affairs of the insurer or agent in respect of whom the investigation is being made and may examine and inquire into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the insurer or agent and into any property, assets or things owned, acquired or alienated in whole or in part by such insurer or agent, and the insurer or agent shall be bound to make prompt and explicit answers to any such inquiries.

(3) When conducting an investigation pursuant to this Section, the Superintendent or the person authorized by the Superintendent to make the investigation may make copies of the documents referred to in subsection (2).

(4) For the purpose of an investigation pursuant to this Section, the Superintendent and the person authorized by the Superintendent to make the investigation have all the powers of a commissioner appointed pursuant to the *Public Inquiries Act*. R.S., c. 231, s. 49.

Appeal

50 (1) A person who is dissatisfied with a decision of the Superintendent pursuant to this Part may, within thirty days from the date of the decision, appeal to a judge of the county court who may, upon hearing the appeal which shall be heard in accordance with the *Summary Proceedings Act*, by order do any one or more of the following things:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;
- (d) vary the decision appealed against;
- (e) refer the matter back to the Superintendent for further consideration and decision;
- (f) award costs of the appeal;
- (g) make such other order as to the judge seems just.

(2) The appeal shall be by notice of appeal and a copy thereof shall be served upon the Superintendent not less than ten days before the day on which the motion is returnable.

(3) On the hearing of an appeal any evidence taken before the Superintendent and certified by the Superintendent may, with leave of the judge hearing the appeal, be read and has the like force and effect as if the witness were there examined and any party affected by the appeal may call witnesses and adduce evidence, whether or not the witnesses were called or the evidence adduced at the hearing before the Superintendent, either as to the credibility of witnesses or as to any other fact material to the inquiry.

(4) An appeal lies to the Appeal Division of the Supreme Court from a decision of the county court upon any question of law but such appeal can only be taken by leave of a judge of the Appeal Division given upon an application presented to the judge within thirty days after the rendering of the decision and upon such terms as the judge may determine and notice of such an application shall be given to the Superintendent at least two clear days before the presentation of such application.

(5) Where leave to appeal has been granted, the appeal shall be brought by notice served on the Superintendent within ten days after the leave to appeal has been granted and the notice shall contain the names of the parties and the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 231, s. 50.

Insurance council

51 (1) In this Section, "council" means a council established pursuant to subsection (2).

(2) The Governor in Council may provide for the establishment of an Insurance Council or councils and for the appointment of or election of members to the councils.

(3) The Governor in Council may make regulations prescribing the functions, powers and duties of a council established pursuant to subsection (2) and governing the carrying out of those functions and duties and the exercise of those powers.

(4) Without limiting the generality of subsection (3), the Governor in Council may make regulations granting to a council, on any terms and conditions that the Governor in Council considers appropriate, the power to

(a) accept and exercise powers, functions and responsibilities delegated to it by the Superintendent;

(b) establish the educational, training and other standards and qualifications required for the licensing or registration of agents;

(c) establish and enforce ethical, operational and trade practices for agents;

(d) investigate complaints and adjudicate or mediate disputes regarding services provided by an agent;

(e) make recommendations to government;

(f) fix and collect license, registration or other fees and special fees from applicants, registrants and licensees in the insurance industry that are necessary to allow the council to finance the exercise of its assigned powers;

(g) initiate and engage in programs of consumer protection;

- (h) sub-delegate its powers to sub-councils or committees;
- (i) make by-laws necessary for its efficient functioning.

(5) A council shall file with the Superintendent every by-law, rule and regulation and amendment thereto made by the council within thirty days of making it.

(6) The Superintendent shall, within thirty days of receiving a by-law, rule, regulation or amendment pursuant to subsection (5),

(a) advise the council that the Superintendent approves the by-law, rule, regulation or amendment, as the case may be, and fix a date on which the by-law, rule, regulation or amendment comes into force; or

(b) where the Superintendent is of the opinion that the by-law, rule, regulation or amendment, as the case may be, is unacceptable or prejudicial to the public interest, so advise the council.

(7) No by-law, rule or regulation or amendment thereto made by a council comes into force until the Superintendent fixes a date pursuant to clause (a) of subsection (6).

(8) Every decision of a council is subject to review by the Superintendent on the Superintendent's own initiative or at the request of any interested person.

(9) A decision of the Superintendent, as a result of a review pursuant to subsection (8), may be appealed to the Trial Division of the Supreme Court. R.S., c. 231, s. 51.

Regulations

52 (1) With the approval of the Governor in Council, the Superintendent may make regulations

(a) classifying applications for licenses and restricting or prohibiting the licensing of any class of applicant;

(b) providing for the issuing and renewal of licenses and the fees payable on the application for or renewal of licenses;

(c) providing for the holding of examinations and the fees payable for examinations;

(d) prescribing the conditions upon which a license may be refused, revoked, suspended or not renewed;

(e) requiring agents to supply information and make returns to the Superintendent and prescribing the contents of those returns;

- (f) requiring an agent to furnish a bond or other security and fixing the amount, form and terms thereof;
- (g) requiring and regulating trust accounts and trust records to be maintained by agents;
- (h) respecting disclosure statements;
- (i) regulating the replacement of an existing life insurance contract by another contract of life insurance and prescribing the duties of insurers and agents in connection with the replacement of a life insurance contract;
- (j) prescribing forms and providing for their use;
- (k) exempting any person or class of persons from any of the provisions of this Part;
- (l) defining any word or expression used but not defined in this Part;
- (m) generally to carry out more effectively the intent and purpose of this Part.

(2) The exercise of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 231, s. 52.

SCHEDULE TO PART III

FEES FOR LICENSES FOR AGENTS

The fees payable upon application for or renewal of a three[-]year license are as follows:

- (a) where the applicant is an individual \$398.10;
- (b) where the applicant carries on business as a partnership, corporation or under a business name \$398.10.

The fee payable upon application for a license determined by the Superintendent to expire in two years or less is \$265.40.

2015, c. 6, s. 29.

PART IV

LICENSES FOR ADJUSTERS

Licensing of adjuster

53 (1) Subject to Section 56, the Superintendent may issue to any person a license authorizing the person to act as an adjuster upon

- (a) the filing of an application in the form prescribed by the Superintendent;
- (b) payment of the fee prescribed by the regulations; and

(c) successful completion of courses or examinations, or both, as prescribed by the regulations.

(2) The Superintendent may, upon payment of the fee prescribed by the regulations, issue to the applicant a license on a probationary basis permitting the applicant to act as an adjuster while under the supervision of a licensed adjuster whose name is filed with the Superintendent and who accepts full responsibility for the applicant.

(3) A license issued to a partnership or corporation shall be issued in the name of the partnership or corporation.

(4) A license shall not be issued pursuant to subsection (3) unless the partnership or corporation has a licensed adjuster on staff.

(5) The license shall be subject to the limitations and conditions the Superintendent prescribes. R.S., c. 231, s. 53.

Expiration of license

54 (1) Every license expires at the end of three years after it has been issued or at such other time as the Superintendent may determine, but may be renewed on due application to the Superintendent and payment of the fee prescribed by the regulations, unless previously cancelled or suspended by the Superintendent.

(2) Notwithstanding subsection (1), the Superintendent may determine for a particular license or class of license an expiry date which is less than three years from the date on which it was issued or renewed.

(3) Every probationary license expires at the end of one year after it has been issued or at such other time as the Superintendent may determine, but may be renewed on application to the Superintendent, payment of the fee prescribed by the regulations and satisfaction of the filing requirements prescribed by the regulations, unless previously cancelled or suspended by the Superintendent. R.S., c. 231, s. 54.

Regulations respecting adjusters

55 (1) With the approval of the Governor in Council, the Superintendent may make regulations

- (a) respecting the qualifications and classification of adjusters;
- (b) respecting probationary adjusters;
- (c) providing for licenses for different classes of adjusters;
- (d) prescribing fees payable on the application for or renewal of licenses for adjusters;

- (e) prescribing the conditions upon which a license may be refused, revoked, suspended or not renewed;
- (f) relating to the form and content of courses of study for different classes of adjusters and licenses;
- (g) respecting the time and manner of conducting examinations of adjusters and prescribing the fees for such examinations;
- (h) prescribing books, accounts and records to be kept and maintained by adjusters;
- (i) fixing or limiting the fees or charges that may be made by adjusters;
- (j) requiring adjusters to supply information and make returns to the Superintendent and prescribing the contents of those returns;
- (k) exempting any person or class of persons from any of the provisions of this Part;
- (l) defining any word or expression used but not defined in this Part;
- (m) generally for the better carrying out of the provisions of this Part and the more efficient administration of it.

(2) Regulations made under this Section come into force upon publication in the Royal Gazette. R.S., c. 231, s. 55.

Advisory board

56 In determining the granting or refusal of an application for a license or renewal of a license of an adjuster or probationary adjuster, or the suspension or cancellation of a license or the reinstatement of any suspended or cancelled license, the Superintendent may, in any case where the Superintendent deems it proper, nominate an advisory board consisting of three persons, one of whom shall be the Superintendent or another person appointed by him, one of whom shall be a representative of insurers and one of whom shall be a representative of licensed adjusters before which board a hearing may be had and the report made to the Superintendent, and the Superintendent shall take such report into consideration when making a decision. R.S., c. 231, s. 56.

License required

57 (1) No person shall either on his own account or as a member or representative of a partnership or corporation, act or offer to undertake to act, as an adjuster or probationary adjuster unless he is the holder of a license that is in force.

(2) Subject to subsection (3), unless he holds an adjuster's license that is in force no person shall, on behalf of himself or any other person, directly or indirectly

(a) solicit the right to negotiate or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or

(b) hold himself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

(3) Subsection (2) does not apply to a barrister or solicitor acting in the usual course of his profession. R.S., c. 231, s. 57.

Suspension or cancellation of license

58 (1) A license may be suspended or cancelled by the Superintendent if, after due investigation, the Superintendent determines that the holder of the license

(a) has made a material mis-statement in the application for the license;

(b) has violated any provision of this Act or the regulations; or

(c) has demonstrated his incompetency or untrustworthiness to act as an adjuster or probationary adjuster, by anything done or omitted in connection with the business for which the license was granted.

(2) The Superintendent shall notify the adjuster or probationary adjuster by registered mail of the suspension or cancellation of the adjuster's or probationary adjuster's license pursuant to subsection (1).

(3) Upon receipt of the notification referred to in subsection (2), the adjuster or probationary adjuster shall forthwith return the license to the Superintendent. R.S., c. 231, s. 58.

Hearing prior to suspension or cancellation

59 (1) Before cancelling or suspending an adjuster's or probationary adjuster's license pursuant to Section 58, the Superintendent shall fix a time and place for a hearing to review the evidence and shall give the adjuster or probationary adjuster fifteen days notice of the hearing.

(2) The notice referred to in subsection (1) shall be delivered personally or by registered mail and shall include the particulars of all evidence in the possession of the Superintendent to be reviewed at the hearing in sufficient detail to enable the adjuster or probationary adjuster to respond. R.S., c. 231, s. 59.

Adjuster to notify Superintendent

60 Where a licensed insurance adjuster or a person who holds a license on a probationary basis ceases to act as adjuster either on his own account or as a member or representative of a partnership or corporation, he shall, within ten business days, notify the Superintendent in writing of such fact and the reason for the termination. R.S., c. 231, s. 60.

Evidence of adjuster status

61 A certificate purporting to be given by the Superintendent that on a day mentioned in the certificate

- (a) a person mentioned therein was or was not licensed under this Part;
- (b) a person mentioned therein was originally issued a license; or
- (c) the license of any adjuster mentioned therein was renewed, suspended, revised or revoked,

is admissible in evidence without proof of the signature or office of the person purporting to give the certificate and is *prima facie* proof of the facts stated in the certificate. R.S., c. 231, s. 61.

Investigation

62 (1) The Superintendent, or any person authorized by the Superintendent, may, upon complaint of any person interested, or when the Superintendent or the person authorized by the Superintendent deems it necessary without complaint, investigate and inquire into any such matter as the Superintendent or the person designated by the Superintendent deems expedient for the due administration of this Act, including the circumstances surrounding any transaction or matter or thing done by an adjuster or probationary adjuster whether licensed or not licensed.

(2) For the purpose of an investigation pursuant to subsection (1), the Superintendent or the person authorized by the Superintendent may inquire into and examine the business affairs of the person in respect of whom the investigation is being made, and may examine and inquire into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person and into any property, assets or things owned, acquired or alienated in whole or in part by such person, and any such person shall be bound to make prompt and explicit answers to any such inquiries.

(3) The Superintendent, or the person authorized by the Superintendent to make an investigation, may make copies of the documents referred to in subsection (2).

(4) For the purpose of an investigation pursuant to this Section, the Superintendent or the person authorized by the Superintendent has all the powers of a commissioner appointed pursuant to the *Public Inquiries Act*. R.S., c. 231, s. 62.

Appeal

63 (1) A person who is dissatisfied with a decision of the Superintendent pursuant to this Part may, within thirty days from the date of the decision, appeal to a judge of the county court who may, upon hearing the appeal which shall be heard in accordance with the *Summary Proceedings Act*, by order do any one or more of the following things:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;
- (d) vary the decision appealed against;
- (e) refer the matter back to the Superintendent for further consideration and decision;
- (f) award costs of the appeal;
- (g) make such other order as to the judge seems just.

(2) The appeal shall be by notice of appeal and a copy thereof shall be served upon the Superintendent not less than ten days before the day on which the motion is returnable.

(3) On the hearing of an appeal any evidence taken before the Superintendent and certified by the Superintendent may, with leave of the judge hearing the appeal, be read and shall have the like force and effect as if the witness were there examined and any party affected by the appeal may call witnesses and adduce evidence, whether or not the witnesses were called or the evidenced adduced at the hearing before the Superintendent, either as to the credibility of witnesses or as to any other fact material to the inquiry.

(4) An appeal lies to the Appeal Division of the Supreme Court from a decision of the county court upon any question of law but such appeal can only be taken by leave of a judge of the Appeal Division given upon an application presented to the judge within thirty days after the rendering of the decision and upon such terms as the judge may determine, and notice of such application to the Superintendent at least two clear days before the presentation of such application.

(5) Where leave to appeal has been granted, the appeal shall be brought by notice served on the Superintendent within ten days after the leave to appeal has been granted and the notice shall contain the names of the parties and the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 231, s. 63.

PART V

ACCIDENT AND SICKNESS INSURANCE

Interpretation of Part

64 In this Part,

(a) “application” means a written application for insurance or for the reinstatement of insurance;

(b) “beneficiary” means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;

(c) “blanket insurance” means that class of group insurance which covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities;

(d) “contract” means a contract of insurance;

(e) “Court” means the Trial Division of the Supreme Court or a judge thereof;

(f) “creditor's group insurance” means insurance effected by a creditor whereby the lives or well-being, or the lives and well-being, of a number of his debtors are insured severally under a single contract;

(g) “declaration” means an instrument signed by the insured

(i) with respect to which an endorsement is made on the policy,

(ii) that identifies the contract, or

(iii) that describes the insurance or insurance fund or a part thereof,

in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money which is payable in the event of death by accident;

(h) “family insurance” means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

(i) “group insurance” means insurance other than creditor's group insurance and family insurance, whereby the lives or well-being, or the lives and well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

(j) “group person insured” means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;

- (k) “instrument” includes a will;
- (l) “insurance” means accident insurance, sickness insurance, or accident and sickness insurance;
- (m) “insured” means
 - (i) in the case of group insurance, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and
 - (ii) in all other cases the person who makes a contract with an insurer;
- (n) “person insured” means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;
- (o) “will” includes a codicil. R.S., c. 231, s. 64.

Application of Part

65 (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the Province on and after the first day of December, 1970, and this Section and Sections 64, 66, 67, 76, 79 to 81, 85 and 87 to 103 apply also to a contract made in the Province before that day.

(2) Sections 53, 54, 55, 56, 58, 65 and 68 of Part V of Chapter 148 of the Revised Statutes, 1967, in force immediately prior to the first day of December, 1970, apply to a contract made in the Province before that day.

- (3)** This Part does not apply to
- (a) accidental death insurance;
 - (b) creditor's group insurance;
 - (c) disability insurance; or
 - (d) insurance provided under Section 139 or 140. R.S., c. 231, s. 65.

Application to group insurance contract

66 In the case of a contract of group insurance made with an insurer authorized to transact insurance in the Province at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in the Province at the time he became insured; and
- (b) the rights and obligations of the group person insured if he was resident in the Province at the time he became insured. R.S., c. 231, s. 66.

Policy to be issued

67 An insurer entering into a contract shall issue a policy. R.S., c. 231, s. 67.

Particulars in policy

68 (1) This Section does not apply to

- (a) a contract of group insurance; or
- (b) a contract made by a fraternal society.

(2) An insurer shall set forth the following particulars in the policy:

- (a) the name or a sufficient description of the insured and of the person insured;
- (b) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) the conditions upon which the contract may be reinstated if it lapses; and
- (e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates. R.S., c. 231, s. 68.

Condition respecting confinement

69 (1) Where a contract of accident insurance or sickness insurance issued on or after the first day of July, 1976 includes a provision that a benefit is payable to an insured on account of his disability and the provision is conditional on the confinement of the insured, the condition is null and void.

(2) Notwithstanding subsection (1), a contract of accident or sickness insurance may provide for

- (a) early commencement of loss of time benefits based on the admission to hospital of the person insured;
- (b) payment of loss of time benefits during the period of in-patient hospitalization of the person insured;
- (c) payment of per diem benefits during the period of in-patient hospitalization of the person insured;
- (d) payment of lump sum benefits based on the admission to hospital or the period of in-patient hospitalization of the person insured. R.S., c. 231, s. 69.

Particulars in policy of group insurance

70 In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the group persons insured and persons insured;
- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid; and
- (e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates. R.S., c. 231, s. 70.

Continuing liability after termination

71 (1) In this Section,

(a) “original maximum benefit” means, in relation to a contract of group insurance, the maximum period provided under that contract for the payment of any benefit payable thereunder in respect of loss of income;

(b) “prescribed time period” means, in relation to a contract of group insurance, a continuous period of six months following the termination of the contract or benefit provision therein or such longer continuous period as may be provided in that contract instead of the six month period.

(2) Where a contract of group insurance or benefit provision therein is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable, to or in respect of any group person insured under the contract, to pay benefits thereunder relating to

- (a) loss of income because of disability;
- (b) death;
- (c) dismemberment; or
- (d) accidental damage to natural teeth,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision, if the disability, death, dismemberment or accidental damage to natural teeth is reported to the insurer within the prescribed time period.

(3) Notwithstanding clause (a) of subsection (2), an insurer does not remain liable, under a contract or benefit provision described in that subsection, to pay a benefit for loss of income for the re-occurrence, after the termination of that contract or benefit provision, of a disability that re-occurs after a continuous period

of six months, or such longer period as is provided in the contract, during which the group person insured was not disabled.

(4) An insurer who is liable under subsection (2) to pay a benefit for loss of income on account of the disability of a group person insured is not liable to pay benefits for any period longer than the period remaining of the original maximum benefit period in respect of the disability of the group person insured.

(5) Where a contract of group insurance, herein referred to as the “replacing contract”, is entered into within thirty-one days of the termination of another contract of group insurance, herein referred to as the “other contract”, and insures the same group or a part of the group insured under the other contract,

(a) the replacing contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract, if

(i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and

(ii) the person is a member of a class eligible for insurance under the replacing contract;

(b) every person who was insured under the other contract and who is insured under the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract; and

(c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract,

but if the replacing contract provides that the full benefits required to be paid pursuant to subsection (2) by the insurer of the other contract are to be provided instead under the replacing contract, the insurer of the other contract is not liable to pay any such benefits. R.S., c. 231, s. 71.

Particulars to person covered

72 (1) Except as provided in subsection (2) in the case of a contract of group insurance, an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set forth the following particulars:

(a) the name of the insurer and a sufficient identification of the contract;

(b) the amount or the method of determining the amount of insurance on the group person insured and on any person insured;

(c) the circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

(2) This Section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less. R.S., c. 231, s. 72.

Disclosure of exception or reduction

73 (1) Subject to Section 74 and except as otherwise provided in this Section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as “Exceptions” or “Reductions”.

(2) Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

(4) The exception or reduction mentioned in Section 86 need not be set forth in the policy.

(5) This Section does not apply to a contract made by a fraternal society. R.S., c. 231, s. 73.

Statutory conditions

74 Subject to Section 75, the conditions set forth in the Schedule to this Part shall be deemed to be part of every contract other than a contract of group insurance and shall be printed on or attached to the policy forming part of such contract with the heading “Statutory Conditions”. R.S., c. 231, s. 74.

Omission of statutory condition

75 (1) Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

(2) Statutory conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with therein.

(3) Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

(4) Statutory conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in Section 74.

(5) Clauses (a) and (b) of paragraph (1) of statutory condition 7 may not be varied in policies providing benefits for loss of time.

(6) Statutory conditions 10 and 11 may be varied by shortening the periods of time prescribed therein, and statutory condition 12 may be varied by lengthening the period of time prescribed therein.

(7) The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

(8) In the case of a contract made by a fraternal society,

(a) the following provision shall be printed on every policy in substitution for paragraph (1) of statutory condition 1:

1 (1) *The contract* - This policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

and

(b) statutory condition 5 shall not be printed on the policy.
R.S., c. 231, s. 75.

Notice of statutory conditions

76 In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type:

Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident insurance.

R.S., c. 231, s. 76; revision corrected 1999.

Effect of delivery of policy or renewal

77 (1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or, in the case of a renewal certificate, the renewal premium therefor has not been fully paid,

(a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if such premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it; and

(b) the contract may be terminated for the non-payment of the premium by the insurer upon ten days notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer and the ten days shall begin on the day following the date of mailing such notice.

(2) This Section does not apply to a contract of group insurance or to a contract made by a fraternal society. R.S., c. 231, s. 77.

Unpaid premium

78 (1) An insurer may

(a) deduct unpaid premiums from an amount which it is liable to pay under a contract; or

(b) sue the insured for unpaid premiums.

(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed never to have been paid.

(3) Clause (a) of subsection (1) does not apply to a contract of group insurance.

(4) This Section does not apply to a contract made by a fraternal society. R.S., c. 231, s. 78.

Persons with insurable interest

79 Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and well-being and in the life and well-being of

(a) his child or grandchild;

(b) his spouse or common-law partner;

(c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education;

(d) his officer or employee; and

(e) any person in whom he has a pecuniary interest. R.S., c. 231, s. 79; 2000, c. 29, s. 24.

No insurable interest

80 (1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

- (2)** A contract is not void for lack of insurable interest
- (a) if it is a contract of group insurance; or
 - (b) if the person insured has consented in writing to the insurance.

(3) Where the person insured is under the age of sixteen years, consent to the insurance may be given by one of his parents or by a person standing *in loco parentis* to him. R.S., c. 231, s. 80.

POLICIES ON LIVES OF MINORS

Capacity of minor

81 (1) Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of nineteen years

- (a) to make an enforceable contract; and
- (b) in respect of a contract.

(2) A beneficiary who has attained the age of eighteen years has the capacity of a person of the age of nineteen years to receive insurance money payable to him and to give a valid discharge therefor. R.S., c. 231, s. 81.

MISREPRESENTATION AND
NON-DISCLOSURE**Duty to disclose**

82 (1) An applicant for insurance on his own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to Sections 83 and 86, a failure to disclose, or a misrepresentation of, such a fact renders a contract voidable by the insurer.

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to Section 83, voidable by the insurer. R.S., c. 231, s. 82.

Contract not voidable

83 (1) Subject to Section 86 and except as provided in subsection (2),

(a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by Section 82 to be disclosed does not, except in the case of fraud, render the contract voidable;

(b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by Section 82 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim. R.S., c. 231, s. 83.

Reinstatement

84 Sections 82 and 83 apply *mutatis mutandis* to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in Section 83 commences to run in respect of a reinstatement from the date of reinstatement. R.S., c. 231, s. 84.

Prior existence of disease or condition

85 Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

(a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person; and

(b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract. R.S., c. 231, s. 85.

Mis-statement of age

86 (1) Subject to subsections (2) and (3), if the age of the person insured has been mis-stated to the insurer then, at the option of the insurer, either

(a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or

(b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

(2) In the case of a contract of group insurance, if there is a mis-statement to the insurer of the age of a group person insured or person insured, the provisions, if any, of the contract with respect to age or mis-statement of age shall apply.

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs. R.S., c. 231, s. 86.

BENEFICIARIES**Designation of representative or beneficiary**

87 (1) Unless otherwise provided in the policy, an insured may, in a contract or by a declaration, designate his personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.

(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(3) A designation in a will is of no effect against a designation made later than the making of the will.

(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will would have been revoked by operation of law or otherwise, the designation is thereby revoked. R.S., c. 231, s. 87.

Designation and payment

88 (1) A designation in favour of the "heirs", "next of kin" or "estate", or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative.

(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased

beneficiary in the insurance money is provided in the contract or by declaration, the share is payable

- (a) to the surviving beneficiary;
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his personal representative.

(3) A beneficiary designated under Section 87 may, upon the death by accident of the person insured or group person insured, enforce for his own benefit, and a trustee appointed pursuant to Section 89 may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his personal representative. R.S., c. 231, s. 88; revision corrected 1999.

Trustee for beneficiary

89 An insured may, in contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration. R.S., c. 231, s. 89.

Payment and assignment

90 (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a Court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary.

(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interest given by the contract and by this Part to the insured, and shall be deemed to be the insured.

(5) A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable, is valid. R.S., c. 231, s. 90.

Entitlement of beneficiary

91 (1) Where a beneficiary is designated, any insurance money payable to him is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured, and is not subject to the claims of the creditors of the insured.

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse or common-law partner, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure. R.S., c. 231, s. 91; 2000, c. 29, s. 24.

Enforcement of contract by group person insured

92 A group person insured may, in his own name, enforce a right given by a contract to him, or to a person insured thereunder as a person dependent upon or related to him, subject to any defence available to the insurer against him or such person insured or against the insured. R.S., c. 231, s. 92.

Simultaneous deaths

93 Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection (2) of Section 88 as if the beneficiary had predeceased the person insured or group person insured. R.S., c. 231, s. 93.

Payment into court

94 (1) Where the insurer admits liability for the insurance money or any part thereof, and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of the person entitled is unknown; or
- (c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply *ex parte* to the Court for an order for payment of money into Court, and the Court may upon such notice, if any, as it deems necessary, make an order accordingly.

(2) The Court may fix without taxation the costs incurred upon or in connection with any application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it deems just.

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment. R.S., c. 231, s. 94.

Payment into court for minor

95 (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1), the sum of ten dollars where the amount does not exceed one thousand dollars, and the sum of fifteen dollars in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Minister of Community Services and deliver to him a copy of the affidavit. R.S., c. 231, s. 95.

Payment for beneficiary under disability

96 Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 96.

Payment to authorized person

97 Notwithstanding that insurance money is payable to a person, the insurer may, if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding two thousand dollars to

(a) a relative by blood or connection by marriage of a person insured or the group person insured; or

(b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto, and any such payment discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 97.

Place of payment

98 (1) Subject to subsection (2), insurance money is payable in the Province.

(2) In the case of a contract of group insurance, insurance money is payable in the province of Canada in which the group person insured was resident at the time he became insured.

(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

(4) Where a person entitled to receive insurance money is not domiciled in the Province, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

(5) Where insurance money is by the contract payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in the Province, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 98.

Claimant may sue in Province

99 Regardless of the place where a contract was made, a claimant who is a resident of the Province may bring an action in the Province if the insurer was authorized to transact insurance in the Province at the time the contract was made or at the time the action is brought. R.S., c. 231, s. 99.

Information affecting insurance money

100 An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money. R.S., c. 231, s. 100.

Undue prominence to policy term

101 The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy. R.S., c. 231, s. 101.

Imperfect compliance with statutory condition

102 Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or

avoidance of the insurance in whole or in part, and a Court before which a question relating thereto is tried deems it inequitable that the insurance should be forfeited or avoided on that ground, the Court may relieve against the forfeiture or avoidance on such terms as it deems just. R.S., c. 231, s. 102.

Persons not agent of insured

103 No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract. R.S., c. 231, s. 103.

SCHEDULE TO PART V

STATUTORY CONDITIONS

1 (1) *The contract* - The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

(2) *Waiver* - The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

(3) *Copy of application* - The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

2 *Material facts* - No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

3 (1) *Changes in occupation* - If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either,

(a) reduce the premium rate; or

(b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

4 *Relation of earnings to insurance* - Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract,

including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

5 *Termination by insured* - The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the Province, or by delivery thereof to an authorized agent of the insurer in the Province, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

6 (1) *Termination by insurer* - The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the *pro rata* premium for the expired time.

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on records of the insurer.

(3) Where the notice of termination is delivered to the insured, five days notice of termination shall be given; where it is mailed to the insured, ten days notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

7 (1) *Notice and proof of claim* - The insured or a person insured or a beneficiary entitled to make a claim, or the agent of any of them, shall

(a) give written notice of claim to the insurer

(i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the Province, or

(ii) by delivery thereof to an authorized agent of the insurer in the Province,

not later than thirty days from the date a claim arises under the contract on account of an accident, sickness or disability;

(b) within ninety days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age and the age of the beneficiary if relevant; and

(c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

(2) *Failure to give notice or proof* - Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

8 *Insurer to furnish forms for proof of claim* - The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

9 *Rights of examination* - As a condition precedent to recovery of insurance moneys under this contract,

(a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending; and

(b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

10 *When moneys payable other than for loss of time* - All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within sixty days after it has received proof of claim.

11 *When loss of time benefits payable* - The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding sixty days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

12 *Limitation of actions* - An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would become payable if it had been a valid claim.

R.S., c. 231, Part V, Sch.

PART VI

AUTOMOBILE INSURANCE

Interpretation of Part

104 In this Part,

(a) “Assigned Risk Plan” means the Nova Scotia Automobile Assigned Risk Plan as presently constituted and operated by automobile insurance companies carrying on business in the Province or by the Facility Association and approved for the purposes of this Act by the Minister;

(b) “automobile” includes a trolley bus and a self-propelled vehicle, and the trailers, accessories, and equipment of any of them but does not include railway rolling stock that runs on rails, or watercraft, or aircraft of any kind;

(c) “automobile insurance” means insurance

(i) against liability arising out of

(A) bodily injury to or death of a person, or

(B) loss of or damage to property,
caused by an automobile or the use or operation thereof,

(ii) against loss of or damage to an automobile and the loss of use thereof,

and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also includes insurance described in subclause (i);

(d) *repealed 2003 (2nd Sess.), c. 1, s. 8.*

(e) “contract” means a contract of automobile insurance;

(ea) “Facility Association” means the Facility Association continued under the *Compulsory Automobile Insurance Act* (Ontario) and includes any successor to it;

(f) “insured” means a person insured by a contract whether named or not and includes any person who is stated in the contract to be entitled to benefits payable under insurance referred to in Section 140, whether or not the person is described therein as an insured person;

(g) “licensed insurer” means an insurer licensed pursuant to Section 6 to carry on the business of automobile insurance in the Province;

(ga) “mandatory condition” means a condition in a contract prescribed by regulation;

(h) “motor vehicle liability policy” means a policy, or that part of a policy, evidencing a contract insuring

(i) the owner or driver of an automobile, or

(ii) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf,

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

(i) “non-owner's policy” means a motor vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;

(j) “owner's policy” means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy, and, if the contract so provides, in respect of the use or operation of any other automobile;

(k) “rating bureau” means any association or body, incorporated or unincorporated, of insurance companies created or organized for the purpose of filing or promulgating rates of premium payable upon contracts of

automobile insurance in the Province or which assumes to file or promulgate such rates by agreement among the members thereof or otherwise. R.S., c. 231, s. 104; 1995-96, c. 20, s. 1; 2003 (2nd Sess.), c. 1, s. 8.

APPLICATION OF PART

Application of Part

105 (1) This Part applies to contracts providing automobile insurance made or renewed in the Province.

- (2)** This Part does not apply to contracts insuring only against
- (a) loss of, or damage to, an automobile while in or on described premises;
 - (b) loss of, or damage to, property carried in or upon an automobile; or
 - (c) liability for loss of, or damage to, property carried in or upon an automobile.

(3) This Part does not apply to a contract providing insurance with respect to an automobile not required to be registered under the *Motor Vehicle Act*, unless it is insured under a contract evidenced by a form of policy approved under this Part.

(4) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile.

(5) Every insurance company from time to time licensed to issue a motor vehicle liability policy shall subscribe to the Assigned Risk Plan and be a member of Judgment Recovery (N.S.) Ltd. and shall be bound by any and all provisions governing such subscribers and members.

(6) Every Assigned Risk Plan shall file with the Superintendent a copy of its constitution, by-laws, rules, and regulations and any alterations or additions thereto not later than ten days after the same are made. R.S., c. 231, s. 105.

Participation in plan

106 (1) Every insurer carrying on the business of automobile insurance in the Province shall be a participant in and subject to the terms and conditions of any government or industry plan to ensure a market for automobile insurance to all licensed operators of a motor vehicle.

(1A) Every insurer carrying on the business of automobile insurance in the Province shall be a participant in and be subject to the terms and conditions of the facility association plan of operations which will provide, in accordance with Sections 139A to 139U, payment with respect to claims for damages made by

persons who are not insured under a contract within the meaning of Section 139 and who have no other insurance or have other insurance that is inadequate, with respect to the damages claimed, and shall, in accordance with this Act and the articles of association or by-laws of a plan to which subsection (1) applies, establish and implement a plan of operation and carry out its obligations in the Province with respect to that plan of operation.

(2) The responsible official of any plan referred to in subsection (1) shall file with the Superintendent a copy of the constitution, by-laws, rules and regulations thereof and, in case of any change that may be proposed or contemplated thereafter, shall file also a copy of such change at least thirty days before the change is to go into effect.

(3) The Governor in Council may appoint a person, board or agency to prepare and implement a plan to ensure a market for automobile insurance to all licensed operators of a motor vehicle or to determine, review, approve, reject or vary rates, surcharges, premiums or other amount payable by an insured for insurance issued under such a plan, and the appointment of a person, board or agency pursuant to this subsection shall confer upon the person, board or agency all powers and authorities necessary to carry out the intent and purpose of this Section.

(3A) *repealed 2003 (2nd Sess.), c. 1, s. 9.*

(4) A person, board or agency referred to in subsection (3) may fix fees to recover the direct and indirect costs incurred by the person, board or agency in performing their functions and duties pursuant to this Section.

(5) The fees referred to in subsection (4)

(a) shall be paid to the person, board or agency by the facility association in such proportions as the person, board or agency determines; and

(b) may include the cost of retaining experts and legal counsel to provide the person, board or agency with advice, including testimony, on technical and legal matters. R.S., c. 231, s. 106; 1995-96, c. 20, s. 2; 2002, c. 5, s. 31; 2003, c. 11, s. 1; 2003 (2nd Sess.), c. 1, s. 9.

Representation of insurer and keeping records in Province

107 (1) *repealed 2003 (2nd Sess.), c. 1, s. 10.*

(2) Complete files and records respecting pending claims arising in the Province and dealt with by an insurer carrying on the business of automobile insurance in the Province shall be kept in its principal place of business in the Province.

(3) An insurer who contravenes the provisions of this Section shall be guilty of an offence and shall be liable to a fine not exceeding five thousand dollars for each day the offence occurs or continues.

(4) Notwithstanding subsection (3), the Superintendent may suspend or cancel the license of a person authorized to carry on the business of automobile insurance in the Province who contravenes the provisions of this Section.

(5) Subsection (2) comes into force on and not before such day as the Governor in Council orders and declares by proclamation. R.S., c. 231, s. 107; 2003 (2nd Sess.), c. 1, s. 10.

LEVY PURSUANT TO HEALTH SERVICES AND INSURANCE ACT AND THIS ACT

Levy

107A (1) Upon the Superintendent being notified by the Minister of Health of the amount of the levy imposed upon insurers pursuant to the *Health Services and Insurance Act*, the Superintendent shall notify each automobile insurer of the amount of the levy and each insurer shall remit to the Superintendent the amount of the levy in accordance with the provisions of the *Health Services and Insurance Act*.

(2) Where an insurer referred to in subsection (1) fails to remit the levy imposed pursuant to the *Health Services and Insurance Act* within the prescribed time and in the prescribed manner, the Superintendent shall suspend the licence of the insurer to transact automobile insurance in the Province, such suspension to take effect at midnight of the last day for making the remittance.

(3) Where the licence of an insurer to transact automobile insurance in the Province is suspended pursuant to subsection (2), the Superintendent may reinstate the licence upon being satisfied that the insurer has remedied the default which gave rise to the suspension.

(4) A suspension pursuant to subsection (2) of a licence of an insurer to transact automobile insurance in the Province does not affect the validity of any policy of the insurer and all the rights, duties, obligations and liabilities of the insured and the insurer under the policy remain in full force and effect.

(5) Where an insurer whose licence to transact automobile insurance in the Province has been suspended pursuant to subsection (2) fails to remedy the default within ninety days, the Superintendent shall, upon giving notice to the insurer, revoke the licence of the insurer.

(6) Where the licence of an insurer to transact automobile insurance in the Province is revoked pursuant to subsection (5), the Superintendent, without the consent of the policyholders of the insurer, may appoint an administrator for the automobile insurance contracts of the insurer in the Province and the appointment remains in force until revoked by the Superintendent.

(7) The remuneration of the administrator appointed pursuant to subsection (6) shall be in the absolute discretion of the Superintendent and all costs,

including the remuneration of the administrator and the reinsurance of the automobile insurance contracts in the Province, shall be borne by the insurer whose licence was revoked.

(8) The administrator appointed pursuant to subsection (6) shall have a right of access to, and the insurer whose licence was revoked shall provide, all books and records relating to all automobile insurance contracts of the insurer in the Province in force at the time of the revocation of the licence of the insurer.

(9) The administrator appointed pursuant to subsection (6) may arrange for the reinsurance in another licensed insurer of all automobile insurance contracts of the insurer in the Province whose licence was revoked pursuant to subsection (5).

(10) Where the licence of an insurer to transact automobile insurance in the Province is revoked pursuant to subsection (5), all automobile insurance contracts in the Province, the terms and conditions thereof and all rights, duties and liabilities of the insured and the insurer remain in full force and effect until the contracts have been reinsured pursuant to subsection (9).

(11) An administrator appointed pursuant to subsection (6) may make a valid and effectual assignment to the reinsurer of all the right, title and interest of the insurer whose licence was revoked pursuant to subsection (5), in and to the automobile insurance contracts of that insurer in the Province in force at the time of reinsurance.

(12) Where an assignment of contracts to a reinsurer is made by an administrator pursuant to subsection (11), all right, title and interest in the unearned premiums existing in respect of those contracts shall, effective as of the time of reinsurance, vest in the reinsurer and the insurer whose licence was revoked pursuant to subsection (5) shall immediately pay over to the reinsurer an amount equal to the amount of the unearned premiums then in existence.

(13) Where the right, title and interest in unearned premiums vests in the reinsurer pursuant to subsection (12), the interest so vested in the reinsurer constitutes a debt owing to the reinsurer by the insurer whose licence was revoked pursuant to subsection (5) and the debt is a first charge against all assets in the Province of the insurer whose licence was revoked. 1992, c. 14, s. 53; 1992, c. 20, s. 28.

Levy on each insured vehicle

107B (1) In each year, every automobile insurer shall pay a levy of fifty cents with respect to each vehicle insured by that automobile insurer for the purpose of recovering costs incurred by volunteer fire departments in responding to motor vehicle accidents.

(2) The Superintendent shall notify each automobile insurer of the levy on or before June 30th in each year.

(3) An automobile insurer shall remit to the Superintendent the funds payable by the automobile insurer with respect to the levy no later than August 31st in each year.

(4) Where an automobile insurer fails to remit the funds payable with respect to the levy in accordance with this Section, the Superintendent may suspend the licence of the automobile insurer to transact automobile insurance in the Province effective after August 31st of the year in which the funds are due.

(5) Subsections 107A(3) to (13) apply *mutatis mutandis* to a licence suspension pursuant to this Section as if it were a licence suspension pursuant to subsection 107A(2).

(6) The funds collected from automobile insurers with respect to the levy shall be paid to volunteer fire departments as the Minister may determine.

(7) For greater certainty, nothing in this Section prevents a fire department from making a claim for costs incurred in responding to a motor vehicle accident.

(8) The Governor in Council may make regulations respecting

(a) the calculation and remittance of the funds payable by automobile insurers with respect to the levy;

(b) the notification of automobile insurers with respect to the levy and the funds payable;

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

(d) any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

(9) The exercise by the Governor in Council of the authority contained in subsection (8) is regulations within the meaning of the *Regulations Act*, 2011, c. 35, s. 5.

APPROVAL OF FORMS

Approval by Superintendent

108 (1) No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

(2) An insurer may require additional information in an approved application form but such additional information does not constitute any part of the application for the purposes of Section 111.

(3) Where, in the opinion of the Superintendent, any provision of this Part, including any mandatory condition, is wholly or partly inappropriate to the requirements of a contract or is so inapplicable by reason of the requirements of any Act, he may approve a form of policy or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or part thereof or endorsement, in the form so approved, is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or condition of this Part.

(4) Except as to matters in Section 121, the Superintendent may, if he considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge for the extension an additional premium and to state this in the policy or in any endorsement.

(6) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general, and which for the purpose of Section 110, shall be the standard owner's policy.

(7) Where the Superintendent approves a form referred to in subsection (6), he shall cause a copy thereof, and of amendments thereto, to be published in the Royal Gazette, but it is not necessary for him to publish in the Royal Gazette endorsement forms approved for use with that form.

(8) The Superintendent may revoke any approval given under this Section and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

(9) The Superintendent shall, on request of any interested insurer, specify in writing his reasons for granting, refusing or revoking an approval of a form. R.S., c. 231, s. 108; 2003 (2nd Sess.), c. 1, s. 11.

APPLICATION AND POLICY

Persons forbidden to act as agent

109 No person carrying on the business of financing the sale or purchase of automobiles, and no automobile dealer, insurance agent or broker, and no officer or employee of such a person, dealer, agent or broker, shall act as the agent of an applicant for the purpose of signing an application for automobile insurance. R.S., c. 231, s. 109.

Requirements respecting application

110 (1) A copy of the written application signed by the insured or his agent, or if no signed application is made, a copy of the purported application, or such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon or attached to the policy when issued by the insurer.

(2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy or the agent for delivery or mailing to the insured a form of application to be completed and signed by the insured and returned to the insurer.

(3) Subject to subsection (6), the insurer shall deliver or mail to the insured named in the policy, or the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment of the contract.

(4) Where a written application signed by the insured or his agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification he informs the insurer in writing that he rejects the policy.

(5) Upon every application form and policy there shall be printed or stamped in conspicuous type a copy of subsection (1) of Section 111.

(6) Where an insurer adopts the standard owner's policy, it may, instead of issuing the policy, issue a certificate in the form approved by the Superintendent which, when issued, is of the same force and effect as if it was in fact the standard owner's policy, subject to the limits and coverages shown thereon by the insurer and any endorsements issued concurrently therewith or subsequent thereto but, at the request of an insured at any time, the insurer shall provide a copy of the standard owner's policy wording as approved by the Superintendent.

(7) Where a certificate referred to in subsection (6) is issued, subsection (5) and subsection (2) of Section 137 apply to the certificate. R.S., c. 231, s. 110.

Misrepresentation or contravention and defence

111 (1) Where

- (a) an applicant for a contract
 - (i) gives false particulars of the described automobile to be insured, to the prejudice of the insurer, or
 - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;

(b) the insured contravenes a term of the contract or commits a fraud; or

(c) the insured wilfully makes a false statement with respect to a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor, or where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy.

(3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof. R.S., c. 231, s. 111.

Mandatory conditions

112 (1) In this Section, “policy” does not include an interim receipt or a binder.

(2) Subject to subsections (3), (4) and (5), subsection (3) of Section 108 and Section 137,

(a) the mandatory conditions are part of every contract;

(b) the mandatory conditions shall be printed in every policy under the heading “Mandatory Conditions”; and

(c) no variation from, omission of or addition to a mandatory condition is binding upon the insured.

(3) The mandatory conditions do not apply to insurance coming within Sections 139 and 140.

(4) In prescribing the mandatory conditions, the Governor in Council may provide that specific conditions do not apply to contracts that do not insure against liability for loss or damage to persons and property, or to contracts that do not insure against loss of or damage to the automobile.

(5) Notwithstanding subsection (2), no contract of automobile insurance or policy document or form printed before the coming into force of this Section is invalid or of no effect for the reason only that it bears

(a) the words “Statutory Conditions” or “statutory conditions” instead of “Mandatory Conditions” or “mandatory conditions”;

(b) words that may have a different spelling or be presented in a different form, but have an identical intent or purpose; or

(c) different numbering or cross-referential numbering that conveys the same effect. 2003 (2nd Sess.), c. 1, s. 12.

Excluded driver

113 Where a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or this Act with respect to any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract. 2003 (2nd Sess.), c. 1, s. 12.

Effect of income-continuation benefit plan

113A In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for income loss and loss of earning capacity shall be reduced by all payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for income loss or loss of earning capacity under the laws of any jurisdiction or under an income-continuation benefit plan if, under the law or the plan, the provider of the benefit retains no right of subrogation. 2003 (2nd Sess.), c. 1, s. 12.

Limitation on liability

113B (1) In this Section,

(a) “minor injury” means a personal injury that

(i) does not result in a permanent serious disfigurement,

(ii) does not result in a permanent serious impairment of an important bodily function caused by a continuing injury which is physical in nature, and

(iii) resolves within twelve months following the accident;

(b) “serious impairment” means an impairment that causes substantial interference with a person’s ability to perform their usual daily activities or their regular employment.

(2) and (3) *repealed 2010, c. 18, s. 2.*

(4) Notwithstanding any enactment or any rule of law, but subject to subsection (6), the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, are only liable in an action in the Province for damages for any award for pain and suffering or any other non-monetary loss from bodily injury or death arising directly or indirectly from the use or operation of the automobile for a minor injury to the amount prescribed in the regulations.

(5) *repealed 2010, c. 18, s. 2.*

(6) In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine, for the purpose of subsection (4), whether, as a result of the use or operation of the automobile, the injured person has suffered a minor injury.

(7) The determination of a judge on a motion under subsection (6) is binding on the parties at the trial.

(8) Where no motion is made under subsection (6), the judge shall determine for the purpose of this Section whether, as a result of the use or operation of the automobile, the injured person has suffered a minor injury.

(9) This Section and any regulations made with respect to this Section do not apply to any action for damages with respect to an incident that occurs on or after the twenty-eighth day of April, 2010. 2003 (2nd Sess.), c. 1, s. 12; 2010, c. 18, s. 2.

Excluded damages

113BA(1) Notwithstanding any enactment or any rule of law, but subject to subsection (6) of Section 113B and subsection (4) of Section 113E, the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, are not liable in an action in the Province for the following damages for income loss and loss of earning capacity from bodily injury or death arising directly or indirectly from the use or operation of the automobile:

(a) damages for income loss suffered before the trial of the action in excess of the net income loss, as determined by regulation, suffered during that period;

(b) damages for loss of earning capacity suffered after the incident and before the trial of the action in excess of the net loss of earning capacity, as determined by regulation, suffered during that period.

(2) Subsection (1) applies to all actions, including actions under the *Fatal Injuries Act* and similar legislation.

(3) Subsection (4) of Section 113B, subsection (1) of this Section and subsection (3) of Section 113E do not protect a person from liability if the person is defended in the action by an insurer that is not licensed to undertake automobile insurance in the Province, unless the insurer has filed an undertaking to become licensed to undertake automobile insurance in the Province. 2010, c. 18, s. 3.

Discount rate

113C In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, under any enactment or rule of law, an award against the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, shall not be calculated using a discount rate less than the amount prescribed by the Governor in Council by regulation. 2003 (2nd Sess.), c. 1, s. 12.

Excess insurance

113D Nothing in Sections 113A to 113C or Section 113E prevents an insurer from providing a policy or endorsement to compensate an insured with respect to damages for any award for pain or suffering or any other non-monetary loss in excess of the amount prescribed in the regulations or with respect to any other limitation on damages in those Sections. 2003 (2nd Sess.), c. 1, s. 12; 2010, c. 18, s. 4.

Accident claims

113E (1) In this Section,

- (a) “accident” means an accident or other incident arising directly or indirectly from the use or operation of an automobile;
- (b) “accident claim” means a claim for loss or damages for bodily injury or death arising from an accident;
- (c) “claimant” means a person injured as a result of an accident;
- (d) “minor injury”, with respect to an accident, means
 - (i) a sprain,
 - (ii) a strain, or
 - (iii) a whiplash-associated disorder injury,

caused by that accident that does not result in a serious impairment.

(2) This Section and any regulations made pursuant to or with respect to this Section applies to any accident claim with respect to an accident that occurs on or after the twenty-eighth day of April, 2010.

(3) In an accident claim, the amount recoverable as damages for non-monetary loss of the claimant for a minor injury must be calculated or otherwise determined in accordance with the regulations.

(4) In an accident claim, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine, for the purpose of subsection (3), whether the claimant has suffered a minor injury.

(5) The determination of a judge on a motion under subsection (4) is binding on the parties at the trial.

(6) Where no motion is made under subsection (4), the judge shall determine for the purpose of this Section whether the claimant has suffered a minor injury.

(7) The Governor in Council may make regulations

(a) providing for the classification of, or categories of, minor injuries;

(b) providing for the assessment of injuries including, without limiting the generality of the foregoing, regulations establishing or adopting guidelines, best practices or other methods for assessing whether an injury is or is not a minor injury;

(c) governing damages, including the amounts of or limits on damages, for non-monetary loss for minor injuries;

(d) providing for or otherwise setting out circumstances under which a minor injury to which this Section would otherwise apply is exempt from the application of this Section;

(e) governing the application of this Section in respect of injuries arising out of an accident if the injuries consist of a combination of minor injuries to which this Section applies and injuries to which this Section does not apply;

(f) providing for or otherwise setting out circumstances under which an injury that results in a serious impairment is a minor injury;

(g) respecting the onus of proof relating to minor injuries;

(h) respecting any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

(8) A regulation made pursuant to subsection (7) may be made retroactive in its effect to a day not earlier than the day that this Section has effect.

(9) The exercise by the Governor in Council of the authority contained in subsection (7) is regulations within the meaning of the *Regulations Act*, 2010, c. 18, s. 5.

MOTOR VEHICLE LIABILITY POLICIES

Owner's policy

114 (1) Every contract evidenced by an owner's policy insures the person named therein, and every other person who with his consent personally

drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract, against liability imposed by law upon the insured named in the contract or that other person for loss or damage

(a) arising from the ownership, use or operation of any such automobile; and

(b) resulting from bodily injury to or the death of any person, and damage to property.

(2) Where the contract evidenced by an owner's policy also provides insurance against liability with respect to an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as may be specified in the contract.

(3) Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:

(a) the spouse or common-law partner of the deceased insured, if residing in the same dwelling premises at the time of his death; and

(b) as respects the described automobile, a newly acquired automobile, if that automobile was acquired by the deceased insured prior to his death, and a temporary substitute automobile, all as defined by the policy,

(i) any person having proper temporary custody thereof, until grant of probate or administration to the personal representative of the deceased insured, or

(ii) the personal representative of the deceased insured. R.S., c. 231, s. 114; 2000, c. 29, s. 24.

Non-owner's policy

115 Every contract evidenced by a non-owner's policy insures the person named therein, and such other person, if any, as may be specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage

(a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him or registered in his name; and

(b) resulting from bodily injury to, or death of, any person and damage to property. R.S., c. 231, s. 115.

Owner does not include lienholder

116 For the purposes of this Part, a person who has a lien upon, or as security legal title to, an automobile, shall not be deemed to be the owner of the automobile merely by reason of the lien or title. R.S., c. 231, s. 116.

Territorial limit

117 Insurance under Sections 114 and 115 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America, and upon a vessel plying between ports of those countries. R.S., c. 231, s. 117.

Rights of unnamed insured

118 Any person insured by but not named in a contract to which Section 114 or 115 applies may recover indemnity, in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S., c. 231, s. 118.

Obligation of insurer

119 Every contract evidenced by a motor vehicle liability policy shall provide that where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect to which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall

(a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as may be deemed expedient by the insurer;

(b) defend in the name, and on behalf of, the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property;

(c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and

(d) in case the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time. R.S., c. 231, s. 119.

Contamination

120 Liability arising from the contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of such automobile. R.S., c. 231, s. 120.

Insurer not liable

121 The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability

(a) imposed by any workers' compensation law upon any person insured by the contract; or

(b) resulting from bodily injury to, or the death of, any employee of any person insured by the contract while engaged in the operation or repair of the automobile. R.S., c. 231, s. 121.

Exclusions respecting business

122 The insurer may provide under a contract evidenced by a motor vehicle liability policy in either or both of the following cases, that it shall not be liable

(a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles, for any loss or damage sustained while engaged in the use or operation or while working upon the automobile in the course of that business unless the person is the owner of the automobile or his employee;

(b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of the insured. R.S., c. 231, s. 122.

Exclusions respecting equipment

123 Subject to the limitations and exclusions of the endorsement, the insurer may provide, by endorsement to a contract evidenced by a motor vehicle liability policy, that it shall not be liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while it is at the site of the use or operation of that machinery or apparatus. R.S., c. 231, s. 123.

Exclusions respecting use

124 (1) The insurer may provide under a contract evidenced by a motor vehicle liability policy in one or more of the following cases, that it shall not be liable while

(a) the automobile is rented or leased to another person;

(b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;

(c) the automobile is used as a taxicab, public omnibus, or sightseeing conveyance or for carrying passengers for compensation or hire.

(2) In clause (b) of subsection (1), “radioactive material” means

(a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor;

(b) radioactive waste material;

(c) unused enriched nuclear fuel rods; or

(d) any other radioactive material of such a quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

(3) The use by an employee of his automobile on the business of his employer and for which he is paid does not fall within clause (a) of subsection (1).

(4) The following do not fall within the words “for carrying passengers for compensation or hire” used in clause (c) of subsection (1):

(a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;

(b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip;

(c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse or common-law partner;

(d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer;

(e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program. R.S., c. 231, s. 124; 2000, c. 29, s. 24; 2003 (2nd Sess.), c. 1, s. 13.

Minimum liability under policy

125 (1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least five hundred thousand dollars, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

(2) *repealed 2003 (2nd Sess.), c. 1, s. 14.*

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least five hundred thousand dollars, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least five hundred thousand dollars, exclusive of interest and costs, against liability for loss of or damage to property.

(4) Nothing in this Section or this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective

for a limit less than that required under subsection (1). R.S., c. 231, s. 125; 2003 (2nd Sess.), c. 1, s. 14.

Liability in other jurisdiction

126 Every motor vehicle liability policy issued in the Province shall be conclusively deemed to provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province of Canada,

(a) the insurer shall be liable up to the minimum limits prescribed for that province or territory if those limits are higher than the limits prescribed by the policy;

(b) the insurer shall appear in any action or proceeding against the insurer and shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province or territory; and

(c) the insured, by acceptance of the policy, constitutes and appoints the insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which an action is brought against the insured arising out of the ownership, use or operation of the automobile. R.S., c. 231, s. 126.

Prohibited defences

127 (1) In any action in the Province against an insurer transacting the business of automobile insurance in the Province or its insured arising out of an automobile accident in the Province, the insurer shall appear and shall not set up any defence to a claim under a contract made outside the Province, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the Province, and the contract made outside the Province shall be deemed to include the benefits prescribed pursuant to Section 140.

(2) In any action in another province against an insurer transacting the business of automobile insurance in the Province or its insured arising out of an automobile accident in the other province, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in the Province, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the other province.

(3) Where the Superintendent is satisfied that an insurer has failed to comply with the provisions of this Section, he may issue an order directing the insurer to cease transacting the business of automobile insurance in the Province. R.S., c. 231, s. 127.

Separate excess contract

128 (1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to

a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy whether the designated contract is a first loss insurance or an excess insurance.

(2) Where the contract designated in the excess contract terminates, or is terminated, the excess contract is also automatically terminated. R.S., c. 231, s. 128.

Reimbursement agreement

129 Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy, providing that the insured will reimburse the insurer in an agreed amount with respect to any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor. R.S., c. 231, s. 129.

Liability of insurer under nuclear energy contract

130 (1) In this Section, “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy, for loss or damage resulting from bodily injury to, or the death of, any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by Section 125; and

(b) the unnamed insured under the contract of nuclear energy liability insurance may, with respect to such loss or damage, recover indemnity under that contract in the same manner, and to the same extent, as if named therein as the insured, and for that purpose he shall be deemed to be a party to the contract and to have given consideration therefor.

(3) For the purpose of this Section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted. R.S., c. 231, s. 130.

Effect of payments under policy

131 (1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or

alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or his personal representative of any claim that the person or his personal representative or any person claiming through or under him or by virtue of the *Fatal Injuries Act* may have against the insured and the insurer.

(2) Nothing in this Section precludes the insurer making the payment from demanding, as a condition precedent to such payment, a release from the person or his personal representative or any other person to the extent of such payment.

(3) Where the person commences an action, the court shall adjudicate upon the matter first without reference to the payment but in giving judgment the payment shall be taken into account and the person shall only be entitled to judgment for the net amount, if any.

(4) The intention of this Section is to permit payments to a claimant without prejudice to the defendant or his insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof. R.S., c. 231, s. 131.

Application for direction

132 (1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause (b) of Section 119 between an insurer and the insured or between the insurers, as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Trial Division of the Supreme Court and the Court shall give directions as may appear proper with respect to the performance of the obligation.

(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and his insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

(3) An order under subsection (1) does not affect the rights and obligations of the insurers with respect to payment of any indemnity under their respective policies.

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in Section 119 in accordance with their respective liabilities for damages awarded against the insured. R.S., c. 231, s. 132.

Action by claimant against insurer

133 (1) Any person who has a claim against an insured, for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that that person is not a party to the contract, may, upon recovering a judgment therefor in any province of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided by that contract.

(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by

(a) an assignment, waiver, surrender, cancellation, or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insurer after the happening of the event giving rise to a claim under the contract;

(b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract; or

(c) any contravention of the *Criminal Code* (Canada) or statute of any province of Canada, or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in clauses (a), (b) and (c) is available to the insurer as a defence in an action brought under subsection (1).

(5) It is not a defence to an action under this Section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer, and alleged by a party to the action to be such a policy, is not a motor vehicle liability policy, and this Section applies, *mutatis mutandis*, to the instrument.

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether that is rateably or by way of first loss or excess insurance, as the case may be, and the insured shall, on demand, furnish the insurer with particulars of all other insurance covering the subject matter of the contract.

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1) and the insurer admits liability to pay the insurance money under the contract, if the insurer considers that

- (a) there are or may be other claimants; or
- (b) there is no person capable of giving and willing to give or authorized to give it a valid discharge for payment,

the insurer may apply to the court *ex parte* for an order for payment of the money into court, and the court may, upon such notice, if any, as it thinks necessary, make an order accordingly.

(8) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein.

(9) Notwithstanding anything therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this Section, be deemed to provide all the types of coverage mentioned in Section 124, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in Section 125.

(10) Where one or more contracts provide for coverage of a type mentioned in Section 122 or 123, then, except as provided in subsection (12), the insurer may

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(11) Where one or more contracts provide for coverage in excess of the limits mentioned in Section 125, then, except as provided in subsection (12), the insurer may,

- (a) with respect to the coverage in excess of those limits;
- and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(12) Where a contract provides coverage for loss or damage resulting from bodily injury to, or the death of, any person being carried in or upon, or entering, or getting onto, or alighting from, an automobile operated in the business of carrying passengers for compensation or hire and insured for that purpose, then

- (a) with respect to that type of coverage; and

(b) as against a claimant,

the insurer may only avail itself of a defence that it is entitled to set up against the insured with respect to that part of the coverage, if any, that exceeds

(c) the limits mentioned in Section 125; or

(d) the minimum limits required for that type of coverage by or pursuant to another Act,

whichever is the greater.

(13) The insured shall reimburse the insurer, upon demand, in the amount that the insurer has paid by reason of this Section and that it would not otherwise be liable to pay.

(14) Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured files a defence in the action.

(15) Upon being made a third party the insurer may

(a) contest the liability of the insured to any party claiming against the insured;

(b) contest the amount of any claim made against the insured;

(c) deliver any pleadings with respect to the claim of any party claiming against the insured;

(d) have production and discovery from any party adverse in interest; and

(e) examine and cross-examine witnesses at the trial to the same extent as if it were a defendant in the action.

(16) An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name, and on behalf, of the insured an action to which its insured is a party. R.S., c. 231, s. 133.

Recovery by convicted insured restricted

134 (1) An insured may not recover from his insurer any amount with respect to damage to his own automobile or injuries sustained by him while in a condition for which he is convicted of an offence under paragraph (a) of section 253 (impaired driving) or paragraph (b) of section 253 (breathalyzer offence) or under or in connection with circumstances for which he is convicted of an offence under subsection (2) of section 254 (refusing road-side test) or subsection (3) of section 254 (refusing breathalyzer test) of the *Criminal Code* (Canada) unless he establishes that his impairment by alcohol or drug was not the proximate cause of the accident.

(1A) An insured may not recover from the insured's insurer any amount with respect to damage to the insured's own automobile or injuries sustained by the insured during or in connection with circumstances for which the insured is convicted of an offence under section 249 (dangerous driving) or section 249.1 (flight) of the *Criminal Code* (Canada) unless the insured establishes that such circumstances were not the proximate cause of the accident.

(2) Subsections (1) and (1A), or words to like effect approved by the Superintendent, shall be printed in every automobile insurance policy.

(3) Notwithstanding subsection (2), no contract of automobile insurance or policy document or form that had been printed on or before the coming into force of this subsection is invalid or of no effect for the reason only that it does not have printed on it the provisions of subsection (1A) or words to like effect. R.S., c. 231, s. 134; 2003 (2nd Sess.), c. 1, s. 15.

Notice of action and disclosure of particulars

135 (1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of notice or process in the action.

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within ten days after written demand therefor. R.S., c. 231, s. 135.

Physical Damage Cover

Exclusions and limitations

136 Subject to subsection (1) of Section 108, the insurer may provide in a contract such exclusions and limitations with respect to loss of, or damage to, or the loss of use of the automobile as it considers necessary. R.S., c. 231, s. 136.

Partial payment clause

137 (1) A contract, or part of a contract, providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only

- (a) an agreed portion of any loss that may be sustained; or
- (b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

(2) Where a clause is inserted in accordance with subsection (1) there shall be printed or stamped upon the face of the policy in conspicuous type the words: "This policy contains a partial payment of loss clause." R.S., c. 231, s. 137.

Adjustment of claim

138 (1) Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

(2) Where notice is given or proof of loss is made by a person other than the insured because the insured cannot be located, or neglects, or refuses, or is unable, to give notice and make claim under statutory conditions 4 and 7 as set forth in Schedule A to this Part, the insurer may, notwithstanding subsection (1) but in any event not earlier than sixty days from delivery of the proof required under clause (c) of subcondition (1) of statutory condition 4, adjust and pay the claim to the other person having an interest indicated in the contract. R.S., c. 231, s. 138.

Direct Compensation for Property Damage

Recovery for property damage

138A (1) This Section applies if

(a) an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in the Province of one or more other automobiles;

(b) the automobile that suffers the damage or in respect of which the contents suffer damage is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer who is licensed to undertake automobile insurance in the Province or who has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this Section; and

(c) at least one other automobile involved in the accident is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer who is licensed to undertake automobile insurance in the Province or who has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this Section.

(2) This Section applies *mutatis mutandis* in respect of an automobile, the owner, operator or lessee of which is exempt from the requirement to be insured under the *Motor Vehicle Act*, if the person who is financially responsible for the damages resulting from the accident involving the automobile files with the Superintendent an undertaking to be bound by this Section.

(3) Where this Section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection (1) of Section 114 as though the insured were a third party.

(4) Recovery under subsection (3) must be based on the degree of fault of the insurer's insured as determined under the fault determination rules prescribed by regulation under clause (a) of subsection (1) of Section 138B.

(5) An insured may bring an action against an insurer if

(a) the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault; or

(b) the insured is not satisfied with a proposed settlement,

and the matters in issue shall be determined in accordance with the ordinary rules of law.

(6) Where this Section applies,

(a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;

(b) an insured has no right of action against a person under an agreement, other than a contract of automobile insurance, in respect of damages to the insured's automobile or its contents or for loss of use, except to the extent that the person is at fault or negligent in respect of those damages or that loss; and

(c) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to the insurer's insured under this Section.

(7) Nothing in this Part precludes an insurer, in a contract belonging to a class prescribed by the regulations, from agreeing with an insured that, in the event that a claim is made by the insured under this Section, the insurer shall pay only

(a) an agreed portion of the amount that the insured would otherwise be entitled to recover; or

(b) the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the agreement.

(8) Subsection (7) does not apply unless, before the insurer enters into the contract referred to in that subsection, the insurer offers to enter into another contract with the prospective insured that does not contain the agreement referred to in that subsection but is identical to the contract referred to in subsection (7) in all other respects except for the amount of the premium.

(9) In the circumstances prescribed by regulation, a contract belonging to a class prescribed by the regulations for the purpose of subsection (7) must provide that, in the event that a claim is made by the insured under this Section, the insurer shall pay only the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the contract.

(10) Subsection (8) does not apply to a contract that contains a provision required by subsection (9).

(11) Where a contract contains an agreement referred to in subsection (7) or a provision required by subsection (9), the policy must have “This policy contains a partial payment of recovery clause for property damage” printed or stamped on its face in conspicuous type.

(12) This Section does not affect an insured’s right to recover in respect of any physical damage coverage in respect of the insured automobile.

(13) This Section does not apply to damage to those contents of an automobile that are being carried for reward.

(14) This Section does not apply if both or all of the automobiles are owned by the same person.

(15) This Section does not apply to damage to an automobile owned by the insured or to its contents if the damage is caused by the insured while driving another automobile.

(16) This Section applies only in relation to loss or damage sustained on or after the date this Section comes into force. 2011, c. 35, s. 6.

Regulations

138B (1) The Governor in Council may make regulations

(a) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;

(b) respecting indemnification and subrogation where Section 138A applies;

(c) prescribing classes of contracts for the purpose of subsection (7) of Section 138A;

(d) prescribing the circumstances in which a contract belonging to a class prescribed under clause (c) must contain a provision described in subsection (9) of Section 138A;

(e) prescribing the amount, or the minimum or maximum amount, of a reduction required by a provision described in clause (b) of subsection (7) of Section 138A or subsection (9) of Section 138A.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2011, c. 35, s. 6.

Limited Accident Insurances

Required contents of certain contracts

139 (1) In this Section,

(a) “insured automobile” means the automobile as defined or described in the contract;

(b) “person insured under the contract” means

(i) in respect of a claim for damage to the insured automobile, the owner of the automobile,

(ii) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,

(iii) in respect of a claim for bodily injury or death,

(A) any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,

(B) the insured named in the contract and, if residing in the same dwelling premises as the insured named in the contract, the insured's spouse or common-law partner and any dependent relative,

(I) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or

(II) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

(C) if the insured named in the contract is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured named in the contract, for whose regular use the insured automobile is furnished and, if residing in the same dwelling place, the insured's spouse or common-law partner and any dependent relative,

(I) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or

(II) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

if such director, officer, employee or partner or the spouse or common-law partner of that director, officer, employee or partner is not the owner of an automobile insured under a contract;

(c) “unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

(d) “uninsured automobile” means an automobile with respect to which neither the owner nor driver of it has applicable and collectable bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or the insured's spouse or common-law partner.

(2) Every contract evidenced by a motor vehicle liability policy shall provide for payment by the insurer of all sums that

(a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;

(b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and

(c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile,

subject to the terms, conditions, provisions, exclusions and limits prescribed by regulation.

(3) A dependent relative referred to in the definition “person insured under the contract” in subsection (1) who

(a) is the owner of an automobile insured under a contract;
or

(b) sustains bodily injuries or dies as the result of an accident while driving, being carried in or upon or entering or getting on to or alighting from the dependent relative's own uninsured automobile,

is not a dependent relative for the purpose of this Section.

(4) The Governor in Council may make regulations

(a) prescribing, amending or altering the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (2);

(b) deeming any term, condition, provision, exclusion or limit as prescribed, amended or altered by a regulation made pursuant to clause (a) to be included in any motor vehicle liability policy made or renewed on or after the effective date of the regulation and in any motor vehicle liability policy that is subsisting on the effective date of the regulation;

(c) requiring that terms, conditions, provisions, exclusions and limits as prescribed, amended or altered by a regulation made pursuant to clause (a) be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

(5) Any payments made or available to a person under a contract of insurance referred to in subsection (2) constitute, to the extent of such payments, a release by the person or the person's personal representative or any person claiming through or under the person or by virtue of the *Fatal Injuries Act*, of any claim that the person may have under subsection (2), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or the person's personal representative or any other person.

(6) A release within the meaning of subsection (5) does not enure to the benefit of the person or persons against whom the insurer has a right to subrogation under this Act.

(7) This Section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after July 1, 1996, and all contracts evidenced by motor vehicle liability policies that were subsisting on that day are deemed to provide for payments referred to in subsection (2) in respect of an accident arising out of the use or operation of an automobile occurring on or after that day. 1995-96, c. 20, s. 3; 2000, c. 29, s. 24.

Application of Sections 139B to 139U

139A (1) Sections 139B to 139U apply only to matters arising out of accidents involving an automobile occurring on or after July 1, 1996.

(2) Sections 139B to 139U apply only to a claim for damages by a person who is not insured under a contract within the meaning of Section 139 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, and, subject to subsection (4), no person other than one who is not insured under a contract within the meaning of Section 139 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, may apply to the Facility Association for payment of damages in accordance with Sections 139B to 139U.

(3) Notwithstanding any other provision of this Act, no person shall apply to the Facility Association pursuant to Section 139B or 139C for payment of damages in respect of damage to an automobile owned by or registered in the name of the person, notwithstanding that the person may have had no applicable and collectable insurance with respect to that automobile at the time of the accident in which the damage was incurred if, at the time of the accident, the person was driving the automobile or had the care or control of it, whether it was in motion or not.

(4) Where a question arises between a person's insurer and the Facility Association as to whether a person is insured under a contract of insurance within the meaning of Section 139 or has other insurance with respect to the damages claimed, the person may, at the person's option, make a claim for damages against the insurer or apply to the Facility Association for payment of damages in accordance with Sections 139B to 139U.

(5) Where, in the circumstances described in subsection (4), a person elects to make a claim for damages against the person's insurer and liability is denied on the grounds that the person is not insured under a contract within the meaning of Section 139 and has no other insurance with respect to the damages claimed, the person may proceed, in accordance with Sections 139B to 139U, to apply to the Facility Association for payment of damages.

(6) Where, in the circumstances described in subsection (4) or (5), a person elects to apply, in accordance with Sections 139B to 139U, to the Facility Association for payment of damages and the Facility Association makes a payment to the person in accordance with those Sections, the Facility Association is subrogated to the extent of those payments to the rights of the person to whom the amount is paid and, where in the opinion of the Facility Association, the person is insured under a contract within the meaning of Section 139 or has other insurance with respect to the damages claimed, the Facility Association may bring an action in its name or in the name of such person against the insurer to recover the amount of the payment.

(7) No payment made by the Facility Association in the circumstances described in subsection (6) bars the person to whom it is made from making a claim against the person's insurer for damages in excess of the amount of the payment by the Facility Association. 1995-96, c. 20, s. 3.

Payment by Facility Association

139B (1) A person who would have a cause of action against an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care and control of that person, for damages for injuries to or the death of any person or damage to property, arising out of the operation, care or control of the automobile in the Province, except a person entitled to make application pursuant to Section 139C, may make application in a form provided by the Facility Association for payment by the Facility Association of the damages in respect of such death, personal injury or property damage.

(2) Upon receipt of an application pursuant to subsection (1), the Facility Association shall, by registered mail, forward a notice of the application for payment by the Facility Association to the owner and the driver of the automobile against whom liability for the damages occasioned by the operation of the automobile is alleged, to their latest known addresses or to their latest addresses as recorded with the Registrar of Motor Vehicles.

(3) The Facility Association may, in respect of an application made pursuant to subsection (1), make payment, subject to the same conditions, limits, deductions and exclusions that would apply to an application by a judgment creditor in accordance with Sections 139C to 139U, with the necessary modifications, of an amount that it considers proper in all the circumstances if

(a) the applicant executes a release under seal of all claims arising out of the automobile accident, subject to subsections (6) and (7) of Section 139A, that occasioned the damages to be paid by the Facility Association; and

(b) subject to clause (c), the owner and driver of the automobile against whom liability for the damages occasioned by the operation of the automobile is alleged, execute a consent to the payment of the sum for damages by the Facility Association and also execute under seal an undertaking in a form provided by the Facility Association to repay to the Facility Association the amount to be paid by the Facility Association; or

(c) the person to whom a notice is sent in accordance with subsection (2) does not reply within thirty days of the date upon which the notice was sent either

(i) by mail, or

(ii) by attending in person at the place named in the notice,

and dispute liability to the person making application pursuant to subsection (1).

(4) Where an amount is paid out by the Facility Association pursuant to subsection (3) or (5), the Facility Association shall, to the extent of the amount paid out, be deemed to be a creditor of every person against whom liability for the damages occasioned by the operation of the automobile is alleged and who was given notice pursuant to subsection (2), and upon the filing with a prothonotary of the Supreme Court of Nova Scotia of a certificate of the Facility Association in a form prescribed by the regulations stating the amount paid out, judgment may be entered in the name of the Facility Association as a judgment of the Supreme Court of Nova Scotia, and, without the consent of the Facility Association, no execution under a judgment obtained with respect to the damages referred to above shall be made by any person other than the Facility Association against the property of the judgment debtor until the judgment debt of the Facility Association is satisfied.

(5) The Facility Association may, in its discretion, make interim payments to claimants claiming damages for personal injury where the responsible person or persons do not dispute their liability after a notice is sent to them in accordance with subsection (2). 1995-96, c. 20, s. 3.

Application for payment where judgment

139C Subject to Section 139H, where a person obtains in any court in the Province a judgment against

(a) an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care or control of the person, for damages for injuries to or the death of any person or damage to property, arising out of the operation, care or control of an automobile in the Province; or

(b) a party unknown as contemplated by Section 139K, for damages for injury to or the death of any person arising out of the operation, care or control of an automobile in the Province,

upon the determination of all proceedings, including appeals, the person may apply to the Facility Association for payment of the amounts in respect of the judgment to which the person is entitled in accordance with Sections 139B to 139U. 1995-96, c. 20, s. 3.

Duty to make payment

139D The Facility Association shall pay out to the person the amount of the judgment including the costs included in the judgment, or that part of the judgment including the costs to which the person is entitled, if

(a) the person makes an affidavit

(i) as to what amount the person has recovered or is or was entitled to recover from any source, for or in respect of any injury, death or damage to a person or property arising out of the operation, care or control of the automobile by the owner or driver of it against whom the judgment was obtained whether or not in the action damages were claimed for or in respect of the injury, death or damage and as to what compensation or services or benefits with a pecuniary value the person has recovered or received or is or was entitled to recover or receive for or in respect of the injury, death or damage, and

(ii) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection (4) of Section 139A, no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer

in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance; and

- (b) the solicitor for the person makes an affidavit
 - (i) that the judgment is a judgment as described in Section 139C,
 - (ii) giving particulars of the amount of damages for or in respect of injury or death or damage to property and the costs included in the judgment,
 - (iii) that in so far as the solicitor was advised by any person and learned of any facts during the litigation
 - (A) the solicitor, subject to subsection (4) of Section 139A, has commenced action against all persons against whom the person might reasonably be considered as having a cause of action for or in respect of the injury, death or damage to person or property as described in subclause (i) of clause (a),
 - (B) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection (4) of Section 139A, no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and
 - (C) that except as disclosed in the applicant's affidavit, the person is and was not entitled to recover, from any source, nor to receive compensation or services or benefits with a pecuniary value, for or in respect of any injury, death or damage to person or property as described in subclause (i) of clause (a), and
 - (iv) that the action was defended throughout to judgment or that there was a default or a consent or agreement by or on behalf of the defendant and that the solicitor complied with Section 139H; and
- (c) the affidavits together with
 - (i) a copy of the statement of claim,
 - (ii) a certified copy of the judgment,
 - (iii) the assignment of judgment, and
 - (iv) where applicable, the solicitor's taxed bill of costs,

are forwarded to the Facility Association. 1995-96, c. 20, s. 3.

Objections to application for payment

139E (1) Where, on an application to the Facility Association,

- (a) all the documents required by Section 139D are not forwarded;
- (b) any matter required to be in an affidavit is omitted;
- (c) the amount requested to be paid by the Facility Association is, in its opinion, greater than the amount to which the applicant is entitled under Sections 139B to 139U; or
- (d) for any reason, the Facility Association wishes the application for payment to go before a judge of the Supreme Court of Nova Scotia for an order for payment by the Facility Association,

the Facility Association shall, within a reasonable period of time, advise the person of its objections to the application for payment and, subject to subsection (2), advise the person that the person must obtain an order of a judge of the Supreme Court of Nova Scotia for payment by the Facility Association.

(2) The Facility Association shall advise the person to remedy any objection it may have against payment and, if the objection is remedied to the satisfaction of the Facility Association, it shall then make payment as hereinbefore provided. 1995-96, c. 20, s. 3.

Application to judge of Supreme Court

139F Where a person is advised that payment shall not be made except by order of a judge of the Supreme Court of Nova Scotia, the person may apply to a judge of the Supreme Court of Nova Scotia upon notice to the Facility Association, for an order directing payment by the Facility Association of the amount in respect of the judgment to which the person is entitled under Sections 139B to 139U. 1995-96, c. 20, s. 3.

Powers of Court on application

139G (1) A judge of the Supreme Court of Nova Scotia may make an order directed to the Facility Association requiring it, subject to Sections 139B to 139U, to pay the amount in respect of the judgment to which the judgment creditor is entitled in accordance with those Sections, if the applicant, in the application, satisfies the judge that

- (a) the applicant has obtained a judgment as set out in Section 139C stating, whether against an owner, a driver or a party unknown, the amount of the judgment and the amount owing on the judgment at the date of the application;
- (b) subject to subsection 139A(4), the applicant has commenced action against all persons against whom the applicant might reasonably be considered as having a cause of action for or in respect of any injury, death or damage to person or property arising out of the

operation, care or control of the automobile by the owner or driver against whom the judgment was obtained;

(c) the applicant has prosecuted every action in good faith to judgment or dismissal;

(d) with respect to the amount to be paid, the applicant has not recovered and is and was not entitled to recover, from any source, any amount for or in respect of the injury, death or damage to person or property described in clause (b);

(e) with respect to the amount to be paid, the applicant has not received and is and was not entitled to receive from any source any compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage to person or property described in clause (b);

(f) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and that, subject to subsection (4) of Section 139A, no part of the amount sought to be paid out by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance; and

(g) the amount sought to be paid out by the Facility Association does not exceed the maximum amount payable under Section 139Q.

(2) The Facility Association may appear and be heard on the application referred to in subsection (1) and may show cause why the order should not be made. 1995-96, c. 20, s. 3.

Restriction on powers of Court

139H (1) Where an action is commenced and the defendant

(a) fails to file and serve a statement of defence;

(b) fails to appear in person or by counsel at an examination for discovery, trial or appeal or notifies the plaintiff that such failure is likely; or

(c) consents or agrees to the entering of judgment,

no order may be made pursuant to Section 139G, and no money is required to be paid by the Facility Association in respect of a judgment obtained on such proceedings, unless before taking any further step in the proceedings, the plaintiff gives written notice, in the form prescribed by the regulations, to the Facility Association of such failure, notification, consent or agreement and affords it reasonable time to

investigate the circumstances of the claim and an opportunity to take such action as it considers advisable pursuant to subsection (2).

(2) Where the Facility Association receives notice pursuant to subsection (1), it may, if it considers it advisable, on behalf and in the name of the defendant, take any step to enforce the defendant's right to compensation or indemnity in respect of or arising out of the claim that is available to the defendant, and take any step in the proceedings, including a consent to judgment in such amount as it may consider proper in the circumstances, and all acts done in accordance with this subsection are deemed to be the acts of the defendant. 1995-96, c. 20, s. 3.

Prerequisite to payment by Association

139I (1) No money is required to be paid by the Facility Association in compliance with an order made pursuant to Section 139G until the judgment of the applicant or the portion of the judgment for which the Facility Association is liable or the applicant's interest in the judgment is assigned to the Facility Association.

(2) Upon filing a copy of the assignment of judgment, certified by the Facility Association to be a true copy, with the registrar, prothonotary or clerk, as the case may be, of the court in which the judgment was obtained, the Facility Association shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

(3) Where execution is issued in the name of the judgment creditor and a copy of the assignment of judgment, certified in accordance with subsection (2), is filed with the sheriff having the execution order, subsection (2) applies *mutatis mutandis*. 1995-96, c. 20, s. 3.

Application for order permitting action

139J Where injury to or the death of any person arises out of the operation, care or control of an automobile in the Province but the identity of the automobile, the owner and the driver of it cannot be established, any person who would have a cause of action against the owner or driver in respect of such injury or death may, upon notice to the Facility Association, apply to a judge of the Supreme Court of Nova Scotia for an order permitting the person to bring an action in the Supreme Court of Nova Scotia against a nominal defendant to be designated as a party unknown. 1995-96, c. 20, s. 3.

Powers of Court on application

139K A judge of the Supreme Court of Nova Scotia may make an order permitting the applicant to bring an action against a party unknown if satisfied that

- (a) there are reasonable grounds for bringing the action;
- (b) all reasonable efforts have been made to ascertain the identity of the automobile involved and of the owner and driver of it;
- (c) the identity of the automobile involved and of the owner and driver of it cannot be established; and

(d) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by reason of the existence of a contract of insurance, and that, subject to subsection (4) of Section 139A, no part of the amount sought to be recovered in the intended action is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by it by reason of the existence of a contract of insurance. 1995-96, c. 20, s. 3.

Rights of Facility Association

139L (1) In any action brought against a party unknown pursuant to Sections 139J and 139K, the Facility Association has all the rights of a defendant in the action, but nothing in this Section imposes any liability on the Facility Association.

(2) In any action to which subsection (1) applies, the Facility Association may plead the general issue and give the special matter in evidence. 1995-96, c. 20, s. 3.

Application of Sections 139J and 139K

139M (1) Where an action for damages for injury to or the death of any person, arising out of the operation, care or control of an automobile in the Province has been dismissed and the judge, in dismissing the action, states in writing that the injury or death arose out of the operation, care or control of an automobile

(a) the identity of which and the owner and driver of which is not established; or

(b) at a time when such automobile was, without the consent of the owner, in the possession of some person other than the owner and the identity of the driver is not established,

Sections 139J and 139K apply for a period of three months from the date of such dismissal, notwithstanding any Act limiting the time within which an action may be brought.

(2) Where, in accordance with subsection (1), an application is made pursuant to Section 139J, clause (c) of Section 139K does not apply. 1995-96, c. 20, s. 3.

Application to add party unknown as defendant

139N (1) Where an action for damages for injury to or the death of any person arising out of the operation, care or control of an automobile in the Province is commenced and the defendant by the pleadings alleges that the plaintiff's damage was caused by a party unknown, the plaintiff may make application to add the party unknown as a defendant and Section 139K applies *mutatis mutandis*.

(2) This Section does not limit or restrict any right to add or join any person as a party to an action in accordance with the practice of the court in which the action is pending. 1995-96, c. 20, s. 3.

Action for declaratory judgment

139O (1) Where judgment has been obtained against a party unknown, the Facility Association may, at any time, bring action in the Supreme Court of Nova Scotia against any person for a declaratory judgment, declaring that person to have been, at the time of the accident, the owner or driver of the automobile in respect of the operation, care or control of which the judgment was obtained, and the court may give judgment accordingly.

(2) Where a declaratory judgment is issued pursuant to this Section,

(a) the person declared in the judgment to be the owner or driver is deemed to have been the defendant in the action in which judgment was obtained against the party unknown and the judgment against the party unknown is deemed to be a judgment against such person; and

(b) the Facility Association is deemed to have obtained a judgment against such person for the amount of all moneys paid by it in respect of the judgment against the party unknown and, accordingly, has all the rights of a judgment creditor, including the right to recover any money that would have been payable in respect of the death or injury under any contract of insurance that was in force at the time of the accident, notwithstanding any Act limiting the time within which an action may be brought.

(3) Where the injury or death arose out of the operation, care or control of the automobile at a time when the automobile was, without the owner's consent, in the possession of some person other than the owner, such action shall be disposed of in the same manner as though the identity of the owner had not been established. 1995-96, c. 20, s. 3.

Restriction or power to grant judgment

139P In an action against a party unknown, a judgment against a party unknown shall not be granted unless the court in which the action is brought is satisfied that all reasonable efforts have been made by the claiming party to ascertain the identity of the automobile and the owner and the driver of it and that such identity cannot be established. 1995-96, c. 20, s. 3.

Deduction from amount of damages

139Q (1) The Facility Association is not required to pay

(a) any amount in respect of a judgment in favour of a person who ordinarily resides outside the Province, unless such person resides in a jurisdiction that provides substantially the same benefits

to persons who ordinarily reside in the Province, but no payment shall include an amount that would not be payable by the law of the jurisdiction in which such person resides;

(b) more than two hundred thousand dollars, exclusive of costs, for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after July 1, 1996, or more than five hundred thousand dollars, exclusive of costs, for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after April 1, 2004, except that payments with respect to damages for damage to property shall be limited to claims for damages in excess of two hundred and fifty dollars,

but, subject to subsection (2) and the regulations, where the judgment creditor recovers or is or was entitled to recover, from any source, for or in respect of any injury, death or damage to person or property arising out of the operation, care or control of the automobile by the owner or driver against whom the judgment was obtained whether or not in the action damages were claimed for or in respect of the injury, death or damage or where the judgment creditor receives or is or was entitled to receive, from any source, compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage, the amount so recovered or received and the amount that the judgment creditor is or was entitled to recover or receive and the amount of compensation and pecuniary value of any services or benefits received or that the judgment creditor is or was entitled to receive shall be deducted from the amount of damages included in the judgment and only the amount of damages included in the judgment after such deductions, or the maximum amount payable under clause (b), whichever is less, is required to be paid by the Facility Association.

(2) In computing the amount payable by the Facility Association, no reduction shall be made

(a) with respect to any amount recovered or recoverable by the judgment creditor under a contract of life insurance, where the amount is payable in respect of the death of the person;

(b) with respect to any compensation or the pecuniary value of any services or benefits that the judgment creditor received, or is or was entitled to receive under the *Social Assistance Act* or the *Health Services and Insurance Act*;

(c) with respect to

(i) any amount recovered by the judgment creditor, or that the judgment creditor is entitled to recover, from such sources as may be prescribed by the regulations, or

(ii) any amount of compensation, or the pecuniary value of any benefits or services, received by the judgment creditor, or that the judgment creditor is entitled to receive, from such sources as may be prescribed by the regulations or

where the compensation, benefits or services are of a kind prescribed by the regulations.

(3) For the purpose of this Section, the question of where a person ordinarily resides shall be determined as of the date of the accident as a result of which the damages are claimed. 1995-96, c. 20, s. 3; 2003 (2nd Sess.), c. 1, s. 16.

Costs payable

139R (1) Subject to Section 139B, no costs, other than costs taxed on a party and party basis, are required to be paid by the Facility Association.

(2) Where an action has been maintained in part by an insurer and a part only of the amount of the judgment in the action is payable by the Facility Association, there shall not be paid by the Facility Association more than that part of the party and party costs of the action that bears the same ratio to the whole of such costs as the part of the judgment payable by the Facility Association bears to the total amount of the judgment. 1995-96, c. 20, s. 3.

Applicable practice and procedure

139S The practice and procedure of the Supreme Court of Nova Scotia or the court in which the application or action is brought, including the right of appeal and the practice and procedure relating to appeals, apply to any application or action pursuant to Sections 139B to 139U. 1995-96, c. 20, s. 3.

Prohibition against application by Governments

139T No application for the payment of damages shall be made to the Facility Association by or on behalf of the Government of Canada or a province of Canada or the United States of America or a state of the United States or any political subdivision or corporation or agency of such Governments. 1995-96, c. 20, s. 3.

Deeming for purposes of Sections 139B to 139T

139U For the purpose of Sections 139B to 139T, all owners and drivers whose liability results in payment by the Facility Association are deemed to be *sui juris* and all actions taken by the Facility Association in the settlement of claims and actions on their behalf are deemed to be taken upon their instructions and with their full consent. 1995-96, c. 20, s. 3.

Regulations

139V The Governor in Council may make regulations

(a) generally respecting forms to be used for the purpose of Sections 139B to 139U and prescribing forms required to be prescribed;

(b) prescribing sources for the purpose of subclause (i) of clause (c) of subsection (2) of Section 139Q;

(c) prescribing, for the purpose of subclause (ii) of clause (c) of subsection (2) of Section 139Q, sources of compensation, benefits and services, and kinds of compensation, benefits, and services. 1995-96, c. 20, s. 3.

Medical and other expense coverage

140 (1) Every motor vehicle liability policy shall provide

- (a) medical, rehabilitation, loss of income, death and funeral expense benefits; and
- (b) other benefits,

set forth in regulations made by the Governor in Council, which shall be printed in every policy under the heading "Section B - Accident Benefits".

(2) Where an insurer makes a payment under a provision of a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or a person claiming through or under him or by virtue of the *Fatal Injuries Act* may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in the subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representative or any other person. R.S., c. 231, s. 140; 2003 (2nd Sess.), c. 1, s. 17.

Demand for insurance particulars

141 (1) Where a person is injured or killed in an accident in the Province involving an automobile, that person or his personal representative may serve

- (a) a demand by registered mail on the owner of the automobile; or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the types mentioned in Section 140 and, where the demand is made under clause (a), requiring the owner, if he has such insurance, to state the name of the insurer.

(2) Where the owner or insurer does not, within ten days after receiving a demand made under subsection (1), comply with the demand he is guilty of an offence. R.S., c. 231, s. 141.

Right of unnamed insured

142 Any person insured by but not named in a contract to which Section 139 or 140 applies may recover under the contract, in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be

deemed to be a party to the contract and to have given consideration therefor. R.S., c. 231, s. 142.

Liability of insurer in first instance

143 (1) Where a person who is entitled to benefits provided by insurance pursuant to Section 140

(a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for payment of the benefits provided by the insurance; or

(b) is not an occupant of a motor vehicle or a railway rolling stock that runs on rails and is struck by a motor vehicle, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for the payment of the benefits provided by the insurance.

(2) Nothing in this Section affects the operation of subsection (2) of Section 140. R.S., c. 231, s. 143.

Payment into court

144 (1) Where an insurer admits liability for insurance money payable under Sections 139 or 140 and it appears that

(a) there are adverse claimants;

(b) the whereabouts of an insured person entitled is unknown; or

(c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time following thirty days after the date upon which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly.

(2) The receipt of the proper officer of the Court is sufficient discharge to the insurer for insurance money paid into court and those moneys shall be dealt with as the Court orders. R.S., c. 231, s. 144.

Limitation period

145 Every action or proceeding against an insurer under a contract with respect to insurance provided under Section 139 or 140 shall be commenced within the limitation period specified in the contract but, in no event, shall this be less than one year after the happening of the accident. R.S., c. 231, s. 145.

Disclosure of insurance particulars

146 (1) Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or

being carried in or upon or entering or getting into or alighting from or as a result of being struck by an automobile, he shall furnish the person against whom the claim is made with full particulars of all insurance available to the claimant under contracts falling within the scope of Section 140.

(2) Where a claimant is entitled to the benefit of insurance within the scope of Section 140, this, to the extent of payments made or available to the claimant thereunder, constitutes a release by the claimant of any claim against the person liable to the claimant or the insurer of the person liable to the claimant. R.S., c. 231, s. 146.

Terms of insurance permitted

147 Subject to subsection (1) of Section 108, an insurer may in a policy

(a) provide insurance that is less extensive in scope than the insurances mentioned in Sections 139 and 140; and

(b) provide the terms of the contract that relate to the insurances mentioned in Sections 139 and 140. R.S., c. 231, s. 147.

OTHER INSURANCE

First loss and excess insurance

148 (1) Subject to Section 130, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in clause (j) of Section 104 is, as respects liability arising from or occurring in connection with, the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) Subject to Sections 130 and 140 and to subsection (1), if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of, or against loss of, or damage to, an automobile or otherwise, of his interest in the subject matter of the contract, or any part thereof, the insurer is liable only for its rateable proportion of any liability or expense or loss or damage.

(3) "Rateable proportion" as used in subsection (2) means

(a) if there are two insurers liable and each has the same policy limits, each of the insurers shall be liable to share equally in any liability, expense, loss or damage;

(b) if there are two insurers liable with different policy limits, the insurers shall be liable to share equally up to the limit of the smaller policy limit;

(c) if there are more than two insurers liable, clauses (a) and (b) shall apply *mutatis mutandis*.

(4) Notwithstanding subsection (1), the Governor in Council may make regulations

(a) respecting the priority of payment of insurance held by a lessor as defined in Section 148D or by a renter as defined in Section 148D in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the lessor or renter;

(b) modifying any provision of this Act to the extent that the Governor in Council considers necessary in order to carry out the purpose and intent of this Section;

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

(5) The exercise by the Governor in Council of the authority contained in subsection (4) is regulations within the meaning of the *Regulations Act*. R.S., c. 231, s. 148; 2011, c. 35, s. 7.

Interpretation

148A In Sections 148B to 148F, “owner” means an owner of a vehicle under the *Motor Vehicle Act*. 2011, c. 35, s. 8.

Right of action for damages caused by negligence

148B Subject to Section 148D, nothing in this Act shall be construed to curtail or abridge the right of any person to commence and maintain an action for damages by reason of any injuries to a person or any property resulting from

(a) the negligence of the owner or driver of any motor vehicle; or

(b) the negligence of any agent or employee of the owner of a motor vehicle. 2011, c. 35, s. 8.

Onus of proof

148C (1) In this Section and Sections 148D and 148E, “highway” means a highway under the *Motor Vehicle Act*.

(2) Where a person sustains loss or damage by reason of a motor vehicle on a highway, the onus of proof in any civil action that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or the employee or agent of the owner acting in the course of that person’s employment or of the driver of the motor vehicle is on that owner or driver.

(3) Subsection (2) does not apply

(a) in the case of a claim by a passenger without payment against the owner or driver of the motor vehicle in which the passenger was being transported; or

(b) in the case of an accident between motor vehicles on a highway if the claim is made by the owner or driver of any of the motor vehicles involved in the accident or by a passenger in one of the motor vehicles involved in the accident against the owner or driver of another vehicle. 2011, c. 35, s. 8.

Recovery of loss or damage

148D (1) In this Section,

(a) “conditional seller” means a person who, by agreement, in the ordinary course of the person’s business, enters into an agreement with another person for the conditional sale or lease of a vehicle with the right of purchase on performance of the conditions set out in the agreement and with an immediate right of possession vested in the conditional vendee or lessee;

(b) “lender” means a person who holds a security interest in a motor vehicle through a written security agreement, who under that agreement has lent money to a person in respect of the motor vehicle and who is not in possession of the motor vehicle, or a person to whom the lender has assigned the agreement;

(c) “lessor” means a person who, by agreement, in the ordinary course of the person’s business, leases or grants exclusive use of a motor vehicle to another person for a term of more than thirty days or otherwise grants exclusive use of a motor vehicle to another person for a period of more than thirty days, and who is not in possession of the motor vehicle, or a person to whom the lessor has assigned the agreement, but does not include a conditional seller;

(d) “renter” means a person who, by agreement, in the ordinary course of the person’s business, rents a motor vehicle to another person for a term of no more than thirty days and who is not in possession of the motor vehicle, or a person to whom the renter has assigned the agreement;

(e) “security agreement” means a security agreement under the *Personal Property Security Act* or under personal property security legislation of another province of Canada;

(f) “security interest” means a security interest under the *Personal Property Security Act* or under personal property security legislation of another province of Canada;

(g) “seller” means a person who holds a security interest in a motor vehicle through a written security agreement, who sells the motor vehicle to another person under a contract in writing when the purchaser has carried out the terms of the contract and who is not in possession of the motor vehicle, or a person to whom the seller has assigned the security agreement or the contract.

(2) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was living with and as a member of the family of the owner of the motor vehicle,

the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and

(e) to be driving the motor vehicle in the course of that person's employment.

(3) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle,

the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and

(e) to be driving the motor vehicle in the course of that person's employment.

(4) Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, the maximum amount for which a lessor or renter of the motor vehicle is liable in respect of the same incident in the person's capacity as a lessor or renter of the motor vehicle is the amount determined under subsection (7) less any amounts that

(a) are recovered for loss or damage under the third party liability provisions of a contract evidenced by a motor vehicle liability policy issued to a person other than a lessor or renter;

(b) are in respect of the use or operation of the motor vehicle; and

(c) are in respect of the same incident.

(5) Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who is a conditional seller, a lender or a seller is not liable in that person's capacity as a conditional seller, a lender or a seller.

(6) Notwithstanding subsections (2) to (5), nothing in this Section relieves any person who is deemed to be the agent or employee of the owner and to be driving the motor vehicle in the course of that person's employment from liability for the loss or damage.

(7) The maximum amount for which a lessor or renter of a motor vehicle is liable for the purpose of subsection (4) is the greatest of

- (a) one million dollars;
- (b) the amount of third party liability insurance required by law to be carried in respect of the motor vehicle; and
- (c) the amount established, or determined in the manner prescribed, by regulation.

(8) Subsections (4) and (5) do not apply

- (a) in respect of amounts payable by a conditional seller, lender, lessor, renter or seller other than by reason of vicarious liability imposed by this Section; or
- (b) to conditional sellers, lenders, lessors, renters or sellers or motor vehicles, or classes of conditional sellers, lenders, lessors, renters or sellers or motor vehicles, prescribed by regulation.

(9) The Governor in Council may make regulations

- (a) establishing amounts payable, or prescribing the manner of determining amounts payable, for the purpose of clause (c) of subsection (7);
- (b) prescribing conditional sellers, lenders, lessors, renters and sellers and motor vehicles or classes of conditional sellers, lenders, lessors, renters and sellers and motor vehicles for the purpose of clause (b) of subsection (8).

(10) The Governor in Council may make different regulations under clause (b) of subsection (9) in relation to conditional sellers, lenders, lessors, renters and sellers and motor vehicles, or classes of conditional sellers, lenders, lessors, renters and sellers and motor vehicles, for different circumstances.

(11) The exercise by the Governor in Council of the authority contained in subsection (9) is regulations within the meaning of the *Regulations Act*.

(12) Subsections (4) to (9) apply only in relation to loss or damage sustained on or after the date this Section comes into force. 2011, c. 35, s. 8.

Owner jointly responsible for damage

148E An owner of a motor vehicle who requires or knowingly permits a person who is less than eighteen years of age to operate the motor vehicle on a highway and any person in charge of a motor vehicle who provides it to a person who is less than eighteen years of age are jointly and severally responsible with the driver for any injury, damage or loss caused by the fault of the driver in the operation of the motor vehicle, unless the owner of the vehicle satisfies the court that the driver was operating the vehicle without the express or implied consent of the owner. 2011, c. 35, s. 8.

Owner not responsible for damage caused by stolen car

148F The owner or person in charge of a motor vehicle is not responsible for any damage caused by the fault of the driver of the vehicle if the owner or person in charge of the motor vehicle proves that the vehicle was operated by or in the charge of a person who had stolen the motor vehicle. 2011, c. 35, s. 8.

SUBROGATION

Subrogation

149 (1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which Section 137 applies, the insurer shall have control of the action.

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to

(a) the solicitors to be instructed to bring the action in the name of the insured;

(b) the conduct and carriage of the action or any matters pertaining thereto;

(c) any offer of settlement or the apportionment thereof whether action has been commenced or not;

- (d) the acceptance of any money paid into court or the apportionment thereof;
- (e) the apportionment of costs; or
- (f) the launching or prosecution of an appeal,

either party may apply to the Trial Division of the Supreme Court for the determination of the matters in question and the Court shall make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

(6) A settlement or release given before or after action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein. R.S., c. 231, s. 149.

POLICIES OTHER THAN MOTOR VEHICLE LIABILITY POLICIES

Partial payment of loss

150 A policy, other than a motor vehicle liability policy, may contain a clause to the effect that the insurer in the event of loss shall pay only an agreed portion of any loss which may be sustained or the amount of the loss after deduction of a sum specified in the policy, in either case not exceeding the amount of the insurance, in which case there shall be printed upon the face of the policy in conspicuous type, in red ink, the words: "This policy contains a partial payment of loss clause." R.S., c. 231, s. 150.

Adjustment of claim with insured

151 Where a claim is made under any policy other than a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the policy as well as with any person having an interest indicated in the policy. R.S., c. 231, s. 151.

RATES AND RATING BUREAUX

Organization of rating bureau

152 Every rating bureau shall forthwith after its adoption file in the office of the Board three certified copies of its constitution, articles of association and by-laws, and a list of members of such bureau and their addresses, and thereafter shall file in the office of the Board every amendment, revision or consolidation of its constitution, articles of association and by-laws, and notice of the admission of new members and the withdrawal of former members within thirty days. R.S., c. 231, s. 152.

Return respecting rates

153 Every rating bureau on behalf of its members and every licensed insurer not belonging to a rating bureau shall make a return under oath to the Board in such form and at such times as it may require showing every or any schedule of rates filed, made or charged, together with such further or other information concerning such rates as the Board considers necessary or desirable. R.S., c. 231, s. 153.

Restriction on rates

154 (1) For the purpose of this Section, "previous rates" means, in relation to an insurer, the rates that the insurer has filed with the Nova Scotia Utility and Review Board and that were in effect on the first day of May, 2003.

(2) Effective the first day of November, 2003, an insurer shall not charge an amount more than eighty per cent of the previous rates, until the later of

(a) the first day of November, 2004, or, for the Facility Association, the first day of April, 2004; and

(b) the effective date of a new schedule of rates approved by the Board.

(3) Notwithstanding Section 40, an insurer shall, not later than the thirty-first day of January, 2004, reimburse, pursuant to the reduction of rates made by subsection (2), on a *pro rata* basis, an insured in respect of any excess premium paid by the insured to the insurer on the remainder of a contract that is in effect on the first day of November, 2003.

(4) Where a contract that is in effect on the first day of November, 2003, expires on or before the thirty-first day of January, 2004, the insurer may credit the amount of the reimbursement, calculated pursuant to subsection (3), to the insured on the premium to be paid for renewal of the contract, but the insured is entitled to the reimbursement if the insured does not renew the contract with that insurer.

(5) Where an insured is paying the insurer in instalments for a contract that is in effect on the first day of November, 2003, the insurer may credit the amount of the reimbursement, calculated pursuant to subsection (3), to the insured on the remaining instalments to be paid. 2003 (2nd Sess.), c. 1, s. 18.

Restriction on application

155 (1) An insurer may not apply to the Board before the first day of July, 2004, for an increase in its schedule of rates that will have effect on or after the first day of November, 2004.

(2) For greater certainty, an insurer is not required by subsection (1) to file an increase in its schedule of rates. 2003 (2nd Sess.), c. 1, s. 18.

Facility Association

155A (1) For greater certainty, the Facility Association is not an insurer for the purpose of Section 155.

(2) The Facility Association is an insurer for the purpose of Section 154 and Sections 155B to 155K. 2003 (2nd Sess.), c. 1, s. 18.

Decrease in rates

155B (1) For greater certainty, an insurer not belonging to a rating bureau may, at any time, file with the Board a schedule of rates that decreases the rates that are being charged before the date of the filing.

(2) A filing made under subsection (1) may take effect immediately after filing, but the Board may, on its own motion, review the filing and may require changes or disapprove the filing. 2003 (2nd Sess.), c. 1, s. 18.

Risk-classification system

155C (1) Every insurer shall, on or before the first day of January, 2004, file with the Board the risk-classification system that it is using in determining the rates for each category and coverage of automobile insurance.

(2) Every insurer shall apply to the Board for approval of any changes to its risk-classification system.

(3) An insurer is not required to apply for approval of a risk-classification system that the insurer is required to use under the regulations.

(4) An insurer shall file with the Board any change to its risk-classification system that is required by the regulations.

(5) The Board may provide interim approval of a risk-classification system and, where so approved, the insurer may use the risk-classification system until such time as the Board revokes the approval or requires changes as a condition of approval.

(6) No insurer shall use a risk-classification system in classifying risks for a coverage or category of automobile insurance unless the risk-classification system is

- (a) filed with the Board;
- (b) approved by the Board, where approval is required; or
- (c) exempt from approval pursuant to this Act. 2003 (2nd

Sess.), c. 1, s. 18.

First replacement of or alteration in schedule of rates

155D (1) This Section applies to the first replacement of or alteration in the schedule of rates that applies on or after November 1, 2004.

(2) Every insurer shall apply to the Board for any replacement of or alteration in the schedule of rates that it intends to use for each coverage and category of automobile insurance.

(3) Notwithstanding subsection (2), where an alteration in the schedule of rates is a general decrease for one or more categories or coverages, with no increases in any category or coverage, the approval of the Board is not required and the alteration need only be filed with the Board, but the Board may, on its own motion, review the filing and require changes or disapprove the filing.

(4) No insurer may use any rates that have not been approved by the Board, where approval is required, or that have not been filed with the Board.

(5) Subsection (4) does not apply to rates that have been filed with the Nova Scotia Utility and Review Board and that were in effect on the first day of May, 2003, as reduced pursuant to subsection (2) of Section 154. 2003 (2nd Sess.), c. 1, s. 18.

Application of Sections 155F to 155H

155E Sections 155F to 155H apply to

- (a) an application for approval of a risk-classification system; and
- (b) an application for replacement of or alteration in a schedule of rates made subsequent to an application made under Section 155D. 2003 (2nd Sess.), c. 1, s. 18.

Application for approval of risk-classification system or rates

155F (1) An application for approval of a risk-classification system or rates shall be in a form approved by the Board, shall be filed together with such information, material and evidence as the Board may require and shall be filed in accordance with either Section 155G or Section 155H.

(2) The Board may require an applicant to provide such information, material and evidence as the Board considers necessary in addition to the information, material and evidence required to be provided in or with the application. 2003 (2nd Sess.), c. 1, s. 18.

Approval of risk-classification system or rates

155G (1) An application for approval of a risk-classification system or rates is deemed to have been approved by the Board sixty days after it is filed, unless the Board, within that period, advises the applicant orally or otherwise that the Board has not approved the application.

(2) The Board may approve the application before the expiry of the sixty-day period.

(3) The Board may extend the period for approval for a period not exceeding sixty days.

(4) If the Board notifies an applicant orally that the Board has not approved an application, the Board shall, within five days, mail a written notice to the applicant confirming that fact.

(5) The Board shall not approve the application if a hearing is required by the regulations or if the Board considers that it is in the public interest to hold a hearing on the application. 2003 (2ns Sess.), c. 1, s. 18.

Expedited approval

155H (1) An applicant may apply for expedited approval of rates if the average of the proposed rates for each coverage and category of automobile insurance does not exceed the average of the existing rates filed by that insurer by more than the percentage prescribed by the Board for that class of applicant, coverage or category.

(2) An application for expedited approval is deemed to have been approved thirty days after it is filed, unless the Board, within that period, advises the applicant orally or otherwise that the Board has not approved the application.

(3) For greater certainty, the Board may approve an application for expedited approval before the expiry of the thirty-day period.

(4) Where the Board notifies an insurer orally that the Board has not approved the application for expedited approval, the Board shall promptly mail a written notice to the applicant confirming that fact.

(5) Where the Board notifies the insurer that the Board has not approved the application for expedited approval, the insurer may

(a) submit a new application; or

(b) resubmit the same application, in which case Section 155G applies to the application and this Section does not apply. 2003 (2nd Sess.), c. 1, s. 18.

Refusal to approve

155I (1) The Board shall refuse to approve an application if the Board considers that

(a) the proposed risk classification system or rates are not just and reasonable in the circumstances;

(b) the proposed risk classification system is not reasonably predictive of risk or does not distinguish fairly among rates;

(c) the proposed rates would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer; or

(d) the proposed rates or rules are in violation of this Act or the regulations.

(2) In deciding on an application, the Board may take into account financial and other information and any other matters that directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance using the proposed risk classification system.

(3) The Board may approve or refuse to approve the application or may vary the risk classification system or the rates, and the approval may be subject to the conditions or restrictions that the Board considers appropriate in the circumstances. 2003 (2nd Sess.), c. 1, s. 18.

Appeal

155J (1) Where the Board notifies an applicant that the Board has not approved its application, the applicant may, within fifteen days after receiving the notification, appeal the decision to the Board.

(2) An appeal under subsection (1) must be in writing.

(3) The appeal shall be heard by a panel of the Board of not fewer than three members, none of whom were involved in the decision not to approve the application.

(4) The Board, on the appeal, may approve or refuse to approve the application or may vary the risk classification system or the rates, and the approval may be subject to the conditions or restrictions that the Board considers appropriate in the circumstances. 2003 (2nd Sess.), c. 1, s. 18.

Costs

155K The Board shall assess the costs to an insurer for a review of an application or a hearing pursuant to Sections 155 to 155J and may include the cost of retaining experts and legal counsel to provide the Board with advice, including testimony, on technical and legal matters. 2003 (2nd Sess.), c. 1, s. 18.

Statistical return

156 (1) Every licensed insurer which carries on in the Province the business of automobile insurance shall prepare and file with such statistical agency as may be designated by the Governor in Council a record of its automobile insurance premiums and of its loss and expense costs in the Province in such form and manner, and according to such system of classification, as the Superintendent may approve.

(2) The Superintendent may require any agency so designated to compile the data so filed in such form as he may approve, and the expense of making such compilation shall be apportioned among the insurers whose data is compiled by such agency by the Superintendent who shall certify in writing the amount due from each insurer and the same shall be payable by the insurer to such agency forthwith.

(3) The Superintendent shall deliver to the Board three copies of the compilation upon receipt thereof from the statistical agency. R.S., c. 231, s. 156.

Adjustment of rates by Board

157 (1) The Board may of its own motion and shall, when so requested by the Minister, examine into and concerning the rates for all or any class or classes of automobile insurance in or in any part of the Province.

(2) It shall be the duty of the Board after due notice in a daily newspaper published with broad circulation in the Province and after a hearing to order an adjustment of the rates for automobile insurance whenever it finds such rates to be excessive, inadequate, unfairly discriminatory or otherwise unreasonable.

(3) A rate charged by an insurer in any area for any classification of risk shall not be presumed to be excessive for the sole reason that a lower rate is charged by a competing insurer in the same area and for a similar classification of risk.

(4) Any order made under this Section shall state the reasons for the finding of the Board.

(5) A rating bureau, a licensed insurer or the Superintendent may appeal any order of the Board on questions of fact or law to the Nova Scotia Court of Appeal.

(6) No order made shall take effect for a period of ten days after its date.

(7) The Superintendent shall be served with notice of any hearing and he and any rating bureau, licensed insurer or other person shall be entitled to be heard either personally or by counsel.

(8) Any rating bureau, licensed insurer or other person failing to comply with any provision of the order of the Board shall be guilty of an offence.

(9) The Board may fix fees to recover the direct and indirect costs incurred by the Board in conducting an examination, including a hearing, pursuant to this Section.

(10) The fees referred to in subsection (9)

(a) shall be paid to the Board by the licensed automobile insurers whose rates are the subject of an examination, including a hearing, pursuant to this Section in such proportions as the Board determines; and

(b) may include the cost of retaining experts and legal counsel to provide the Board with advice, including testimony, on

technical and legal matters. R.S., c. 231, s. 157; 2002, c. 5, s. 32; 2003 (2nd Sess.), c. 1, s. 19.

Access to records

158 (1) The Board, or any person authorized in writing by the Board, shall have access to such

(a) books, records, securities or documents of a rating bureau or licensed insurer as are related to the schedules of rates of the rating bureau or licensed insurer;

(b) books, records, securities or documents of a rating bureau or licensed insurer as are related to the underwriting rules and principles or rate classification systems of the rating bureau or licensed insurer; and

(c) information related to return on investment, profit, retained earnings, expenses, commissions paid, executive compensation and such other matters as are related to the solvency and financial circumstances of the rating bureau or licensed insurer.

(2) Any officer or person in charge, possession, custody or control of the books, records, securities, documents or information referred to in subsection (1) who refuses access to the books, records, securities, documents or information is guilty of an offence. 2003 (2nd Sess.), c. 1, s. 20.

Regulations

159 (1) The Governor in Council may make regulations

(a) adding to or increasing medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that are required to be in contracts;

(b) defining the minimum levels of medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that insurers must offer to insureds as optional supplements to the benefits required to be in contracts;

(c) determining that exclusions or limitations in any part of the general provisions, definitions, mandatory conditions or benefits required to be included in a contract do not apply to a "person insured in Quebec" as defined by the regulations;

(d) prescribing mandatory conditions that must be included in every contract;

(e) prescribing risk-classification factors that must be used by insurers;

(f) prescribing risk-classification factors that may not be used by insurers;

- (g) prescribing the circumstances under which the Board must hold hearings before approving an application;
- (h) prescribing matters that may not be considered in rates, rules or risk classification systems;
- (i) prescribing optional endorsements, coverages or riders that an insurer must offer to provide to insureds on an optional basis;
- (j) prescribing endorsements, coverages or riders that an insurer may offer to provide to insureds on an optional basis;
- (k) prescribing guidelines that are binding on the Board;
- (ka) establishing or governing a system or process for the examination, assessment and treatment or rehabilitation of bodily injuries suffered by an insured as a result of an accident as defined in Section 113E in respect of which benefits are payable under Section 140;
- (kb) governing the payment of any fees, levies or other assessments in respect of a system or process established under clause (ka) including, without limitation, respecting
 - (i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and
 - (ii) to whom and by whom the fees, levies or other assessments are to be paid;
- (l) prescribing activities or failures to act for the purpose of Section 159B;
- (m) prescribing such additional matters related to the conduct of insurers as will tend to improve their service and assist insureds.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2003 (2nd Sess.), c. 1, s. 20; 2010, c. 18, s. 6.

Insurer not to refuse to insure, renew or continue or to terminate insurance

159A (1) An insurer shall not refuse to issue, refuse to renew or terminate a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance on any ground set out in the regulations made pursuant to subsection (2).

- (2) The Governor in Council may make regulations
 - (a) requiring an insurer or broker to supply to applicants for automobile insurance, named insureds under contracts for automobile insurance or any other person prescribed by the regulations

such information, including but not restricted to underwriting rules, as the regulations specify;

(b) prescribing grounds for which an insurer cannot, in circumstances specified by the regulations, refuse to issue, refuse to renew or terminate a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;

(c) requiring insurers to provide to applicants for automobile insurance, named insureds under contracts for automobile insurance or any other person prescribed by the regulations reasons in any case of refusal to issue, refusal to renew or termination of a contract of automobile insurance or in any case of change to classification of risk;

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

(3) The exercise by the Governor in Council of the authority contained in subsection (2) is regulations within the meaning of the *Regulations Act*, 2003, c. 11, s. 3.

WITHDRAWAL OF INSURANCE COMPANIES

Restriction on withdrawal

159B (1) For the purpose of this Section, an insurer is withdrawing from the business of automobile insurance in the Province if the insurer does anything that results or is likely to result in a significant reduction in the amount of gross premiums written by the insurer for automobile insurance in any part of the Province, including any of the following things that have or are likely to have that result:

(a) declining to issue, terminating, refusing to renew or refusing to process applications for contracts of automobile insurance;

(b) refusing to provide or continue coverage or endorsements in respect of contracts of automobile insurance;

(c) taking actions that directly or indirectly result in termination of contracts between the insurer and the agents and brokers who solicit or negotiate contracts of automobile insurance on behalf of the insurer;

(d) reducing the ability of the agents or brokers to solicit or negotiate contracts of automobile insurance on behalf of the insurer;

(e) reducing the insurer's ability to act as a servicing carrier or ceasing to act as a servicing carrier under the Plan of Operation of the Facility Association;

(f) taking actions that directly or indirectly result in the termination of any contract between the insurer and the Facility Association; or

(g) engaging in any activity or failure to act that is prescribed by the regulations.

(2) An insurer shall not withdraw from the business of automobile insurance except in accordance with this Section.

(3) An insurer that intends to withdraw from the business of automobile insurance shall file with the Superintendent a notice in the form provided by the Superintendent.

(4) The notice shall specify the date that the insurer intends to begin to withdraw from the business of automobile insurance and shall be filed at least one hundred and eighty days before that date.

(5) The Superintendent may require the insurer to provide such information, material and evidence as the Superintendent considers necessary in addition to the information, material and evidence required to be provided in the notice.

(6) The insurer may withdraw from the business of automobile insurance on or after the date specified in the notice under subsection (4).

(7) Notwithstanding subsection (6), the Superintendent may

(a) authorize the insurer to withdraw from the business of automobile insurance before the date specified in the notice under subsection (4); or

(b) prohibit the insurer from withdrawing from the business of automobile insurance until a date specified by the Superintendent that is not later than ninety days after the date specified in the notice under subsection (4). 2003 (2nd Sess.), c. 1, s. 21.

Review of this Part

159BA(1) The Superintendent shall review this Part, or cause this Part to be reviewed,

(a) within seven years of the coming into force of this Section; and

(b) at least every seven years thereafter,

or sooner or more often at the request of the Minister.

(2) The Superintendent shall deliver in writing to the Minister the results of the review, including any recommendations for change that the Superintendent considers appropriate as a result of the review. 2011, c. 35, s. 9.

SCHEDULES A and B to PART VI *repealed 2003 (2nd Sess.), c. 1, s. 22.*

PART VII

FIRE INSURANCE

Interpretation of Part

160 In this Part,

(a) “contract” means a contract of insurance against loss of or damage to property in the Province or in transit therefrom or thereto, caused by fire, lightning or explosion;

(b) “mutual insurance” means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts whether or not the maximum amount of the consideration is predetermined. R.S., c. 231, s. 160.

Application of Part

161 (1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in the Province except,

(a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;

(b) where the subject-matter of the insurance is rents, charges or loss of profits;

(c) where the peril of fire is an incidental peril to the coverage provided; or

(d) where the subject-matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) This Part applies to contracts made on or after the first day of January, 1959, and Chapter 100 of the Revised Statutes, 1954, as that Chapter was in force on the thirty-first day of December, 1958, applies to contracts made before the first day of January, 1959.

(3) Notwithstanding subsection (1), this Part applies to insurance of an automobile as provided in subsection (2) of Section 162. R.S., c. 231, s. 161; 1998, c. 8, s. 48.

Other perils

162 (1) Every insurer licensed pursuant to Section 6 to carry on fire insurance may, subject to its Act of incorporation, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, wind-storm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed by the regulations.

(2) An insurer licensed pursuant to Section 6 to carry on fire insurance may insure an automobile against loss or damage under a policy falling within the scope of this Part, but in the case of a purely mutual fire insurance corporation, licensed pursuant to Section 6 to carry on fire insurance in the Province and carrying on business on the premium-note plan, the automobile shall be specifically insured under a policy separate from that insuring other property. R.S., c. 231, s. 162.

Extent of coverage

163 (1) Subject to subsection (4) and to clause (a) of Section 171, in any contract to which this Part applies, the contract shall be deemed to cover the insured property

(a) against fire, whether resulting from explosion or otherwise, not occasioned by or happening through

(i) in the case of goods, their undergoing any process involving the application of heat,

(ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military power;

(b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire;

(c) against explosion, not occasioned by, or happening through, any of the perils specified in subclause (ii) of clause (a), of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion, within the meaning of subsection (1).

(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred shall, for seven days only or for the unexpired term of the contract if less than seven days, cover the property removed and any property remaining in the original location in the proportions which the value of the property in each of the respective locations bears to the value of the property in them all.

(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.

(5) An insurer licensed pursuant to Section 6 to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of live stock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents. R.S., c. 231, s. 163.

Contents of policy

164 Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium for the insurance, the subject-matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue and the term of the insurance. R.S., c. 231, s. 164.

Variance between application and policy

165 After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy. R.S., c. 231, s. 165.

Renewal of contract

166 A contract may be renewed by the delivery of a renewal receipt identifying the policy by a number, date, or otherwise, or a new premium note. R.S., c. 231, s. 166.

Statutory conditions

167 (1) In this Section, "policy" does not include interim receipts or binders.

(2) The conditions set forth in the Schedule to this Part shall be deemed to be part of every contract and shall be printed on every policy with the heading "Statutory Conditions" and no variation or omission of or addition to any statutory condition shall be binding on the insured. R.S., c. 231, s. 167.

Notice of cancellation or alteration

168 (1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to him.

(2) The length of and manner of giving the notice under subsection (1) shall be the same as notice of cancellation to the insured under the statutory conditions in the contract. R.S., c. 231, s. 168.

Contribution among insurers

169 (1) Where, on the happening of any loss or damage to property insured, there is in force more than one contract covering the same interest, the insurers under the respective contracts shall each be liable to the insured for its rateable proportion of the loss unless it is otherwise expressly agreed in writing between the insurers.

(2) For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term thereof that the policy shall not cover, come into force, attach, or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in Section 170 or any contract condition limiting or prohibiting the having or placing of other insurance.

(4) Nothing in subsection (1) affects the operation of any deductible clause and,

(a) where one contract contains a deductible, the *pro rata* proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and

(b) where more than one contract contains a deductible, the *pro rata* proportion of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be pro rated among the insurers with deductibles and these pro rated amounts shall affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) shall be construed to have the effect of increasing the *pro rata* contribution of an insurer under a contract that is not subject to a deductible clause.

(6) Notwithstanding subsection (1), insurance on identified articles shall be a first loss insurance as against all other insurance. R.S., c. 231, s. 169.

Notice of limit of liability

170 A contract containing

- (a) a deductible clause;
- (b) a co-insurance, average or similar clause; or
- (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

shall have printed or stamped upon its face in red ink or in bold print of not less than twelve-point size the words: "This policy contains a clause which may limit the amount payable", and unless these words are so printed or stamped the clause shall not be binding upon the insured. R.S., c. 231, s. 170; 1998, c. 8, s. 49.

Relief granted by court

171 Where a contract

- (a) excludes any loss that would otherwise fall within the coverage prescribed by Section 163; or
- (b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty shall not be binding upon the insured if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried. R.S., c. 231, s. 171.

Subrogation

172 (1) The insurer, upon making any payment or assuming liability therefor under a contract of fire insurance, shall be subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

(2) Where the net amount recovered after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively. R.S., c. 231, s. 172.

SCHEDULE TO PART VII

STATUTORY CONDITIONS

1 *Misrepresentation* - If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to any property in relation to which the misrepresentation or omission is material.

2 *Property of others* - Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

3 *Change of interest* - The insurer shall be liable for loss or damage occurring after an authorized assignment under the *Bankruptcy Act* (Canada) or change of title by succession, by operation of law, or by death.

4 *Material change* - Any change material to the risk and within the control and knowledge of the insured shall avoid the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

- 5 (1) *Termination of insurance* - This contract may be terminated,
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail, or five days' written notice of termination personally delivered;
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but, in no event, shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but, in no event, shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order, or by cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

- 6 (1) *Requirements after loss* - Upon the occurrence of any loss of or damage to the insured property, the insured shall, if such loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,
- (a) forthwith give notice thereof in writing to the insurer;
 - (b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,
 - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,

(ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,

(iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,

(iv) showing the amount of other insurances and the names of other insurers,

(v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,

(vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,

(vii) showing the place where the property insured was at the time of loss;

(c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

(d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (c) and (d) of sub-paragraph (1) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

7 *Fraud* - Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

8 *Who may give notice and proof* - Notice of loss may be given, and proof of loss may be made, by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

9 (1) *Salvage* - The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute *pro rata* towards any reasonable and proper expenses in connection with steps taken by the insured and required under sub-paragraph (1) of this condition according to the respective interests of the parties.

10 *Entry, control, abandonment* - After any loss or damage to insured property, the insurer shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisalment or particular estimate of the loss or damage, but the insurer shall not be entitled to the control of possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

11 *Appraisal* - In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

12 *When loss payable* - The loss shall be payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

13 (1) *Replacement* - The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

14 *Action* - Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

15 *Notice* - Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in this Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address notified to the insurer. In this condition the expression "registered" means registered in or outside Canada.

R.S., c. 231, Part VII, Sch.

PART VIII

LIFE INSURANCE

Interpretation of Part

173 In this Part

(a) "application" means an application for insurance or for the reinstatement of insurance;

(b) "beneficiary" means a person, other than the insured or his personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

(c) "child" includes an adopted child;

(d) "contract" means a contract of life insurance;

(e) "Court" means the Trial Division of the Supreme Court or a judge thereof;

(f) "creditor's group insurance" means insurance effected by a creditor in respect of the lives of his debtors whereby the lives of the debtors are insured severally under a single contract;

- (g) “declaration” means an instrument signed by the insured
 - (i) with respect to which an endorsement is made on the policy,
 - (ii) that identifies the contract, or
 - (iii) that describes the insurance or insurance fund or a part thereof,

in which he designates, or alters or revokes the designation of, his personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;

(h) “family insurance” means insurance whereby the lives of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

- (i) “grandchild” includes the child of an adopted child;

(j) “group insurance” means insurance, other than creditor’s group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

(k) “group-life insured” means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon, or related to, him;

(l) “industrial contract” means a contract for an amount not exceeding two thousand dollars, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and which provides for payment of premiums at fortnightly or shorter intervals, or, if the premiums are usually collected at the home of the insured, at monthly intervals;

- (m) “instrument” includes a will;

- (n) “insurance” means life insurance;

- (o) “insured” means

- (i) except as provided in subclause (ii), the person who makes a contract with an insurer, and

- (ii) in the case of group insurance, the group-life insured in the provisions relating to the designation of beneficiaries or other persons to receive insurance money or relating to the rights and status of beneficiaries;

(p) “person” includes a firm, partnership, corporation, and an unincorporated society or association. R.S., c. 231, s. 173.

APPLICATION OF PART

Application of Part

174 (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the Province on or after the first day of July, 1962, and, subject to subsections (2) and (3), applies to a contract made in the Province before that day.

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately prior to the first day of July, 1962, are those provided in Chapter 151 of the Revised Statutes, 1954, then in force.

(3) Where the person who would have been entitled to the payment of insurance money if the money had become payable immediately prior to the first day of July, 1962, was a preferred beneficiary within the meaning of Chapter 151 of the Revised Statutes, 1954, then in force, the insured may not, except in accordance with that Chapter,

- (a) alter or revoke the designation of a beneficiary; or
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Chapter. R.S., c. 231, s. 174.

Application to group insurance

175 In the case of a contract of group insurance made with an insurer licensed pursuant to Section 6 to carry on the business of insurance in the Province at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries if the group life insured was resident in the Province at the time he became insured; and
- (b) the rights and obligations of the group life insured if he was resident in the Province at the time he became insured. R.S., c. 231, s. 175.

ISSUANCE OF POLICY AND
CONTENTS THEREOF**Contract of insurance**

- 176 (1)** An insurer entering into a contract shall issue a policy.
- (2)** Subject to subsection (3), the provisions in
- (a) the application;
 - (b) the policy;
 - (c) any document attached to the policy when issued; and

(d) any amendment to the contract agreed upon in writing after the policy is issued,

constitute the entire contract.

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

(4) An insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application. R.S., c. 231, s. 176.

Contents of policy

177 (1) This Section does not apply to a contract

- (a) of group insurance;
- (b) of creditor's group insurance; or
- (c) made by a fraternal society.

(2) An insurer shall set forth in the policy

(a) the name or a sufficient description of the insured and of the person whose life is insured;

(b) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;

(c) the amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid;

(d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;

(e) the conditions upon which the contract may be reinstated if it lapses; and

(f) the options, if any,

(i) of surrendering the contract for cash,

(ii) of obtaining a loan or an advance payment of the insurance money, and

(iii) of obtaining paid-up or extended insurance.

R.S., c. 231, s. 177.

Contents of group policy

178 In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth in the policy

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives are insured;
- (c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid; and
- (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer. R.S., c. 231, s. 178.

Contents of group certificate

179 In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group life insured, a certificate or other document in which are set forth

- (a) the name of the insurer and an identification of the contract;
- (b) the amount, or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent upon, or related to, him; and
- (c) the circumstances in which the insurance terminates and the rights, if any, upon termination, of the group life insured and of any person whose life is insured under the contract as a person dependent upon, or related to, him. R.S., c. 231, s. 179.

CONDITIONS GOVERNING
FORMATION OF CONTRACT

Insurable interest

180 (1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

- (2)** A contract is not void for lack of insurable interest if
- (a) it is a contract of group insurance; or
 - (b) the person whose life is insured has consented in writing to the insurance being placed on his life.

(3) Where the person whose life is insured is under the age of sixteen years, consent to insurance being placed on his life may be given by one of his parents or by a person standing *in loco parentis* to him. R.S., c. 231, s. 180.

“insurable interest” defined

181 Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and in the life of

- (a) his child or grandchild;
- (b) his spouse or common-law partner;
- (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education;
- (d) his employee; and
- (e) any person in the duration of whose life he has a pecuniary interest. R.S., c. 231, s. 181; 2000, c. 29, s. 24.

Contract taking effect

182 (1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless

- (a) the policy is delivered to an insured, his assign or agent, or to a beneficiary;
- (b) payment of the first premium is made to the insurer or its authorized agent; and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (a) of subsection (1), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured. R.S., c. 231, s. 182.

Deemed results respecting payments

183 (1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed not to have been paid.

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter. R.S., c. 231, s. 183.

Payment of premium

184 (1) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

(2) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of

(a) thirty days, or in the case of an industrial contract twenty-eight days, from and excluding the day on which the premium is due; or

(b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding six per cent *per annum*, and the balance, if any, of the current year's premium, may be deducted from the insurance money. R.S., c. 231, s. 184.

Duty to disclose

185 (1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to Section 186, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer. R.S., c. 231, s. 185.

Contract not voidable

186 (1) This Section does not apply to a mis-statement of age or to disability insurance.

(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose, or a misrepresentation of, a fact required to be disclosed by Section 185 does not, in the absence of fraud, render the contract voidable.

(3) In the case of a contract of group insurance, a failure to disclose, or a misrepresentation of, such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person in which event it is not, in the absence of fraud, voidable. R.S., c. 231, s. 186.

Non-disclosure by insurer

187 Where an insurer fails to disclose, or misrepresents, a fact material to the insurance, the contract is voidable by the insured, but in the absence of fraud the contract is not by reason of such failure or misrepresentation voidable after the contract has been in effect for two years. R.S., c. 231, s. 187.

Mis-statement of age and insurable age

188 (1) This Section does not apply to a contract of group insurance or of creditor's group insurance.

(2) Subject to subsection (3), where the age of a person whose life is insured is mis-stated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age.

(3) Where a contract limits the insurable age, and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within sixty days after it discovers the error. R.S., c. 231, s. 188.

Mis-statement in group insurance

189 In the case of a contract of group insurance or of creditor's group insurance, a mis-statement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable and the provisions, if any, of the contract, with respect to age or mis-statement of age apply. R.S., c. 231, s. 189.

Suicide

190 (1) Where a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement. R.S., c. 231, s. 190.

Reinstatement

191 (1) This Section does not apply to a contract of group insurance or to a contract made by a fraternal society.

(2) Where a contract lapses and the insured within two years applies for reinstatement of the contract, if within that time he

(a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate

specified in the contract, but not exceeding six per cent *per annum*, compounded annually; and

(b) produces

(i) evidence satisfactory to the insurer of the good health, and

(ii) other evidence satisfactory to the insurer of the insurability,

of the person whose life was insured,

the insurer shall reinstate the contract.

(3) Subsection (2) does not apply where the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

(4) Sections 185 and 186 apply *mutatis mutandis* to reinstatement of a contract. R.S., c. 231, s. 191.

DESIGNATION OF BENEFICIARIES

Designation of beneficiary

192 (1) An insured may, in a contract or by a declaration, designate himself, his personal representative or a beneficiary to receive insurance money.

(2) Subject to Section 193, the insured may alter or revoke the designation by a declaration.

(3) A designation in favour of “heirs”, “next of kin”, or “estate”, or the use of words of like import in a designation, shall be deemed to be a designation of a personal representative. R.S., c. 231, s. 192.

Irrevocable designation

193 (1) An insured may, in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of his creditors and does not form part of his estate.

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

(3) No insurer shall issue a policy containing an irrevocable designation of a beneficiary or accept for filing a declaration containing an irrevocable designation of a beneficiary unless there are attached to the policy or to the declaration statements signed by

(a) the insured in the following form:

I understand that the effect of my designating a beneficiary irrevocably is that, under the provisions of the *Insurance Act*, while the beneficiary is living, I may not alter or revoke the designation without the consent of the beneficiary and I may not assign, exercise rights under or in respect of, surrender or otherwise deal with the contract without the consent of the beneficiary;

and

(b) an agent of the insurer in the following form:

I certify that I have fully explained to the insured the nature and effect of making an irrevocable designation of beneficiary and such explanation was given to the insured not in the presence of the beneficiary and that the insured indicated that he was aware of the irrevocable nature of the designation so made by him.

R.S., c. 231, s. 193.

Designation in will

194 (1) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(2) Notwithstanding the *Wills Act*, a designation in a will is of no effect against a designation made later than the making of the will.

(3) Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(4) Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument if valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked. R.S., c. 231, s. 194.

Trustee for beneficiary

195 (1) An insured may, in a contract or by a declaration, appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

(2) A payment made by an insurer to the trustee discharges the insurer to the extent of the payment. R.S., c. 231, s. 195.

Beneficiary predeceasing life insured

196 (1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable to

- (a) the surviving beneficiary;
- (b) if there is more than one surviving beneficiary, the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, the insured or his personal representative.

(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares. R.S., c. 231, s. 196.

Right to enforce contract

197 A beneficiary may enforce for his own benefit, and a trustee appointed pursuant to Section 195 may enforce as trustee, the payment of insurance money made payable to him in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or his personal representative. R.S., c. 231, s. 197.

Exemption from execution and seizure

198 (1) Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While a designation in favour of a spouse or common-law partner, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure. R.S., c. 231, s. 198; 2000, c. 29, s. 24.

DEALINGS WITH CONTRACT
DURING LIFETIME OF INSURED

Insured dealing with contract

199 Where a beneficiary

- (a) is not designated irrevocably; or
- (b) is designated irrevocably but has attained the age of nineteen years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as provided therein or in this Part or as may be agreed upon with the insurer. R.S., c. 231, s. 199.

Entitlement to dividend and bonus

200 (1) Notwithstanding the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force. R.S., c. 231, s. 200.

Transfer of interest of insured

201 (1) Notwithstanding the *Wills Act*, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

(a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his estate; and

(b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively on the death of each of them, the rights and interests of the insured in the contract, this Section applies successively, *mutatis mutandis*, to each of such persons and to his rights and interests in the contract.

(3) Notwithstanding any nomination made pursuant to this Section, the insured may, prior to his death, assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer. R.S., c. 231, s. 201.

Assignment of contract

202 (1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably as provided in Section 193 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(4) A provision in a contract to the effect that the rights or interests of the insured, or in the case of group insurance the group life insured, are not assignable is valid. R.S., c. 231, s. 202.

Enforcement by group life insured

203 A group life insured may in his own name enforce a right given to him under a contract, subject to any defence available to the insurer against him or against the insured. R.S., c. 231, s. 203.

MINORS

Capacity of minor

204 Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of nineteen years

- (a) to make an enforceable contract; and
- (b) in respect of a contract. R.S., c. 231, s. 204.

Capacity of minor beneficiary

205 A beneficiary who has attained the age of eighteen years has the capacity of a person of the age of nineteen years to receive insurance money payable to him and to give a discharge therefor. R.S., c. 231, s. 205.

PROCEEDINGS UNDER CONTRACT

Matters to be proved

206 Where an insurer receives sufficient evidence of

- (a) the happening of the event upon which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto. R.S., c. 231, s. 206.

Payment

207 (1) Subject to subsection (4), insurance money is payable in the Province.

(2) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars.

(3) Where a person entitled to receive insurance money is not domiciled in the Province, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on his behalf by the law of the domicile of the payee.

(4) In the case of a contract of group insurance, the insurance money is payable in the province of Canada in which the group life insured was resident at the time he became insured. R.S., c. 231, s. 207.

Action in Province

208 Regardless of the place where a contract was made, a claimant who is a resident of the Province may bring action in a Court if the insurer was authorized to carry on insurance in the Province at the time the contract was made or at the time the action is brought. R.S., c. 231, s. 208.

Limitation of action

209 (1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money shall not be commenced more than one year after the furnishing of the evidence required by Section 206, or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

(2) Where a declaration has been made under Section 212, an action or proceeding to which reference is made in subsection (1) shall not be commenced more than one year after the date of the declaration. R.S., c. 231, s. 209.

Instrument or order respecting payment

210 (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a Court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of the instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer. R.S., c. 231, s. 210.

Sufficiency of proof

211 Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by Section 206 and there is no other

question in issue except a question under Section 212, the insurer or the claimant may, before or after action is brought and upon at least thirty days' notice, apply to the Court for a declaration as to the sufficiency of the evidence furnished, and the Court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence. R.S., c. 231, s. 211.

Presumption of death

212 Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his not having been heard of for seven years, and there is no other question in issue except a question under Section 211, the insurer or the claimant may, before or after action is brought and upon at least thirty days' notice, apply to the Court for a declaration as to presumption of the death and the Court may make the declaration. R.S., c. 231, s. 212.

Court may make order

213 (1) Upon making a declaration under Section 211 or 212, the Court may make such order respecting the payment of the insurance money as it deems just and, subject to Section 215, an order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

(2) The Court may fix without taxation the costs incurred in connection with an order made under subsection (1).

(3) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 213.

Application stays proceeding

214 Unless the Court otherwise orders, an application made under Section 211 or 212 operates as a stay of any pending action with respect to the insurance money. R.S., c. 231, s. 214.

Appeal

215 An appeal lies to the Appeal Division of the Supreme Court from any declaration, direction or order made under Section 211 or 212 or subsection (1) of Section 213. R.S., c. 231, s. 215.

Powers of Court

216 Where the Court finds that the evidence furnished under Section 206 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make such other order as it deems just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs. R.S., c. 231, s. 216.

Payment into court

217 Where an insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of a person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly. R.S., c. 231, s. 217.

Simultaneous deaths

218 Unless a contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection (1) of Section 196 as if the beneficiary had predeceased the person whose life is insured. R.S., c. 231, s. 218.

Insurance money payable in instalments

219 (1) Subject to subsections (2) and (3), where insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary has not the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessaries supplied to the beneficiary or his minor children.

(2) A Court may, upon the application of the beneficiary and upon at least ten days' notice, declare that in view of special circumstances

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money; or
- (b) the beneficiary may alienate or assign his interest in the insurance money.

(3) After the death of the beneficiary, subsection (1) does not apply.

(4) In this Section, "instalments" includes insurance money held by the insurer under Section 220. R.S., c. 231, s. 219.

Insurer holding insurance money

220 (1) An insurer may hold insurance money

- (a) subject to the order of an insured or a beneficiary; or
- (b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing. R.S., c. 231, s. 220.

Application for payment into court

221 Where an insurer does not, within thirty days after receipt of the evidence required by Section 206, pay the insurance money to some person competent to receive it or into court, the Court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it deems just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 221.

Costs

222 The Court may fix without taxation the costs incurred in connection with an application or order made under Section 217 or 221, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it deems just. R.S., c. 231, s. 222.

Payment into court for minor

223 (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a discharge therefor, who is willing to do so, the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money, less the applicable costs mentioned in subsection (2), into court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1) the sum of ten dollars where the amount does not exceed one thousand dollars, and the sum of fifteen dollars in other cases, and payment of the remainder of the money into court discharges the insurer

(3) No order is necessary for payment into court under subsection (1), but the prothonotary or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date

of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Minister of Community Services and deliver to him a copy of the affidavit. R.S., c. 231, s. 223.

Beneficiary under disability

224 Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 224.

MISCELLANEOUS PROVISIONS

Presumption against agency

225 No officer, agent or employee of an insurer and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, a beneficiary or a claimant, be deemed to be the agent of the insured in respect of any question arising out of a contract. R.S., c. 231, s. 225.

Insurer giving misinformation

226 An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money. R.S., c. 231, s. 226.

PART IX

MARINE INSURANCE

Interpretation

227 In this Part

- (a) “action” includes counterclaim and set-off;
- (b) “freight” includes the profit derivable by a ship owner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage-money;
- (c) “movables” means any movable tangible property, other than the ship, and includes money, valuable securities and other documents;
- (d) “policy” means marine policy;
- (e) “policy of insurance” includes every writing whereby any contract of marine insurance is made or agreed to be made, or is evidenced, and the expression “insurance” includes assurance. R.S., c. 231, s. 227.

Contract of marine insurance

228 A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed

and includes any insurance, and reinsurance, made upon any ship or vessel or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to any ship or vessel, and includes any insurance of goods, merchandise or property for any transit which includes not only a sea or marine risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance. R.S., c. 231, s. 228.

Mixed land and sea risks

229 (1) A contract of marine insurance, may, by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Part, in so far as applicable, shall apply thereto but, except as by this Section provided, nothing in this Part shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Part defined. R.S., c. 231, s. 229.

Marine adventure insurance permitted

230 (1) Subject to this Part, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular, there is a marine adventure where

(a) any ship, goods or other movables are exposed to maritime perils, such property being in this Part referred to as “insurable property”;

(b) the earning or acquisition of any freight, passage-money, commission, profit or other pecuniary benefit, or the security for any advances, loan or disbursements, is endangered by the exposure of insurable property to maritime perils;

(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.

(3) “Maritime perils” means the perils consequent on or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy. R.S., c. 231, s. 230.

INSURABLE INTEREST

Gaming or wagering contract

231 (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract where

(a) the assured has not an insurable interest as defined by this Part, and the contract is entered into with no expectation of acquiring such an interest; or

(b) the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term,

provided that where there is no possibility of salvage a policy may be effected without benefit of salvage to the insurer. R.S., c. 231, s. 231.

Insurable interest

232 (1) Subject to this Part, every person has an insurable interest who is interested in a marine adventure.

(2) In particular, a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss or by damage thereto or by the detention thereof, or may incur liability in respect thereof. R.S., c. 231, s. 232.

When interest must attach

233 (1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected, provided that where the subject-matter is insured “lost or not lost”, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss. R.S., c. 231, s. 233.

Defeasible or contingent interest

234 (1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them he has an insurable interest, notwithstanding that he might, at his election, have

rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise. R.S., c. 231, s. 234.

Partial interest

235 A partial interest of any nature is insurable. R.S., c. 231, s. 235.

Reinsurance

236 (1) The insurer under a contract of marine insurance has an insurable interest in his risk and may reinsure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance. R.S., c. 231, s. 236.

Bottomry or respondentia

237 The lender of money on bottomry or *respondentia* has an insurable interest in respect of the loan. R.S., c. 231, s. 237.

Wages

238 The master or any member of the crew of a ship has an insurable interest in respect of his wages. R.S., c. 231, s. 238.

Advance freight

239 In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayment in case of loss. R.S., c. 231, s. 239.

Charges of insurance

240 The assured has an insurable interest in the charges of any insurance which he may effect. R.S., c. 231, s. 240.

Mortgage

241 (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss. R.S., c. 231, s. 241.

Assignment of interest

242 Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect, but this Section does not affect a transmission of interest by operation of law. R.S., c. 231, s. 242.

INSURABLE VALUE

Measure of insurable value

243 Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

(a) in insurance on a ship, the insurable value is the value at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements, if any, incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole;

(b) the insurable value, in the case of a steamship includes also the machinery, boilers and coals, oils and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade;

(c) in insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance;

(d) in insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole;

(e) in insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance. R.S., c. 231, s. 243.

DISCLOSURE AND REPRESENTATIONS

Good faith

244 A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by one party the contract may be avoided by the other party. R.S., c. 231, s. 244.

Disclosure by insured

245 (1) Subject to this Section, the assured must disclose to the insurer before the contract is concluded every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which

in the ordinary course of business ought to be known by him and, if the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgement of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

- (a) any circumstance which diminishes the risk;
- (b) any circumstance which is known or presumed to be known to the insurer;
- (c) any circumstance as to which information is waived by the insurer;
- (d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance which is not disclosed be material or not is in each case a question of fact.

(5) The term "circumstance" includes any communication made to or information received by the assured.

(6) For the purposes of clause (b) of subsection (3), an insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of his business, as such, ought to know. R.S., c. 231, s. 245.

Disclosure by agent

246 Subject to Section 245 as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer

- (a) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by or to have been communicated to him; and
- (b) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent. R.S., c. 231, s. 246.

Untrue representation by agent

247 (1) Every material representation made by the assured or by his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true and if it be untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it be made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation be material or not is in each case a question of fact. R.S., c. 231, s. 247.

When contract concluded

248 A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not, and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract. R.S., c. 231, s. 248.

THE POLICY

Contract of marine insurance

249 (1) A contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Part.

(2) The policy may be executed and issued either at the time when the contract is concluded or afterwards. R.S., c. 231, s. 249.

Contents of policy

250 A marine policy must specify

(a) the name of the assured or of some person who effects the insurance on his behalf;

(b) the subject-matter insured and the risk insured against;

(c) the voyage or period of time, or both, as the case may be, covered by the insurance;

(d) the sum or sums insured; and

(e) the name or names of the insurers. R.S., c. 231, s. 250.

Signature of insurer

251 (1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation, the corporate seal may be sufficient, but nothing in this Section shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured. R.S., c. 231, s. 251.

“voyage” and “time” policies

252 (1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a “voyage policy”, and where the contract is to insure the subject-matter for a definite period of time, the policy is called a “time policy”.

(2) A contract for both voyage and time may be included in the same policy. R.S., c. 231, s. 252.

Subject-matter

253 (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this Section, regard shall be had to any usage regulating the designation of the subject-matter insured. R.S., c. 231, s. 253.

Types of policy and valued policy

254 (1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to this Part, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss. R.S., c. 231, s. 254.

Unvalued policy

255 An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner hereinbefore specified. R.S., c. 231, s. 255.

Floating policy

256 (1) A floating policy is a policy which describes the insurance in general terms and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by endorsement on the policy or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment and they must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration. R.S., c. 231, s. 256.

Form of policy

257 (1) A policy may be in the form in the Schedule to this Part.

(2) Subject to this Part, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the Schedule to this Part shall be construed as having the scope and meaning in the Schedule assigned to them. R.S., c. 231, s. 257.

Premium arranged

258 (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable. R.S., c. 231, s. 258.

DOUBLE INSURANCE

Double insurance

259 (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured

exceed the indemnity allowed by this Part, the assured is said to be overinsured by double insurance.

- (2) Where the assured is overinsured by double insurance,
- (a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Part;
 - (b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;
 - (c) where the policy under which the assured claims is an unvalued policy, he must give credit, as against the full insurable value, for any sum received by him under any other policy;
 - (d) where the assured receives any sum in excess of the indemnity allowed by this Part, he is deemed to hold such sum in trust for the insurers according to their right of contribution among themselves. R.S., c. 231, s. 259.

WARRANTIES, ETC.

Warranty

260 (1) A warranty, in the following Sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not and if it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date. R.S., c. 231, s. 260.

Non-compliance

261 (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied and the warranty complied with before loss.

(3) A breach of warranty may be waived by the insurer. R.S., c. 231, s. 261.

Express warranty

262 (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in or written upon the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith. R.S., c. 231, s. 262.

“neutral” property or ship

263 (1) Where insurable property, whether ship or goods, is expressly warranted “neutral,” there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted “neutral,” there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers or use simulated papers, and if any loss occurs through breach of this condition, the insurer may avoid the contract. R.S., c. 231, s. 263.

Nationality of ship

264 There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk. R.S., c. 231, s. 264.

Warranty of “well” or “in good safety”

265 Where the subject-matter insured is warranted “well” or “in good safety” on a particular day, it is sufficient if it be safe at any time during that day. R.S., c. 231, s. 265.

Warranty respecting seaworthiness, ordinary perils or preparation

266 (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further prepara-

tion or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness. R.S., c. 231, s. 266.

Seaworthiness of movables and fitness to carry

267 (1) In a policy of goods or other movables there is no implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage, the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy. R.S., c. 231, s. 267.

Warranty respecting legality

268 There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner. R.S., c. 231, s. 268.

THE VOYAGE

Commencement of voyage

269 (1) Where the subject-matter is insured by a voyage policy “at and from” or “from” a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition. R.S., c. 231, s. 269.

Change of port of departure

270 Where the place of departure is specified by the policy, and the ship, instead of sailing from that place, sails from any other place, the risk does not attach. R.S., c. 231, s. 270.

Change of destination

271 (1) Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach. R.S., c. 231, s. 271.

Change of voyage

272 (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested, and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs. R.S., c. 231, s. 272.

Effect of deviation from voyage

273 (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy

(a) where the course of the voyage is specifically designated by the policy and that course is parted from; or

(b) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial, there must be a deviation in fact to discharge the insurer from his liability under the contract. R.S., c. 231, s. 273.

Several ports of discharge

274 (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy, and if she does not, there is a deviation.

(2) Where the policy is to "ports of discharge," within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order, and, if she does not, there is a deviation. R.S., c. 231, s. 274.

Delay in voyage

275 In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable. R.S., c. 231, s. 275.

Deviation or delay excused

276 (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused

- (a) where authorized by any special term in the policy;
- (b) where caused by circumstances beyond the control of the master and his employer;
- (c) where reasonably necessary in order to comply with an express or implied warranty;
- (d) where reasonably necessary for the safety of the ship or subject-matter insured;
- (e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger;
- (f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- (g) where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage with reasonable dispatch. R.S., c. 231, s. 276.

ASSIGNMENT OF POLICY**Assignment**

277 (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment and it may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in the policy, the assignee of the policy is entitled to sue thereon in his own name and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner. R.S., c. 231, s. 277.

Late assignment

278 Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative provided that nothing in this Section affects the assignment of a policy after loss. R.S., c. 231, s. 278.

THE PREMIUM

Premium

279 Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium. R.S., c. 231, s. 279.

Broker

280 (1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the insured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy, and where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent. R.S., c. 231, s. 280.

Effect of receipt on policy

281 Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker. R.S., c. 231, s. 281.

Proximate cause of loss

282 (1) Subject to this Part, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular,

(a) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils. R.S., c. 231, s. 282.

Total or partial loss

283 (1) A loss may be either total or partial and any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive as well as an actual total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks or otherwise, they are incapable of identification, the loss, if any, is partial and not total. R.S., c. 231, s. 283; revision corrected 1999.

Actual total loss

284 (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given. R.S., c. 231, s. 284.

Missing ship

285 Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed. R.S., c. 231, s. 285.

Effect of trans-shipment

286 Where, by a peril insured against, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in trans-shipping them, and sending them on to

their destination, the liability of the insurer continues, notwithstanding the landing or trans-shipment. R.S., c. 231, s. 286; revision corrected 1999.

Constructive total loss

287 (1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss where

(a) the assured is deprived of the possession of his ship or goods by a peril insured against, and

(i) it is unlikely that he can recover the ship or goods, as the case may be, or

(ii) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered;

(b) in the case of damage to a ship, she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired;

(c) in the case of damage to goods, the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

(3) For the purposes of clause (b) of subsection (2), in estimating the cost of repairs, no deduction is to be made in respect of general average contribution to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general contributions to which the ship would be liable if repaired. R.S., c. 231, s. 287.

Effect of constructive total loss

288 Where there is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss. R.S., c. 231, s. 288.

Abandonment

289 (1) Subject to this Section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment and, if he fails to do so, the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character, the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer and the mere silence of the insurer after notice is not an acceptance.

(6) Where notice of abandonment is accepted, the abandonment is irrevocable and the acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him. R.S., c. 231, s. 289.

Effect of abandonment

290 (1) Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss. R.S., c. 231, s. 290.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL AVERAGE AND PARTICULAR CHARGES)

Particular average loss

291 (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage

charges, are called particular charges, and particular charges are not included in particular average. R.S., c. 231, s. 291.

Salvage charges

292 (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) “Salvage charges” means the charges recoverable under maritime law by a salvor independently of contract but does not include the expenses or services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against, and such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred. R.S., c. 231, s. 292.

General average loss

293 (1) A general average loss is a loss caused by or directly consequential on a general average act and includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

(7) Where ship, freight and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general aver-

age losses or contributions is to be determined as if those subjects were owned by different persons. R.S., c. 231, s. 293.

MEASURE OF INDEMNITY

Measure of indemnity

294 (1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy. R.S., c. 231, s. 294.

Total loss

295 Subject to this Part and to any express provision in the policy, where there is a total loss of the subject-matter insured,

(a) if the policy be a valued policy, the measure of indemnity is the sum fixed by the policy;

(b) if the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured. R.S., c. 231, s. 295.

Partial loss respecting ship

296 Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

(a) where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;

(b) where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;

(c) where the ship has not been repaired and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above. R.S., c. 231, s. 296.

Partial loss of freight

297 Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy. R.S., c. 231, s. 297.

Partial loss of movables

298 Where there is a partial loss of goods, merchandise or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows:

(a) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;

(b) where part of the goods, merchandise or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss;

(c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value;

(d) “gross proceeds” means the actual price obtained at a sale where all charges on sale are paid by the sellers;

(e) “gross value” means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges and duty paid beforehand, provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. R.S., c. 231, s. 298.

Apportionment of valuation

299 (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy, and the insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Part.

(2) Where a valuation has to be apportioned and particulars of the prime cost of each separate species, quality or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities or descriptions of goods. R.S., c. 231, s. 299.

Indemnity payable

300 (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the underinsurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle. R.S., c. 231, s. 300.

Indemnity to third party

301 (1) Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability. R.S., c. 231, s. 301.

Measure of indemnity for other loss

302 (1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Part, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Part relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that, at the time of the loss, the whole or any part of the subject-matter insured was not a risk under the policy. R.S., c. 231, s. 302.

Particular average warranty

303 (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured and particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded. R.S., c. 231, s. 303.

Successive losses

304 (1) Unless the policy otherwise provides and subject to this Part, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss which has not been repaired or otherwise made good is followed by a total loss, the assured can only recover in respect of the total loss.

(3) Nothing in this Section shall affect the liability of the insurer under the suing and labouring clause. R.S., c. 231, s. 304.

Suing and labouring clause

305 (1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges as defined by this Part are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents in all cases to take such measures as may be reasonable for the purpose of averting or minimizing a loss. R.S., c. 231, s. 305.

RIGHTS OF INSURER ON PAYMENT

Subrogation where loss

306 (1) Where the insurer pays for a total loss, either of the whole or, in the case of goods, of any apportionable part of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may

remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to subsection (1), where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Part, by such payment for the loss. R.S., c. 231, s. 306.

Contribution

307 (1) Where the assured is overinsured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt. R.S., c. 231, s. 307.

Effect of underinsurance

308 Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance. R.S., c. 231, s. 308.

RETURN OF PREMIUM

Right to return of premium

309 Where the premium, or a proportionate part thereof, is by this Part declared to be returnable,

- (a) if already paid, it may be recovered by the assured from the insurer; and
- (b) if unpaid, it may be retained by the assured or his agent. R.S., c. 231, s. 309.

Return by agreement

310 Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured. R.S., c. 231, s. 310.

Total failure of consideration

311 (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular,

(a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured, but if the risk is not apportionable and has once attached, the premium is not returnable;

(b) where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable, provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless at such time the insurer knew of the safe arrival;

(c) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering;

(d) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;

(e) where the assured has overinsured under an unvalued policy, a proportionate part of the premium is returnable;

(f) subject to the foregoing provisions, where the assured has overinsured by double insurance, a proportionate part of the several premiums is returnable, provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable. R.S., c. 231, s. 311.

MUTUAL INSURANCE**Mutual insurance**

312 (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Part relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Part, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this Section, this Part applies to a mutual insurance. R.S., c. 231, s. 312.

SUPPLEMENTAL

Ratification of contract

313 Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss. R.S., c. 231, s. 313.

Variation by agreement or usage

314 (1) Where any right, duty or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) This Section extends to any right, duty or liability declared by this Part which may be lawfully modified by agreement. R.S., c. 231, s. 314.

Meaning of reasonable

315 Where, by this Part, any reference is made to reasonable time, reasonable premium or reasonable diligence, the question what is reasonable is a question of fact. R.S., c. 231, s. 315.

Common law

316 The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Part, shall continue to apply to contracts of marine insurance. R.S., c. 231, s. 316.

SCHEDULE TO PART IX

(Section 257)

FORM OF POLICY

Be it known that as well as in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause and them, and every of them, to be insured lost or not lost, at and from Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the whereof is master

under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading hereof aboard the said ship, upon the said ship, etc., and so shall continue and endure, during her abode there, upon the said ship, etc. And further, until the said ship, with all her ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at upon the said ship, etc., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Touching the adventures and perils which we, the assurers, are contented to bear and to take upon us in this voyage; they are of the seas, men-of-war, fire enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, taking at sea, arrests, restraints, and detentions of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to the insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so, we the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

In witness whereof we, the assurers, have subscribed our names and sums assured in

N. B. Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per centum; and all other goods, also the ship and freight are warranted free from average, under three pounds per centum, unless general, or the ship be stranded.

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Part for the construction of a policy in the above or other like form, where the context does not otherwise require:

1 Where the subject-matter is insured “lost or not lost” and the loss has occurred before the contract is concluded, the risk attaches, unless at such time the assured was aware of the loss, and the insurer was not.

2 Where the subject-matter is insured “from” a particular place, the risk does not attach until the ship starts on the voyage insured.

3 (a) Where a ship is insured “at and from” a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.

(b) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(c) Where chartered freight is insured “at and from” a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without special conditions and is insured “at and from” a particular place, the risk attaches *pro rata* as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the ship-owner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4 Where goods or other movables are insured “from the loading thereof”, the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

5 Where the risk on goods or other movables continues until they are “safely landed,” they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

6 In the absence of any further license or usage, the liberty to touch and stay “at any port or place whatsoever” does not authorize the ship to depart from the course of her voyage from the port of departure to the port of destination.

7 The term “perils of the seas” refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8 The term “pirates” includes passengers who mutiny and rioters who attack the ship from the shore.

9 The term “thieves” does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

10 The term “arrests, etc., of kings, princes, and people” refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11 The term “barratry” includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

12 The term “all other perils” includes only perils similar in kind to the perils specifically mentioned in the policy.

13 The term “average unless general” means a partial loss of the subject-matter insured other than a general average loss, and does not include “particular charges”.

14 Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15 The term “ship” includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers and coals, oils, and engine stores, if owned by the assured.

16 The term “freight” includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage-money.

17 The term “goods” means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

R.S., c. 231, Part IX, Sch.

PART X

PENALTIES

General penalty

317 (1) A person who contravenes this Act is liable to a fine not exceeding five thousand dollars for each offence.

(2) Any person who violates Sections 6 or 11, subsection (1) of Section 38 or Section 57 shall be liable to a penalty of ten dollars for every day he is in violation of the Section.

(2A) Subject to Sections 155 and 155A, any person who is guilty of an offence under Section 154 is liable to a fine not exceeding fifty thousand dollars for each deviation, with respect to each insured, from the schedule of rates.

(3) Any insurer guilty of an offence under Section 154 is liable to a fine not exceeding one thousand dollars with respect to each insured not reimbursed in accordance with that Section.

(4) A rating bureau or licensed insurer that files information with the Board that appears calculated to mislead is guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand dollars.

(5) An insurer that withdraws from the business of automobile insurance in contravention of Section 159B is guilty of an offence and liable to a fine not exceeding one million dollars. R.S., c. 231, s. 317; 2003, c. 11, s. 4; 2003 (2nd Sess.), c. 1, s. 23.

Limitation

318 A prosecution for a contravention of this Act shall be commenced within two years of the contravention. R.S., c. 231, s. 318.

PART XI

AGREEMENT

Agreement with Quebec

319 The Attorney General, with the approval of the Governor in Council, may enter into an agreement with the Government of Quebec or an agency thereof respecting automobile accident claims in each of the jurisdictions so as to assure Nova Scotia residents of adequate coverage in the case of automobile accidents occurring in the Province of Quebec. R.S., c. 231, s. 319.

PART XII

SELF-INSURANCE PLANS

Interpretation of Part

320 In this Part, unless the context otherwise requires,

(a) “attorney” means a person authorized to act for subscribers pursuant to Section 323;

(b) “subscribers” means the persons exchanging with each other contracts of indemnity or inter-insurance pursuant to Section 321. R.S., c. 231, s. 320.

Contracts of indemnity or inter-insurance

321 It is lawful for a person to exchange, with other persons in the Province and elsewhere, contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed pursuant to this Act, except life insurance, accident insurance, sickness insurance and guarantee insurance. R.S., c. 231, s. 321.

Not deemed to be insurer

322 No person shall be deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons contracts of indemnity or inter-insurance pursuant to this Act. R.S., c. 231, s. 322.

Execution of contracts

323 (1) Contracts of indemnity or inter-insurance may be executed on behalf of subscribers by a person other than a subscriber acting as an attorney under a power of attorney, a copy of which has been filed pursuant to Section 324.

(2) Notwithstanding any condition or stipulation of a power of attorney or of a contract of indemnity or inter-insurance, an action or proceeding in respect of a contract may be maintained in a court of competent jurisdiction in the Province. R.S., c. 231, s. 323.

Declaration

324 The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration verified by oath, setting forth

(a) the name of the attorney and the name or designation under which contracts are issued, which name or designation shall not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as, in the opinion of the Superintendent, to be likely to result in confusion or deception;

(b) the classes of insurance to be effected or exchanged under contracts;

(c) a copy of the form of the contract, agreement or policy under or by which contracts of indemnity or inter-insurance are to be effected or exchanged;

(d) a copy of the form of power of attorney under which contracts are to be effected or exchanged;

(e) the location of the office from which contracts are to be issued;

(f) a financial statement in the form prescribed by the Superintendent;

(g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange; and

(h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney. R.S., c. 231, s. 324.

License

325 (1) Upon an exchange complying with this Part, the Superintendent may issue a license.

(2) Notwithstanding anything contained in this Act, the Superintendent may, with the approval of the Minister, require an exchange, as a condition of the issue or renewal of its license, to deposit approved securities with the Minister in such amount and upon such terms and conditions as the Superintendent considers proper. R.S., c. 231, s. 325; 2003 (2nd Sess.), c. 1, s. 24.

License may not be issued

326 (1) A license shall not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance

(a) against loss by fire, until evidence satisfactory to the Superintendent has been filed with the Superintendent that applica-

tions have been made for indemnity upon at least seventy-five risks in the Province or elsewhere aggregating not less than one million five hundred thousand dollars as represented by executed contracts of *bona fide* applications to become concurrently effective; or

(b) in respect of automobiles, until evidence satisfactory to the Superintendent has been filed with the Superintendent that applications have been made for indemnity upon at least five hundred automobiles as represented by executed contracts or *bona fide* applications to become concurrently effective and that arrangements satisfactory to the Superintendent are in effect for the re-insurance of all liabilities in excess of such limits as the Superintendent may prescribe.

(2) In this Section, “automobile” has the same meaning as in Part VI. R.S., c. 231, s. 326.

Deemed service

327 Where the office from which contracts are to be issued is not in the Province, service upon the Superintendent of notice or process in any action or proceeding in the Province in respect of a contract of indemnity or inter-insurance effected by the exchange shall be deemed a service upon the subscribers who are members of the exchange at the time of the service. R.S., c. 231, s. 327.

Statements to be filed with Superintendent

328 There shall be filed with the Superintendent by the attorney, as often as the Superintendent may require, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney verified by oath to the effect that the attorney has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least five hundred subscribers, and that from such examination or other information in the possession of the attorney it appears that no subscriber has assumed on any single fire insurance risk an amount greater than ten per cent of the net worth of such subscriber. R.S., c. 231, s. 328.

Reserve fund and guarantee fund

329 (1) In this Section, “approved securities” means securities that are authorized for investment pursuant to Section 330.

(2) There shall, at all times, be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to fifty per cent of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and *pro rata* on contracts for longer periods.

(3) Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus an additional sum, in excess of all liabilities, in cash or approved securities amounting to not less than fifty thousand dollars.

(4) In the case of a fire insurance exchange whose principal office is in the Province, the guarantee fund or surplus referred to in subsection (3) shall not be less than twenty-five thousand dollars.

(5) In the case of an automobile insurance exchange whose principal office is in the Province, the guarantee fund or surplus referred to in subsection (3) shall, during the first year of operation of the exchange, be maintained at an amount not less than ten thousand dollars and thereafter not less than twenty-five thousand dollars.

(6) If, at any time, the amounts on hand are less than those required by this Section, the subscribers or the attorney shall forthwith make up the deficiency.

(7) Where funds, other than those that accrued from premiums or deposits of subscribers, are supplied to make up a deficiency, such funds shall be deposited and held for the benefit of subscribers on such terms and conditions as the Superintendent may require so long as a deficiency exists, and may thereafter be returned to the depositor. R.S., c. 231, s. 329.

Investment of surplus funds

330 (1) Where the principal office of the exchange is in the Province, the surplus insurance funds and the reserve fund of the exchange shall be invested in the class of securities prescribed by the Superintendent.

(2) Where the principal office of the exchange is outside the Province, it shall be a condition precedent to the issue of a license pursuant to this Act that evidence satisfactory to the Superintendent is filed with the Superintendent showing that the class of security in which funds of the exchange are required by law to be invested, and are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate. R.S., c. 231, s. 330.

Liability on behalf of subscribers

331 (1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of the subscriber.

(2) No attorney or exchange shall effect re-insurance of any risks undertaken by the exchange in any licensed reciprocal or inter-insurance exchange unless such exchange operates on the same underwriting standards. R.S., c. 231, s. 331.

Attorney not to act until license issued

332 (1) No person shall act as attorney, or for or on behalf of an attorney, in the exchange of contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, until a license has been issued and is in force.

(2) Every person who, in contravention of subsection (1), undertakes or effects or agrees or offers to undertake or effect an exchange of contracts of indemnity or inter-insurance, or any act or transaction in connection therewith, is guilty of an offence and on conviction is liable to a fine of not less than fifty dollars and not more than five hundred dollars. R.S., c. 231, s. 332.

License suspended or revoked

333 (1) Where a licensed exchange or attorney contravenes a provision of this Act, the license of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but the suspension or revocation does not affect the validity of contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts.

(2) Notice of suspension or revocation shall be given by the Superintendent in at least two successive issues of the Royal Gazette as soon as is reasonably possible after the suspension or revocation. R.S., c. 231, s. 333; 2003 (2nd Sess.), c. 1, s. 25.

Insurance against fire

334 Notwithstanding anything in this Act, any person may insure against fire any property situated in the Province in an exchange not licensed pursuant to this Act, and any property so insured or to be insured may be inspected and any loss incurred in respect thereof adjusted, if such insurance is effected outside the Province and without any solicitation in the Province, directly or indirectly, on the part of the insurer. R.S., c. 231, s. 334.
